sector agencies. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the committees' meetings were widely publicized throughout the nectarine and peach industries and all interested persons were invited to attend the meetings and participate in committee deliberations. Like all committee meetings, the August 31, 2006, meetings were public meetings and all entities, both large and small, were able to express their views on these issues.

An interim final rule concerning this action was published in the **Federal Register** on December 28, 2006. The rule was posted on CTFA's website. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period, which ended on February 26, 2007. One comment supporting the actions was received. The commenter stated that the actions accurately reflected the industries' desire to bring the orders' rules and regulations into conformance with the amended order provisions.

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (71 FR 78038, December 28, 2006), will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

PART 916—NECTARINES GROWN IN CALIFORNIA

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR parts 916 and 917, which was published at 71 FR 78038 on December 28, 2006, is adopted as a final rule without change.

Dated: March 19, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–5311 Filed 3–22–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. AMS–FV–06–0187; FV07–930–1 FR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2006–2007 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes final free and restricted percentages for the 2006–2007 crop year. The percentages are 55 percent free and 45 percent restricted and will establish the proportion of cherries from the 2006 crop which may be handled in commercial outlets. The percentages are intended to stabilize supplies and prices, and strengthen market conditions. The percentages were recommended by the Cherry Industry Administrative Board (Board), the body that locally administers the marketing order. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

DATES: *Effective Date:* March 26, 2007. This final rule applies to all 2006–2007 crop year restricted cherries until they are properly disposed of in accordance with marketing order requirements.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737; *Telephone:* (301) 734–5243, or *Fax:* (301) 734–5275, or E-mail at *Patricia.Petrella@usda.gov* or *Kenneth.Johnson@usda.gov.*

Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; *Telephone:* (202) 720–2491, *Fax:* (202) 720–8938, or *E-mail: Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and restricted percentages may be established for tart cherries handled by handlers during the crop year. This rule establishes final free and restricted percentages for tart cherries for the 2006–2007 crop year, beginning July 1, 2006, through June 30, 2007. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The order prescribes procedures for computing an optimum supply and preliminary and final percentages that establish the amount of tart cherries that can be marketed throughout the season. The regulations apply to all handlers of tart cherries that are in the regulated districts. Tart cherries in the free percentage category may be shipped immediately to any market, while restricted percentage tart cherries must be held by handlers in a primary or secondary reserve, or be diverted in accordance with § 930.59 of the order and § 930.159 of the regulations, or used for exempt purposes (to obtain diversion credit) under § 930.62 of the order and § 930.162 of the regulations. The regulated Districts for this season are: District one—Northern Michigan; District two—Central Michigan; District three—Southwest Michigan; District four—New York; District seven—Utah; and District eight—Washington. Districts five, six and nine (Oregon, Pennsylvania, and Wisconsin, respectively) will not be regulated for the 2006–2007 season.

The order prescribes under § 930.52 that those districts to be regulated shall be those districts in which the average annual production of cherries over the prior three years has exceeded six million pounds. A district not meeting the six million-pound requirement shall not be regulated in such crop year. Because this requirement was not met in the Districts of Oregon, Pennsylvania, and Wisconsin, handlers in those districts will not be subject to volume regulation during the 2006–2007 crop year.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. Demand for tart cherries and tart cherry products tend to be relatively stable from year to year. The supply of tart cherries, by contrast, varies greatly from crop year to crop year. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, because tart cherries are processed either into cans or frozen, they can be stored and carried over from crop year to crop year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely balanced. The primary purpose of setting free and restricted percentages is to balance supply with demand and reduce large surpluses that may occur.

Section 930.50(a) of the order prescribes procedures for computing an optimum supply for each crop year. The Board must meet on or about July 1 of each crop year, to review sales data, inventory data, current crop forecasts and market conditions. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years to which is added a desirable carryout inventory not to exceed 20 million pounds or such other amount as may be established with the approval of the Secretary. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year before new crop supplies are available for marketing.

The order also provides that on or about July 1 of each crop year, the Board is required to establish preliminary free and restricted percentages. These percentages are computed by deducting the actual carryin inventory from the optimum supply figure (adjusted to raw product equivalent—the actual weight of cherries handled to process into cherry products) and subtracting that figure from the current year's USDA crop forecast. If the resulting number is positive, this represents the estimated over-production, which would be the restricted percentage tonnage. The restricted percentage tonnage is then divided by the sum of the USDA crop forecast or by an average of such other crop estimates for the regulated districts to obtain percentages for the regulated districts. The Board is required to establish a preliminary restricted percentage equal to the quotient, rounded to the nearest whole number, with the complement being the preliminary free tonnage percentage. If the tonnage requirements for the year are more than the USDA crop forecast, the Board is required to establish a preliminary free tonnage percentage of 100 percent and a preliminary restricted percentage of zero. The Board is required to announce the preliminary percentages in accordance with paragraph (h) of § 930.50.

The Board met on June 22, 2006, and computed, for the 2006–2007 crop year, an optimum supply of 182 million pounds. The Board recommended that the desirable carryout figure be zero pounds. Desirable carryout is the amount of fruit required to be carried into the succeeding crop year and is set by the Board after considering market circumstances and needs. This figure can range from zero to a maximum of 20 million pounds, or such other amount, as the Board with the approval of the Secretary, may establish.

The Board calculated preliminary free and restricted percentages as follows: The USDA estimate of the crop for the entire production area was 256 million pounds; a 25 million pound carryin (based on Board estimates) was subtracted from the optimum supply of 182 million pounds which resulted in 2006–2007 tonnage requirements (adjusted optimum supply) of 157 million pounds. The carryin figure reflects the amount of cherries that handlers actually had in inventory at the beginning of the 2006–2007 crop year. Subtracting the adjusted optimum supply of 157 million pounds from the USDA crop estimate (256 million pounds) results in a surplus of 99 million pounds of tart cherries. The surplus was divided by the production in the regulated districts (249 million pounds) and resulted in a restricted percentage of 40 percent for the 2006–2007 crop year. The free percentage was 60 percent (100 percent minus 40 percent). The Board established these percentages and announced them to the industry as required by the order.

The preliminary percentages were based on the USDA production estimate and the following supply and demand information available at the June meeting for the 2006–2007 year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	182
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board at the June meeting	182
Preliminary Percentages:	
(4) USDA crop estimate	256
(5) Carryin held by handlers as of July 1, 2006	25
(6) Adjusted optimum supply for current crop year (Item 3 minus Item 5)	157
(7) Surplus (Item 4 minus Item 6)	99
(8) USDA crop estimate for regulated districts	249

	Free	Restricted
(9) Final percentages (item 7 divided by item 8 x 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	60	40

Between July 1 and September 15 of each crop year, the Board may modify the preliminary free and restricted percentages by announcing interim free and restricted percentages to adjust to the actual pack occurring in the industry.

USDA establishes final free and restricted percentages through the informal rulemaking process. These percentages would make available the tart cherries necessary to achieve the optimum supply figure calculated by the Board. The difference between any final free percentage designated by USDA and 100 percent is the final restricted percentage. The Board met on September 9, 2006, to recommend final free and restricted percentages.

The actual production reported by the Board was 263 million pounds, which is a 7 million pound increase from the USDA crop estimate of 256 million pounds.

A 31 million pound carryin (based on handler reports) was subtracted from the Board's optimum supply of 182 million pounds, yielding an adjusted optimum supply for the current crop year of 151 million pounds. The adjusted optimum supply of 151 million pounds was subtracted from the actual production of 263 million pounds, which resulted in a 112 million pound surplus. The total surplus of 112 million pounds is divided by the 251 million-pound volume of tart cherries produced in the regulated districts. This results in a 45 percent restricted percentage and a corresponding 55 percent free percentage for the regulated districts.

The final percentages are based on the Board's reported production figures and the following supply and demand information available in September for the 2006–2007 crop year:

	Millions of pounds	
Optimum Supply Formula:		
(1) Average sales of the prior three years	182	
(2) Plus desirable carryout	0	
(3) Optimum supply calculated by the Board	182	
Final Percentages:		
(4) Board reported production	263	
(5) Plus carryin held by handlers as of July 1, 2006	31	
(6) Adjusted optimum supply (Item 3 minus Item 5) available for current crop year	151	
(7) Surplus (Item 4 minus Item 6)	112	
(8) Production in regulated districts	251	
	Percentages	
	Free	Restricted
(9) Preliminary percentages (item 7 divided by item 8 x 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	55	45

USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal will be met by this action which releases 100 percent of the optimum supply and the additional release of tart cherries provided under § 930.50(g). This release of tonnage, equal to 10 percent of the average sales of the prior three years sales, is made available to handlers each season. The Board recommended that such release should be made available to handlers the first week of December and the first week of May. Handlers can decide how much of the 10 percent release they would like to receive on the December and May release dates. Once released, such cherries are released for free use by such handler. Approximately 18 million pounds would be made available to handlers this season in accordance with USDA Guidelines. This release will be made available to every handler and released to such handler in proportion to the handler's percentage of the total regulated crop handled. If a handler does not take his/her proportionate amount, such amount remains in the inventory reserve.

Final Regulatory Flexibility Analysis and Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. A majority of the producers and handlers are considered small entities under SBA's standards.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 2001/2002 through 2005/2006, approximately 93.8 percent of the U.S. tart cherry crop, or 214.3 million pounds, was processed annually. Of the 214.3 million pounds of tart cherries processed, 62 percent was frozen, 26 percent was canned, and 12 percent was utilized for juice and other products.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. Bearing acreage has declined from a high of 50,050 acres in 1987/88 to 37,050 acres in 2005/2006. This represents a 26 percent decrease in total bearing acres. Michigan leads the nation in tart cherry acreage with 73 percent of the total and produces about 70 percent of the U.S. tart cherry crop each year.

The 2006/2007 crop is moderate in size at 263 million pounds. The largest crop occurred in 1995 with production in the regulated districts reaching a record 395.6 million pounds. The price per pound received by tart cherry growers ranged from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991. These problems of wide supply and price fluctuations in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices they received often did not come close to covering the costs of production.

The industry demonstrated a need for an order during the promulgation process of the marketing order because large variations in annual tart cherry supplies tend to lead to fluctuations in prices and disorderly marketing. As a result of these fluctuations in supply and price, growers realize less income. The industry chose a volume control marketing order to even out these wide variations in supply and improve returns to growers. During the promulgation process, proponents testified that small growers and processors would have the most to gain from implementation of a marketing order because many such growers and handlers had been going out of business due to low tart cherry prices. They also testified that, since an order would help increase grower returns, this should increase the buffer between business success and failure because small growers and handlers tend to be less capitalized than larger growers and handlers.

Aggregate demand for tart cherries and tart cherry products tends to be relatively stable from year-to-year. Similarly, prices at the retail level show minimal variation. Consumer prices in grocery stores, and particularly in food service markets, largely do not reflect fluctuations in cherry supplies. Retail demand is assumed to be highly inelastic which indicates that price reductions do not result in large increases in the quantity demanded. Most tart cherries are sold to food service outlets and to consumers as pie filling; frozen cherries are sold as an ingredient to manufacturers of pies and cherry desserts. Juice and dried cherries are expanding market outlets for tart cherries.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. In general, the farm-level demand for a commodity consists of the demand at retail or food service outlets minus per-unit processing and distribution costs incurred in transforming the raw farm commodity into a product available to consumers. These costs comprise what is known as the ‘‘marketing margin.’’

The supply of tart cherries, by contrast, varies greatly. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, because tart cherries are processed either into cans or frozen, they can be stored and carried over from year-to-year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely in equilibrium. As a result, grower prices fluctuate widely, reflecting the large swings in annual supplies.

In an effort to stabilize prices, the tart cherry industry uses the volume control mechanisms under the authority of the Federal marketing order. This authority allows the industry to set free and restricted percentages. These restricted percentages are only applied to states or districts with a 3-year average of production greater than six million pounds, and to states or districts in which the production is 50 percent or more of the previous 5-year processed production average.

The primary purpose of setting restricted percentages is an attempt to bring supply and demand into balance. If the primary market is over-supplied with cherries, grower prices decline substantially.

The tart cherry sector uses an industry-wide storage program as a supplemental coordinating mechanism under the Federal marketing order. The primary purpose of the storage program is to warehouse supplies in large crop years in order to supplement supplies in short crop years. The storage approach is feasible because the increase in price—when moving from a large crop to a short crop year—more than offsets the costs for storage, interest, and handling of the stored cherries.

The price that growers receive for their crop is largely determined by the total production and carryin inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of free and restricted percentages for the primary market, and a storage program. The establishment of restricted percentages impacts the production to be marketed in the primary market, while the storage program has an impact on the volume of unsold inventories.

The volume control mechanism used by the cherry industry results in decreased shipments to primary markets. Without volume control the primary markets (domestic) would likely be over-supplied, resulting in lower grower prices.

To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been developed. The econometric model provides a way to see what impacts volume control may have on grower prices. The three districts in Michigan, along with the districts in Utah, New York, and Washington are the restricted areas for this crop year and their combined total production is 251 million pounds. A free percentage of 55 percent means 138 million pounds are available to be shipped to primary markets from these four states. Production levels of 3.4 million pounds for Oregon, 4.5 million pounds for Pennsylvania, and 4.3 million pounds for Wisconsin (the unregulated areas in 2006–2007), result in an additional 12.2 million pounds available for primary market shipments.

In addition, USDA requires a 10 percent release from reserves as a market growth factor. This results in an additional 18 million pounds being available for the primary market. The 138 million pounds from Michigan, Utah, Washington, and New York; the 12.2 million pounds from the other producing states; the 18 million pound release; and the 31 million pound carryin inventory gives a total of 199.2 million pounds being available for the primary markets.

The econometric model is used to estimate the difference between grower prices with and without restrictions. With volume controls, grower prices are estimated to be approximately $0.025 per pound higher than without volume controls.

The use of volume controls is estimated to have a positive impact on grower’s total revenues. With restrictions, revenues are estimated to be $6.0 million higher than without restrictions. The without restrictions scenario assumes that all tart cherries produced would be delivered to processors for payments.

It is concluded that the 45 percent volume control would not unduly burden producers, particularly smaller growers. The 45 percent restriction would be applied to the growers in Michigan, New York, Utah, and Washington. The growers in the other three States covered under the marketing order will benefit from this restriction.

Recent grower prices have been as high as $0.44 per pound in 2002–03 when there was a crop failure. Prices in the last two crop years have been $0.33 in 2004 and $0.24 per pound in 2005. At current production levels, yield is estimated at approximately 7,112 pounds per acre. At this level of yield, the cost of production is estimated to be $0.31 per pound (Cost of Production Tart Cherries in Northwestern Michigan, Nugent, Kole, Thornton, Bardenhagen). Thus, this year's grower price even with regulation is estimated to be below the cost of production. The use of volume controls is believed to have little or no effect on consumer prices and should not result in fewer retail sales or sales to food service outlets.

Without the use of volume controls, the industry could be expected to start to build large amounts of unwanted inventories. These inventories have a depressing effect on grower prices. The econometric model shows for every 1 million-pound increase in carry-in inventories, a decrease in grower prices of $0.0039 per pound occurs. The use of volume controls allows the industry to supply the primary markets while avoiding the disastrous results of over-supplying these markets. In addition, through volume control, the industry has an additional supply of cherries that can be used to develop secondary markets such as exports and the development of new products. The use of reserve cherries in the production shortened 2002–2003 crop year proved to be very useful and beneficial to growers and packers.

In discussing the possibility of marketing percentages for the 2006–2007 crop year, the Board considered the following factors contained in the marketing policy: (1) The estimated total production of tart cherries; (2) the estimated size of the crop to be handled; (3) the expected general quality of such cherry production; (4) the expected carryover as of July 1 of canned and frozen cherries and other cherry products; (5) the expected demand conditions for cherries in different market segments; (6) supplies of competing commodities; (7) an analysis of economic factors having a bearing on the marketing of cherries; (8) the estimated tonnage held by handlers in primary or secondary inventory reserves; and (9) any estimated release of primary or secondary inventory reserve cherries during the crop year.

The Board's review of the factors resulted in the computation and announcement in September 2006 of the free and restricted percentages established by this rule (55 percent free and 45 percent restricted).

One alternative to this action would be not to have volume regulation this season. Board members stated that no volume regulation would be detrimental to the tart cherry industry due to the size of the 2006–2007 crop. Returns to growers would not cover their costs of production for this season which might cause some to go out of business.

As mentioned earlier, USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity available under this rule is 110 percent of the quantity shipped in the prior three years.

The free and restricted percentages established by this rule release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

While the benefits resulting from this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

In addition, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 9, 2006, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements under the tart cherry marketing order have been previously approved by OMB and assigned OMB Number 0581–0177.

Reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This rule does not change those requirements.

AMS is committed to complying with E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on January 16, 2007 (72 FR 1681). Copies of the rule were mailed or sent via facsimile to all Board members and handlers. Finally, the rule was made available through the Internet by the Office of the **Federal Register** and USDA. A 30-day comment period ending on February 15, 2007, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are already shipping tart cherries from the 2006–2007 crop. Further handlers are aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

■ For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ 1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 930.255 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 930.255 Final free and restricted percentages for the 2006–2007 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2006, which shall be free and restricted, respectively, are designated as follows: Free percentage, 55 percent and restricted percentage, 45 percent.

Dated: March 19, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–5313 Filed 3–22–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26721; Directorate Identifier 2006–SW–28–AD; Amendment 39–14961; AD 2006–26–51]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH Model MBB–BK 117 C–2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2006–26–51, which was sent previously to all known U.S. owners and operators of Eurocopter Deutschland GmbH (ECD) Model MBB–BK 117 C–2 helicopters by individual letters. This AD requires, before further flight, marking the position of the tail rotor control lever dynamic weights (weights), removing the split pins and the weights, and visually inspecting and replacing, if necessary, the tail rotor control lever before further flight. This AD also requires, within 10 hours time-in-service (TIS), and thereafter at intervals not to exceed 25 hours TIS, repeating the visual inspection of the tail rotor control lever and replacing any unairworthy tail rotor control lever with an airworthy tail rotor control lever before further flight. Also required is reassembling the tail rotor control lever by following the appropriate maintenance instruction. This amendment is prompted by an in-flight incident in which the threaded portion of the tail rotor control lever containing a dynamic weight broke off leading to severe vibrations. The actions specified by this AD are intended to prevent separation of the weights in flight, severe vibration, and subsequent loss of control of the helicopter.

DATES: Effective April 9, 2007, to all persons except those persons to whom it was made immediately effective by Emergency AD 2006–26–51, issued on December 22, 2006, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 9, 2007.

Comments for inclusion in the Rules Docket must be received on or before May 22, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically;
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically;
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590;
- *Fax:* (202) 493–2251; or
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

Examining the Docket

You may examine the docket that contains the AD, any comments, and other information on the Internet at *http://dms.dot.gov*, or in person at the Docket Management System (DMS) Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in the ADDRESSES section. Comments will be available in the AD docket shortly after the DMS receives them.

FOR FURTHER INFORMATION CONTACT: Charles Harrison, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193–0110, telephone (817) 222–5128, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On December 22, 2006, the FAA issued Emergency AD 2006–26–51 for the specified model helicopters, which requires, before further flight, marking the position of the tail rotor control lever dynamic weights (weights), removing the split pins and the weights, and by referring to Figure 1 of the manufacturer's service bulletin, visually inspecting the area around the split pin bore for score marks, notches, scratches, or other damage that exceeds the maintenance manual limitations or a crack and replacing any unairworthy tail rotor control lever before further flight. The AD also requires, within 10 hours TIS, and thereafter at intervals not to exceed 25 hours TIS, repeating the visual inspection of the tail rotor control lever and replacing any unairworthy tail rotor control lever with an airworthy tail rotor control lever before further flight. Also required is reassembling the tail rotor control lever by following the appropriate maintenance instruction. That action was prompted by an in-flight incident in which a dynamic weight broke off the tail rotor control lever subsequently leading to considerable vibrations. A visual inspection revealed that the threaded portion of the control lever containing the dynamic weight had broken off. This condition, if not corrected, could result in separation of the weights in flight, severe vibration, and subsequent loss of control of the helicopter.