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7 CFR Part 930

[Doc. No. AMS–SC–16–0105; SC16–930–5 FR]

Tart Cherries Grown in the States of Michigan, et al.; Free and Restricted Percentages for the 2016–17 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Cherry Industry Administrative Board (Board) to establish free and restricted percentages for the 2016–17 crop year under the marketing order for tart cherries grown in the states of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin (order). The Board locally administers the marketing order and is comprised of producers and handlers of tart cherries operating within the production area, and a public member. This action establishes the proportion of tart cherries from the 2016 crop which may be handled in commercial outlets at 71 percent free and 29 percent restricted. These percentages should stabilize marketing conditions by adjusting supply to meet market demand and help improve grower returns.

DATES: Effective June 27, 2017.

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Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Richard.Lower@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 930, both as amended (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 (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175.

This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) has exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. *See* OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order provisions now in effect, free and restricted percentages may be established for tart cherries handled during the crop year. This final rule establishes free and restricted percentages for tart cherries for the 2016–17 crop year, beginning July 1, 2016, through June 30, 2017.

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 USDA 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 exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA 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 to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule establishes free and restricted percentages for the 2016–17 crop year. This rule establishes the proportion of tart cherries from the 2016 crop which may be handled in commercial outlets at 71 percent free and 29 percent restricted. This action should stabilize marketing conditions by adjusting supply to meet market demand and help improve grower returns. The carry-out and the final percentages were recommended by the Cherry Industry Administrative Board (Board) at a meeting on September 8, 2016.

Section 930.51(a) of the order provides authority to regulate volume by designating free and restricted percentages for any tart cherries acquired by handlers in a given crop year. Section 930.50 prescribes procedures for computing an optimum supply based on sales history and for calculating these free and restricted percentages. Free percentage volume may be shipped to any market, while restricted percentage volume must be held by handlers in a primary or secondary reserve, or be diverted or used for exempt purposes as prescribed in §§ 930.159 and 930.162 of the regulations. Exempt purposes include, in part, the development of new products, sales into new markets, the development of export markets, and charitable contributions. Sections 930.55 through 930.57 prescribe procedures for inventory reserve. For cherries held in reserve, handlers would be responsible for storage and would retain title of the tart cherries.

Under § 930.52, only those districts with an annual average production over the prior three years of at least six million pounds are subject to regulation, and any district producing a crop which is less than 50 percent of its annual average of the previous five years is exempt. The regulated districts for the 2016–17 crop year are: District 1—Northern Michigan; District 2—Central Michigan; District 3—Southern Michigan; District 4—New York; District

7—Utah; District 8—Washington; and District 9—Wisconsin. Districts 5 and 6 (Oregon and Pennsylvania, respectively) are not regulated for the 2016–17 season.

Demand for tart cherries and tart cherry products tends to be relatively stable from year to year. Conversely, annual tart cherry production can vary greatly. In addition, tart cherries are processed and can be stored and carried over from crop year to crop year, further impacting supply. As a result, supply and demand for tart cherries are rarely in balance.

Because demand for tart cherries is inelastic, total sales volume is not very responsive to changes in price. However, prices are very sensitive to changes in supply. As such, an oversupply of cherries can have a sharp negative effect on prices, driving down grower returns. The Board, aware of this economic relationship, focuses on using the volume control provisions in the order to balance supply and demand to stabilize industry returns.

Pursuant to § 930.50 of the order, the Board meets on or about July 1 to review sales data, inventory data, current crop forecasts and market conditions for the upcoming season and, if necessary, to recommend preliminary free and restricted percentages if anticipated supply would exceed demand. After harvest is complete, but no later than September 15, the Board meets again to update its calculations using actual production data, consider any necessary adjustments to the preliminary percentages, and determine if final free and restricted percentages should be recommended to the Secretary.

The Board uses sales history, inventory, and production data to determine whether there is a surplus, and if so, how much volume should be restricted to maintain optimum supply. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year. Optimum supply is defined as the average free sales of the prior three years plus desirable carry-out inventory. Desirable carry-out is the amount of fruit needed by the industry to be carried into the succeeding crop year to meet market demand until the new crop is available. Desirable carry-out is set by the Board after considering market circumstances and needs. Section 930.151(b) specifies that desirable carry-out can range from zero to a maximum of 100 million pounds.

In addition, USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (*http://www.ams.usda.gov/publications/content/1982-guidelines-fruit-vegetable-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 requirement is codified in § 930.50(g) of the order, which specifies that, in years when restricted percentages are established, the Board shall make available tonnage equivalent to an additional 10 percent of the average sales of the prior three years for market expansion (market growth factor).

After the Board determines optimum supply, desirable carry-out, and market growth factor, it must examine the current year's available volume to determine whether there is an oversupply situation. Available volume includes carry-in inventory (any inventory available at the beginning of the season) along with that season's production. If production is greater than the optimum supply minus carry-in, the difference is considered surplus. This surplus tonnage is divided by the sum of production in the regulated districts to reach a restricted percentage. This percentage must be held in reserve or used for approved diversion activities, such as exports.

The Board met on June 23, 2016, and computed an optimum supply of 287 million pounds for the 2016–17 crop year using the average of free sales for the three previous seasons and a desirable carry-out of 57 million pounds. The Board determined three months of sales would be a good estimate for what was needed at the end of the season, as there is a three-month gap between the calculation of carry-out at the end of one season and the availability of fruit in the next season. The recommended carry-out of 57 million pounds is approximately a quarter of average annual sales.

The Board then subtracted the estimated carry-in of 81.3 million pounds from the optimum supply to calculate the production needed from the 2016–17 crop to meet optimum supply. This number, 205.7 million pounds, was subtracted from the Board's estimated 2016–17 production of 351.3 million pounds to calculate a surplus of 145.6 million pounds of tart cherries. The Board also complied with the market growth factor requirement by adding 23 million pounds (average sales for prior three years of 230 million times 10 percent) to the free supply. The surplus minus the market growth factor was then divided by the expected production in the regulated districts (348 million pounds) to reach a preliminary restricted percentage of 35 percent for the 2016–17 crop year.

The Board then discussed whether this calculation would provide sufficient supply to grow sales while being able to supply orders that are already scheduled, including filling remaining orders from a USDA purchase made the previous season. The Board, after considering anticipated supply needs for the 2016–17 season, decided to make an economic adjustment of 22 million pounds to increase the available supply of tart cherries. This economic adjustment further reduced the preliminary surplus to 100.6 million pounds. After these adjustments, the preliminary restricted percentage was recalculated as 29 percent (100.6 million pounds divided by 348 million pounds).

The Board met again on September 8, 2016, to consider final volume regulation percentages for the 2016–17 season. The final percentages are based on the Board's reported production figures and the supply and demand information available in September. The total production for the 2016–17 season was 341 million pounds, 10 million pounds below the Board's June estimate. In addition, growers diverted 26 million pounds in the orchard, leaving 315 million pounds available to market, 310 million pounds of which are in the restricted districts. Using the actual production numbers, and accounting for the recommended desirable carry-out and economic adjustment, as well as the market growth factor, the restricted percentage was recalculated.

The Board subtracted the carry-in figure used in June of 81.3 million pounds from the optimum supply of 287 million pounds to determine 205.7 million pounds of 2016–17 production would be necessary to reach optimum supply. The Board subtracted the 205.7 million pounds from the actual production of 341.3 million pounds, resulting in a surplus of 135.6 million pounds of tart cherries. The surplus was then reduced by subtracting the economic adjustment of 22 million pounds and the market growth factor of 23 million pounds, resulting in an adjusted surplus of 90.6 million pounds. The Board then divided this final surplus by the available production of 310 million pounds in the regulated districts (336.1 million pounds minus 26.4 million pounds of in-orchard diversion) to calculate a restricted percentage of 29 percent with a corresponding free percentage of 71 percent for the 2016–17 crop year, as outlined in the following table:

	Millions of pounds
Final Calculations:	
(1) Average sales of the prior three years	230.0
(2) Plus desirable carry-out	57.0
(3) Optimum supply calculated by the Board	287.0
(4) Carry-in as of July 1, 2016	81.3
(5) Adjusted optimum supply (item 3 minus item 4)	205.7
(6) Board reported production	341.3
(7) Surplus (item 6 minus item 5)	135.6
(8) Total economic adjustments	22.0
(9) Market growth factor	23.0
(10) Adjusted Surplus (item 7 minus items 8 and 9)	90.6
(11) Supply in regulated districts	336.1
(12) In-Orchard Diversion	26.4
(13) Production minus in orchard diversion	309.7
Final Percentages:	Percent
Restricted (item 10 divided by item 13 × 100)	29
Free (100 minus restricted percentage)	71

The primary purpose of setting restricted percentages is an attempt to bring supply and demand into balance. If the primary market is oversupplied with cherries, grower prices decline substantially. Restricted percentages have benefited grower returns and helped stabilize the market as compared to those seasons prior to the implementation of the order. The Board believes the available information indicates that a restricted percentage should be established for the 2016–17 crop year to avoid oversupplying the market with tart cherries. Consequently, based on its discussion of this issue and the result of the above calculations, the Board recommended final percentages of 71 percent free and 29 percent restricted by a vote of 16 in favor, 2 opposed, and 2 abstentions.

Though production came in below the Board's June, 2016, estimate, the initial restriction percentage remained the same due to the substantial in-orchard diversion. During the discussion of the proposed restriction, several members supported the proposed percentages as there was no change from the preliminary 29 percent restriction recommended in June. They believed deviating from the percentages announced in June would be disruptive to the industry, as processors have already made agreements with growers.

Another member noted when there was a crop failure in 2012, there was not enough reserve to maintain sales and warned against being unprepared in the future. The member also noted that in the last four years, even with volume regulation and an increase in imported products, overall domestic sales have increased since 2013, including modest growth in both juice and piefill.

Some members opposed to the proposed restriction expressed concern regarding competition from imported tart cherry juice concentrate. In particular, they were concerned that the additional volume from imports is not accounted for in the Optimum Supply Formula (OSF), thus not capturing overall supply and demand.

Others were of the opinion that the Board's recent actions to expand the use of diversion credits in new markets or through grower diversion were allowing the industry to remain competitive without making additional adjustments to supply. Another member countered that not all handlers are helped by new market diversion credits and cannot sell all of their product under a restriction.

When asked how much of the market currently being served by imports could be supplied by the domestic handlers, some members stated they could utilize the full adjusted calculated surplus of 90.6 million pounds. Others noted that trying to compete for those markets by matching the price of imported concentrate would drop grower returns to an unsustainable level.

One member summarized that, although there is a carrying cost for storing restricted fruit, and the industry appears to be at a trade disadvantage, the Board should account for those factors all the while focusing on continuing to grow sales. Though there was much discussion regarding the market impact of imports, there was no motion made by any Board member to make a further economic adjustment to the calculation based on imported product.

After reviewing the available data, and considering the concerns expressed, the Board determined that a 29 percent restriction with a carry-out volume of 57 million pounds meets sales needs and establishes some reserves without oversupplying the market. Thus, the Board recommended establishing final percentages of 71 percent free and 29 percent restricted. The Board could meet and recommend the release of additional volume during the crop year if conditions so warranted.

Final Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), 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 businesses 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.

There are approximately 600 producers of tart cherries in the regulated area and approximately 40 handlers of tart cherries who are subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $750,000 and small agricultural service firms have been defined as those whose annual receipts are less than $7,500,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS) and Board data, the average annual grower price for tart cherries during the 2015–16 season was approximately $0.347 per pound. With total utilization at 251.1 million pounds, the total 2015–16 crop value is estimated at $87 million. Dividing the crop value by the estimated number of producers (600) yields an estimated average annual receipt per producer of $145,000. This is well below the SBA threshold for small producers. In 2015, The Food Institute estimated a free on board (f.o.b.) price of $0.96 per pound for frozen tart cherries, which make up the majority of processed tart cherries. Multiplying the f.o.b price by total utilization of 251.1 million pounds results in an estimated handler-level tart cherry value of $241 million. Dividing this figure by the number of handlers (40) yields an estimated average annual handler receipts of $6 million, which is below the SBA threshold for small agricultural service firms. Assuming a normal bell-curve distribution, the majority of producers and handlers of tart cherries may be classified as small entities.

The tart cherry industry in the United States is characterized by wide, annual fluctuations in production. According to NASS, the pounds of tart cherry production for the years 2012 through 2015 were 85 million, 291 million, 301 million, and 251 million, respectively. Because of these fluctuations, supply and demand for tart cherries are rarely equal.

Demand for tart cherries is inelastic, meaning changes in price have a minimal effect on total sales volume. However, prices are very sensitive to changes in supply, and grower prices vary widely in response to the large swings in annual supply, with prices ranging from a low of 7.3 cents per pound in 1987 to a high of 59.4 cents per pound in 2012.

Because of this relationship between supply and price, oversupplying the market with tart cherries would have a sharp negative effect on prices, driving down grower returns. The Board, aware of this economic relationship, focuses on using the volume control authority in the order to align supply with demand and stabilize industry returns. This authority allows the industry to set free and restricted percentages as a way to bring supply and demand into balance. Free percentage cherries can be marketed by handlers to any outlet, while restricted percentage volume must be held by handlers in reserve, diverted, or used for exempted purposes.

This rule controls the supply of tart cherries by establishing percentages of 71 percent free and 29 percent restricted for the 2016–17 crop year. These percentages should stabilize marketing conditions by adjusting supply to meet market demand and help improve grower returns. This rule regulates tart cherries handled in Michigan, New York, Utah, Washington, and Wisconsin. The authority for this action is provided for in §§ 930.50, 930.51(a) and 930.52 of the order. The Board recommended this action at a meeting on September 8, 2016.

This rule will result in some fruit being diverted from the primary domestic markets. However, as mentioned earlier, the USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (*http://www.ams.usda.gov/publications/content/1982-guidelines-fruit-vegetable-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 that is available under this action is greater than 110 percent of the average quantity shipped in the prior three years.

In addition, there are secondary uses available for restricted fruit, including the development of new products, sales into new markets, the development of export markets, and being placed in reserve. While these alternatives may provide different levels of return than the sales to primary markets, they play an important role for the industry. The areas of new products, new markets, and the development of export markets utilize restricted fruit to develop and expand the markets for tart cherries. In 2015–16, these activities accounted for over 27 million pounds in sales, 12 million of which were exports.

Placing tart cherries into reserves is also a key part of balancing supply and demand. Although handlers bear the handling and storage costs for fruit in reserve, reserves stored in large crop years are used to supplement supplies in short crop years. The reserves allow the industry to mitigate the impact of oversupply in large crop years, while allowing the industry to maintain supply to markets in years when production falls below demand. Further, storage and handling costs are more than offset by the increase in price when moving from a large crop to a short crop year.

In addition, the Board recommended an increased carry-out of 57 million pounds and made a demand adjustment of 22 million pounds in order to make the regulation less restrictive. Even with the restriction, over 300 million pounds of fruit will be available to the domestic market. Consequently, it is not anticipated that this regulation will unduly burden growers or handlers.

While this action could result in some additional costs to the industry, these costs are more than outweighed by the benefits. The purpose of setting restricted percentages is to attempt to bring supply and demand into balance. If the primary market (domestic) is oversupplied with cherries, grower prices decline substantially. Without volume control, the primary market will likely be oversupplied, resulting in lower grower prices.

The three districts in Michigan, along with the districts in New York, Utah, Washington, and Wisconsin, are the restricted areas for this crop year with a combined total production of 310 million pounds. A 29 percent restriction means 220 million pounds will be available to be shipped to primary markets from these five states. The 220 million pounds from the restricted districts, 5 million pounds from the unrestricted districts (Oregon and Pennsylvania), and the 81 million pound carry-in inventory would make a total of 306 million pounds available as free tonnage for the primary markets. This is similar to the 305 million pounds of free tonnage made available last year. This is enough to cover the 251 million pounds of total utilization in 2015–16, while providing substantial carry-out. Further, the Board could meet and recommend the release of additional volume during the crop year if conditions so warranted.

Prior to the implementation of the order, grower prices often did not cover the cost of production. The most recent costs of production determined by representatives of Michigan State University are an estimated $0.33 per pound. To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been developed. Based on the model, the use of volume control would have a positive impact on grower returns for this crop year. With volume control, grower prices are estimated to be approximately $0.06 per pound higher than without restrictions. In addition, absent volume control, the industry could start to build large amounts of unwanted inventories. These inventories would have a depressing effect on grower prices.

Retail demand is assumed to be highly inelastic, which indicates that changes in price do not result in significant changes in the quantity demanded. Consumer prices largely do not reflect fluctuations in cherry supplies. Therefore, this action should have little or no effect on consumer prices and should not result in a reduction in retail sales.

The free and restricted percentages established by this rule provide the market with optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. As the restriction represents a percentage of a handler's volume, the costs, when applicable, are proportionate and should not place an extra burden on small entities as compared to large entities.

The stabilizing effects of this action benefit all handlers by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all growers and handlers by allowing them to better anticipate the revenues their tart cherries would generate. Growers and handlers, regardless of size, benefit from the stabilizing effects of this restriction. In addition, the increased carry-out should provide processors enough supply to meet market needs going into the next season.

The Board considered alternatives in its preliminary restriction discussions that affected this action. Regarding demand, the Board began with the actual sales average of 230 million pounds. However, the Board noted that some previously contracted sales would be due for delivery in the coming season. In order to avoid undersupplying the market, the Board determined that the calculation of the optimum supply should include an additional adjustment for that purpose. After discussion, an adjustment of an additional 22 million pounds was made in the 2016–17 available supply of tart cherries as it was determined that this amount would best meet the industry's sales needs. Thus, the other alternative levels were rejected.

Regarding the carry-out value, the Board considered a range of alternatives. One member suggested the Board begin with 57 million pounds, approximately a quarter of average annual sales. Other members suggested alternatives as high as 70 million pounds. However, some members were concerned about leaving too much fruit on the market at the end of the season and depressing prices going into the next year. The Board determined three months of sales would be a good estimate for what is needed at the end of the season, as there is a three-month gap between the calculation of carry-out at the end of one season and the availability of fruit from the next season. Thus, the other alternatives were rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0177, Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action will not impose any additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule. Further, the public comments received concerning the proposal did not address the initial regulatory flexibility analysis.

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.

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 June 23, 2016, and September 8, 2016, meetings were public meetings, and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on March 21, 2017 (82 FR 14481). Copies of the rule were sent via email to all Board members and tart cherry handlers. Finally, the rule was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending April 20, 2017, was provided to allow interested persons to respond to the proposal.

Eleven comments were received during the comment period in response to the proposal. Four comments favored the proposed regulation and seven comments opposed the proposed regulation. One comment received was signed by 67 industry members. The commenters included growers, handlers, Board members, an industry representative, economic policy and law students, individuals, and one anonymous cherry consumer. Most of the points made by the commenters in opposition had been discussed prior to the Board's vote recommending this action.

The comment signed by 67 industry members asserted the United States government import data indicate that 40 percent of tart cherry consumption in the 2015 season was from imported products. AMS's analysis of the Foreign Agricultural Service's Global Agricultural Trade System (GATS) indicates an equivalent of more than 230 million pounds of cherries products were imported into the U.S. in the 2016 season. The imported volume has remained above 230 million pounds since the 2014 season. According to the data, tart cherry juice concentrate represents by far the largest segment of imports and has experienced tremendous growth beginning in 2012.

Five of the comments in opposition, including the comment signed by 67 industry members, reference the absence of imported tart cherry products in the OSF. All of these commenters implied that not including imported tart cherry products into the OSF calculation disregards a large portion of the demand for tart cherries. As a result, these commenters since believe the proposed rule fails to bring supply into balance with demand in the targeted market. The comment with 67 signatures states the federal marketing order does not account for the total demand of tart cherry products in the US because imported products are not included in the formula. Another commenter suggested not considering imported products in the OSF indicates the Board's recommended restriction is arbitrary and capricious.

The OSF presented to the Board included several adjustments to avoid the possibility of undersupplying the market. In determining demand, the Board takes into account many factors, including previous sales history and an analysis of economic factors having a bearing on the market. The final percentages recommended by the Board included several adjustments to supply additional fruit to the market. In calculating these adjustments for determining demand in the OSF, the Board also considered supplies of competing commodities and the additional ten percent added for the market growth factor. This was noted by one of the commenters voicing support for the proposed regulation. The economic adjustment added 22 million pounds and the market growth factor added 23 million pounds for an additional 55 million pounds beyond the average sales.

Under the order, when computing and determining final percentages for recommendation to the Secretary, the Board must give consideration to several factors including supplies of competing commodities and economic factors having a bearing on cherry markets. At the meetings on June 23, 2016, and September 8, 2016, the Board discussed its concerns regarding the economic impact of imports. At the September meeting, following the motion to adopt the OSF as presented, several comments and observations were made regarding the matter of imports. However, none of the members suggested an alternative adjustment for imports. Additionally, the Board did not propose amending the order language in section 930.50 to include imports as a factor in calculating the OSF. Most of the comments at the September meeting supported the motion to adopt the OSF as presented.

The comment with 67 signatures also states that the domestic industry has been unable to supply the significant growth in consumption of dried and juiced cherry products. Data concur that domestic production alone would not replace the imported volume in recent years. However, the Board reported steady or increased overall domestic sales from 2013–15, even though each of those seasons were regulated. The use of diversion credits allowed handlers to ship an additional 27.5 million pounds of restricted fruit during the 2015–16 season in addition to free sales. Despite this growth, the industry reported a remaining free inventory of over 80 million pounds going into the crop year, suggesting availability of domestic fruit is not a concern.

Also at the September meeting, a Board member stated an adjustment to the OSF for imports is one alternative, but the Board's preferred alternative was to use restricted cherries for supplying new and competing commodity markets. Therefore, alternatives were considered consistent with Executive Order 13563. The member also stated that restricting cherries under the order aids in stabilizing grower prices. Placing excess cherries into the market is contrary to the purpose of the order. The Board supports utilizing exempted markets for restricted cherries as an alternative to storage. Exporting cherry products and participating in new product and new market projects allows handlers to sell restricted cherries into these markets.

Should domestic handlers decide to compete in these new markets, in most cases, restricted cherries could be used and the handler could receive diversion credits under the diversion provisions of the order. Further, the Board recently recommended extending the maximum length of these activities from three years to five years, creating even more opportunities to pursue new markets. Consequently, handlers currently have ample opportunity to compete for new markets using restricted cherries while continuing to service traditional markets with unrestricted cherries. In addition, should industry efforts cause demand to exceed available volume, the Board could meet and recommend the release of additional volume.

Another commenter opposed to the 29 percent or approximately 90 million pound restriction indicated the total percent restriction, over the past three years, was 69 percent. However, the percent restriction for each year cannot be added together to arrive at the total restriction over the last three years. The calculation to derive the percent restriction over the past three years is achieved by dividing the total adjusted surplus by the total production in regulated districts over the past three years. The pounds of regulated production for 2014, 2015, and 2016 seasons were 295 million with 59 million restricted, 240 million with 47 million restricted, and 310 million with 91 million restricted, respectively. The total 197 million pounds of surplus divided by the total regulated production of 845 million equals a 23 percent restriction. The miscalculation from the commenter in opposition overstated the total percent restriction for the past three years by triple.

This commenter also stated that marketers of cherry products should not be forced to hold volume off the market while imported products enter the market freely. Contrary to the commenter's opinion, a Board member at the September 8, 2016, meeting stated that placing excess cherries into the market as a method of countering imports would only lower grower prices significantly and would not be positive for the grower community. Another Board member added that imports are capturing a less profitable market while the domestic industry is serving more profitable markets.

One commenter indicated the OSF was calculated incorrectly by including the in-orchard diverted fruit as part of production in the formula. This individual suggested if the in-orchard diverted fruit was removed from production, the percentage would be 21 percent, instead of 29 percent restriction. However, 26.4 million pounds of in-orchard diversion were accounted for when calculating the volume subject to restriction from the regulated districts. This is consistent with the method used to account for fruit produced in unrestricted districts. The total production (341.3 million pounds) minus the in-orchard diversions (26.4 million pounds) and production in unrestricted districts (5.2 million pounds) left 309.7 million pounds subject to restriction. The Board divided the surplus of 90.6 million pounds by this volume to arrive at 29 percent restricted and 71 percent free market cherries.

One comment, submitted twice, from two students in opposition to this regulation suggested the government should not intervene and require cherry farmers to restrict supply. This comment assumed the order restricts the amount of tart cherries that can be produced. Volume regulation under the order is a tool for the tart cherry industry to stabilize market conditions due to fluctuations in supply and the inelastic nature of demand for tart cherries. This action does not regulate growers' production of the commodity. This regulatory action is a restriction on domestic tart cherry products handled for the market. This regulation will only restrict cherries purchased for handling. Further, this action is a recommendation from the tart cherry industry as represented by the Board made up of growers, handlers, and a member of the public. The Board considered not regulating as a possible alternative, consistent with Executive Order 13563, but this consideration was rejected after reviewing production data.

One commenter opposed the restriction because it would reduce tart cherry production and not allow the producers to benefit from maximizing the crop. The commenter also concluded the restriction would make it difficult for the industry to reach optimum supply. As previously mentioned, this action does not restrict tart cherry production. Production decisions are made well in advance of the recommendation for volume restriction, which is discussed just prior to harvest and finalized following harvest. Unlike some other commodities like row crops, tree crops such as tart cherries cannot be easily taken out of production. This action regulates only the handling of tart cherries.

Regarding the commenter's second concern, USDA requires 110 percent of average sales be made available under any volume regulation. The Board recommended an economic adjustment for the 2016–17 season to make even more fruit available, going beyond the initial optimum supply calculation. While the restriction may not impact production costs, producers do experience a drop in price when the market is oversupplied. When the market approaches optimum supply, prices tend to be more stable.

All four of the proponents of this action suggest the restriction will stabilize the cherry industry's economy. Three of the proponents made reference to the industry wide support for the recommended restriction, as represented by the Board's vote in which 16 members, the majority of the Board, voted in favor, two abstained and two opposed the recommended restriction. One of these proponents indicated this level of support is significantly greater than the requisite two-thirds majority required for Board action. Further, two proponents made reference that the action is supported by a large majority of the industry.

Three proponents of this action recognized the Board's consideration of the opponents' concerns in their comments on the proposal. All three noted the matter of imports has been addressed by the Board at several meetings. One proponent recognized the Board established a committee to suggest alternative ways to increase domestic juice and juice concentrate sales. Another commenter suggested if growers and processors want to account for imports in a way other than through adjustments, then the Board should focus on amending the order language for determining optimum supply to account for imports.

All three proponents made reference to the Board's efforts in promoting the exemption process as a method of competing with imported cherry products. One commenter noted the

Board's recommendation for extending the time from one year to three years for new product and new market exemptions that was implemented in the previous season. As mentioned previously, the Board has recommended a further expansion of the timeframe. The additional time will allow opportunity for more cherries to qualify for exemption in response to the level of imported cherry products.

One commenter referenced the opportunities available to use both in-orchard and post-harvest diversion to comply with a restriction. The commenter stated the Federal marketing order provides major incentive to expand sales by using restricted fruit to serve new markets, new products, and exports. Additionally, there is incentive in place for growers to divert excess fruit where there is no market or where the cost associated with marketing the fruit may not increase returns. Growers who choose to divert in the orchard can be issued certificates by the Board that can be sold to handlers to meet their restriction requirements.

One commenter noted the Board felt the final calculations were appropriate. They also stated that the majority of the industry approved the order in its last referendum, believing that the order brings more returns to growers. Another proponent noted, even with the restriction, sales are not being lost due to lack of available unrestricted cherries. The carry-in from July 2016 (81 million lbs.) and the projected availability of free market carry-out (57 million lbs.) indicate the restriction is not a factor in limiting sales of tart cherry products. The Board deliberated thoroughly on whether or not to make an additional economic adjustment to account for imported cherry products. However, no motion was made for an additional adjustment to reflect the impact of imported cherry products. As one commenter noted, there is a lack of consensus on how to factor imports into the final calculation.

Further, according to Foreign Agricultural Service's GATS database, though imported cherry products remained high (230 million lbs. equivalent) during the 2016 calendar year, the volume is down from the 2015 calendar year (267 million lbs. equivalent) and also below the 2014 calendar year (244 million lbs. equivalent). The final NASS prices for the 2016 season are not yet available, but from 2013–15, grower prices were stable, ranging from $0.34 to $0.36 per pound. Thus, when using available sales, utilization, and price data from previous years it is difficult to determine what, if any, specific negative impact imports have had on the market for domestic tart cherries and then account for that impact in the OSF.

As previously stated, there are more than 309 million pounds of tart cherries available for free sales for 2016–17. This volume exceeds total sales from 2015–16 of both free and restricted cherries of 288 million pounds. Further, the order provides numerous alternatives for the use of restricted fruit, such as handler diversion, for complying with the recommended restriction. Additionally, the USDA announced the intent to purchase over 10 million pounds of cherry products in the 2016–2017 season as surplus purchases. Therefore, as stated in the RFA, it is not anticipated that this action will unduly burden growers or handlers.

Accordingly, no changes will be made to the rule as proposed, based on the comments 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/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower 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 Committee 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 2016–17 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.

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 930.151 is revised to read as follows:

§ 930.151 Desirable carry-out inventory.

For the 2016 crop year, the desirable carry-out inventory, for the purposes of determining an optimum supply volume, will be 57 million pounds.

■ 3. Section 930.256 is revised to read as follows:

§ 930.256 Free and restricted percentages for the 2016–17 crop year.

The percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2016, which shall be free and restricted, respectively, are designated as follows: Free percentage, 71 percent and restricted percentage, 29 percent.

Dated: June 20, 2017.

Bruce Summers,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2017–13241 Filed 6–23–17; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Docket No. R–1565; RIN 7100 AE–79]

Regulation A: Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (''Board'') has adopted final amendments to its Regulation A to reflect the Board's approval of an increase in the rate for primary credit at each Federal Reserve Bank. The secondary credit rate at each Reserve Bank automatically increased by formula as a result of the Board's primary credit rate action.

DATES: This rule is effective June 26, 2017. The rate changes for primary and secondary credit were applicable beginning June 15, 2017.

FOR FURTHER INFORMATION CONTACT: Clinton Chen, Attorney (202/452–3952), or Sophia Allison, Special Counsel, (202/452–3565), Legal Division, or Lyle Kumasaka, Senior Financial Analyst (202/452–2382); for users of Telecommunications Device for the Deaf (TDD) only, contact 202/263–4869; Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Federal Reserve Banks make primary