

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 930

[Doc. No. AMS-FV-10-0081; FV10-930-4 FR]

#### Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2010-2011 Crop Year for Tart Cherries

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes final free and restricted percentages under the tart cherry marketing order for the 2010-2011 crop year. The percentages are 58 percent free and 42 percent restricted and will establish the proportion of cherries from the 2010 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:* February 26, 2011.

**FOR FURTHER INFORMATION CONTACT:** Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737; *telephone:* (301) 734-5245, *Fax:* (301) 734-5275; *E-mail:* [Kenneth.Johnson@ams.usda.gov](mailto:Kenneth.Johnson@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, 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:* [Antoinette.Carter@ams.usda.gov](mailto:Antoinette.Carter@ams.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 2010-2011 crop year, beginning July 1, 2010, through June 30, 2011.

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 the 2010-2011 crop year are: District two-Central Michigan; District three-Southern Michigan; District four-New York; District seven-Utah; District eight-Washington; and District nine-Wisconsin. Districts one, five, and six (Northern Michigan, Oregon, and Pennsylvania, respectively) are not regulated for the 2010-2011 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 and Pennsylvania, handlers in those districts are not subject to volume regulation during the 2010-2011 crop year. Section 930.52 of the order also provides that any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous five years is exempt from volume regulation. Thus, Northern Michigan is also not subject to volume regulation for the 2010-2011 crop year because its 2010 crop production was less than 50 percent of its 5-year average production due to weather related crop damage.

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, since 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 is 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.

The order also provides that on or about July 1 of each crop year, the Board is 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 or from an average of such other crop estimates the Board votes to use. If the resulting number is positive, this represents the estimated over-production, which would be the restricted tonnage. The restricted tonnage is then divided by the sum of the crop estimates for the regulated districts to obtain a preliminary restricted percentage for the regulated districts. The preliminary free percentage is the difference between the restricted percentage and 100 percent. 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 17, 2010, and computed, for the 2010–2011 crop year, an optimum supply of 170 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.

The Board calculated preliminary free and restricted percentages as follows: The USDA estimate of the crop for the entire production area was 195 million pounds; a 51 million pound carryin (based on Board estimates) was subtracted from the optimum supply of 170 million pounds which resulted in the 2010–2011 poundage requirements (adjusted optimum supply) of 119 million pounds. The carryin figure reflects the amount of cherries that handlers actually have in inventory at the beginning of the 2010–2011 crop year. Subtracting the adjusted optimum supply of 119 million pounds from the USDA crop estimate, (195 million pounds) resulted in a surplus of 76 million pounds of tart cherries. The surplus was divided by the production in the regulated districts (191 million pounds) and resulted in a restricted percentage of 40 percent for the 2010–2011 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 2010–2011 crop year:

	Millions of pounds	
Optimum Supply Formula:		
(1) Average sales of the prior three years .....		170
(2) Plus desirable carryout .....		0
(3) Optimum supply calculated by the Board at the June meeting .....		170
Preliminary Percentages:		
(4) USDA crop estimate .....		195
(5) Carryin held by handlers as of July 1, 2009 .....		51
(6) Adjusted optimum supply for current crop year .....		119
(7) Surplus .....		76
(8) USDA crop estimate for regulated districts .....		191
	Percentages	
	Free	Restricted
(9) Preliminary percentages (item 7 divided by item 8 × 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. No later than September 15, the Board must recommend final free and restricted percentages to the Secretary.

The Secretary 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 and 100 percent is the final restricted percentage.

The Board met on September 10, 2010, to recommend final free and restricted percentages. The actual production reported by the Board was 189 million pounds, which is a 6 million pound decrease from the USDA crop estimate of 195 million pounds.

The Board also recommended an economic adjustment of 20 million pounds to be subtracted from the surplus to adjust the supply for the poor quality and yields due to adverse harvest conditions in various parts of the production area. Handlers stated that processing yields from the 2010 tart cherry harvest were significantly lower this year than in previous years. The lower yields resulted in processors using more raw tart cherries than usual

to produce a given amount of finished product.

A 51 million pound carryin (based on handler reports) was subtracted from the optimum supply of 170 million pounds which resulted in the 2010–2011 poundage requirements (adjusted optimum supply) of 119 million pounds. Subtracting the adjusted optimum supply of 119 million pounds

from the actual production of 189 million pounds results in a surplus of 70 million pounds of tart cherries. An economic adjustment of 20 million pounds was subtracted from the surplus, resulting in an adjusted surplus of 50 million pounds of tart cherries. The adjusted surplus of 50 million pounds was divided by the production in the regulated districts (120 million

pounds) and resulted in a restricted percentage of 42 percent for the 2010–2011 crop year. The free percentage was 58 percent (100 percent minus 42 percent).

The final percentages are based on the Board’s reported production figures and the following supply and demand information available in September for the 2010–2011 crop year:

	Millions of pounds	
Optimum Supply Formula:		
(1) Average sales of the prior three years .....		170
(2) Plus desirable carryout .....		0
(3) Optimum supply calculated by the Board .....		170
Final Percentages:		
(4) Board reported production .....		189
(5) Carryin held by handlers as of July 1, 2010 .....		51
(6) Adjusted optimum supply .....		119
(7) Surplus (item 4 minus item 6) .....		70
(8) Economic adjustment .....		20
(9) Adjusted surplus (item 7 minus item 8) .....		50
(10) Production in regulated districts .....		120
	Percentages	
	Free	Restricted
(11) Final Percentages (item 9 divided by item 10 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage) .....	58	42

The 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 would be met by the establishment of a final percentage 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, 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 available for free use by such handler. Approximately 17 million pounds would be made available to handlers this season in accordance with Department Guidelines. This release would be made available to every 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**

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 600 producers of tart cherries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, 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 1997/98 through 2008/09, approximately 85 percent of the U.S. tart cherry crop, or 222.7 million pounds, was processed annually. Of the 222.7 million pounds of tart cherries processed, 61 percent was frozen, 27 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 35,550 acres in 2009/10. This represents a 29 percent decrease in total bearing acres. Michigan leads the nation in tart cherry acreage with 73 percent of the total and produces about 75 percent of the U.S. tart cherry crop each year.

The 2010/11 crop is 189 million pounds. This production level is 6 million pounds less than the 195.3 million pounds estimated by the National Agricultural Statistics Service (NASS) in June. 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, since 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 volume 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 supplies 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 two districts in Michigan, along with the districts in Utah, New York, Washington, and Wisconsin are the restricted areas for this crop year and their combined total production is 120 million pounds. A 42 percent restriction means 70 million pounds is available to be shipped to primary markets from these five states. Production levels of 65.3 million pounds for Northwest Michigan, 1.2 million pounds for Oregon, and 2.2 million pounds for Pennsylvania (the unregulated areas in 2010/11), result in an additional 69 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 17 million pounds being available for the primary market. The 70 million pounds from the two Michigan districts, Utah, Washington, Wisconsin, and New York, the 69 million pounds from the other producing states, the 17 million pound release, and the 51 million pound carryin inventory gives a total of 207 million pounds being available for the primary markets.

The econometric model is used to estimate the impact of establishing a reserve pool for this year's crop. With the volume controls, grower prices are estimated to be approximately \$0.12 per pound higher than without volume controls.

The use of volume controls is estimated to have a positive impact on growers' total revenues. With regulation, growers' total revenue from processed cherries is estimated to be \$23 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 42 percent volume control would not unduly burden producers, particularly smaller growers. The 42 percent restriction would be applied to the growers in two districts in Michigan, New York, Utah, Washington, and Wisconsin. The growers in the other unregulated areas 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 \$0.372 in 2008–09 and \$0.194 per pound in 2009–10. At current production levels, yield is estimated at approximately 10,251 pounds per acre. At this level of yield the cost of production is estimated to be \$0.25 per pound (costs were estimated by representatives of Michigan State University with input provided by growers for the current

crop). The grower price for 2010–11 will likely be less than \$0.25 per pound for the combined free and restricted production. 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 will 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 carryin inventories, a decrease in grower prices of \$0.0036 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 2002/03 crop year proved to be very useful and beneficial to growers and packers.

In discussing the possibility of marketing percentages for the 2010–2011 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 2010 of the free and restricted percentages proposed to be established by this rule (58 percent free and 42 percent restricted).

One alternative to this action would be not to have volume regulation this season. Board members believed that no volume regulation would be detrimental to the tart cherry industry.

As mentioned earlier, the Department'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.

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.

As noted in the initial regulatory flexibility analysis, the Department 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 10, 2010, meeting was a public meeting and

all entities, both large and small, were able to express views on this issue.

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 proposed rule concerning this action was published in the **Federal Register** on December 13, 2010 (75 FR 77564). Copies of the rule were mailed or sent via facsimile to all Board members and alternates. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending January 12, 2011, 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 Antoinette Carter 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 further 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 2010–2011 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. 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 930.256 is added to read as follows:

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

**§ 930.256 Final free and restricted percentages for the 2010–2011 crop year.**

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2010, which shall be free and restricted, respectively, are designated as follows: Free percentage, 58 percent and restricted percentage, 42 percent.

Dated: February 18, 2011.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2011–4269 Filed 2–24–11; 8:45 am]

BILLING CODE 3410–02–P

**DEPARTMENT OF ENERGY**

**10 CFR Part 1023**

**48 CFR Parts 901, 902, 903, 904, 906, 907, 908, 909, 911, 914, 915, 916, 917, and 952**

RIN 1991–AB81

**(General Provisions) Contract Appeals and the Acquisition Regulation: General, Acquisition Planning, and Contracting Methods and Contract Types**

*Correction*

In rule document 2011–1320 appearing on pages 7685–7694 in the issue of Friday, February 11, 2011, make the following correction:

**915.404 [Table Corrected]**

On page 7693, in the table, in the last row, in the column labeled “Add”, ““DOE to”” should read ““DOE to—””.

[FR Doc. C1–2011–1320 Filed 2–24–11; 8:45 am]

BILLING CODE 1505–01–D

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 25**

[Docket No. NM412 Special Conditions No. 25–419–SC]

**Special Conditions: Boeing Model 787–8 Airplane; Overhead Crew-Rest Compartment**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued for the Boeing Model 787–8 airplane. This airplane will have novel or unusual design features associated with installation of an overhead crew-rest (OCR) compartment. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of the Boeing Model 787–8 airplanes.

**DATES:** *Effective Date:* March 28, 2011.

**FOR FURTHER INFORMATION CONTACT:** Jeff Gardlin, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2136; facsimile (425) 227–1320.

**SUPPLEMENTARY INFORMATION:**

**Background**

On March 28, 2003, The Boeing Commercial Airplane Group (hereafter referred to as “Boeing”) applied for an FAA type certificate for its new Boeing Model 787–8 passenger airplane. The company applied for an extension of time for the type certificate on March 9, 2009, and was granted that extension on March 13, 2009. The Boeing Model 787–8 airplane will be an all-new, two-engine, jet transport airplane with a two-aisle cabin. The maximum takeoff weight will be 476,000 pounds, with a maximum passenger capacity of 381.

**Type Certification Basis**

Under provisions of Title 14 Code of Federal Regulations (14 CFR) 21.17, Boeing must show that the Boeing Model 787–8 airplane (hereafter referred to as “the 787”) meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–117, 25–120, 25–124, 25–125 and 25–128, except that § 25.1309 remains at Amendment 25–117 for cargo-fire protection systems. If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the 787 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to complying with the applicable airworthiness regulations and special conditions, the 787 must comply with the fuel-vent and exhaust-

emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36. In addition, the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the “Noise Control Act of 1972.”

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, the special conditions would also apply to the other model under provisions of § 21.101.

**Novel or Unusual Design Features**

Crew-rest compartments have been installed and certificated on several Boeing airplane models in locations as varied as the main passenger-seating area, the overhead space above the main passenger-cabin seating area, and below the passenger-cabin seating area within the cargo compartment. In each case, the Administrator has determined that the applicable regulations (*i.e.*, 14 CFR part 25) did not provide all of the necessary requirements because each installation had unique features by virtue of its design, location, and use on the airplane. The special conditions contain safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Most recently for the Boeing Model 777 series airplanes, the FAA has issued Special Conditions No. 25–230–SC, dated April 9, 2003, for crew-rest compartments allowed to be occupied by crewmembers and flight crewmembers during flight, and Special Conditions No. 25–260–SC, dated April 14, 2004, for crew-rest compartments allowed to be occupied by crewmembers and flight crewmembers during TT&L, as well as during flight.

The OCR compartment on the 787 identified by Boeing as an overhead flight-attendant rest is located above the main passenger cabin, adjacent to Door 4, and will be accessed from the main deck by stairs through a vestibule. This OCR compartment will contain six private berths, an emergency hatch that opens directly into the main passenger-cabin area, a smoke-detection system, an oxygen system, and various occupant amenities. This OCR compartment will only be occupied by trained crewmembers in flight. It will not be