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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 66

[Document No. AMS—FTPP—19—0104]

National Bioengineered Food Disclosure Standard; Guidance on Validation of a Refining Process and Selecting a Testing Method

ACTION: Notification of guidance.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) posts final guidance to validate a refining process and selects a testing method as it pertains to the National Bioengineered Food Disclosure Standard (Standard).

DATES: The guidance documents are available and effective July 7, 2020.

ADDRESSES: The final guidance and accompanying question and answer documents can be found at <https://www.ams.usda.gov/rules-regulations/be>.

FOR FURTHER INFORMATION CONTACT: Trevor Findley, Deputy Director, Food Disclosure and Labeling Division, Fair Trade Practices Program, Agricultural Marketing Service, U.S. Department of Agriculture, telephone (202) 690-3460, email trevor.findley@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 2016, Public Law 114-216 amended the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) (amended Act) to require USDA to establish a national, mandatory standard for disclosing any food that is or may be bioengineered. In accordance with the amended Act, USDA published final regulations to implement the Standard on December 21, 2018 (83 FR 65814). The regulations became effective on February 19, 2019, with a mandatory compliance date of January 1, 2022.

Foods that do not contain detectable modified genetic material are not

bioengineered foods and do not require disclosure under the Standard. Under the definition of *bioengineered food* at 7 CFR 66.1, food does not contain modified genetic material if the genetic material is not detectable pursuant to § 66.9. The recordkeeping requirements for detectability at 7 CFR 66.9 specify, among other things, (1) the requirements to validate that a refining process renders modified genetic material in a food undetectable and (2) standards of performance for detectability testing.

A refining process is validated through analytical testing that meets the standards described in paragraph (c) of 7 CFR 66.9. Paragraph (c) requires that analytical testing meet the following standard: (1) Laboratory quality assurance must ensure the validity and reliability of test results; (2) analytical method selection, validation, and verification must ensure that the testing method used is appropriate (fit for purpose) and that the laboratory can successfully perform the testing; (3) the demonstration of testing validity must ensure consistent accurate analytical performance; and (4) method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of Part 66.

In the preamble to the final regulations, USDA indicated that it would provide instructions to the industry to explain how they can ensure (1) acceptable validation of refining processes in accordance with AMS standards and (2) acceptable testing methodology used to satisfy that a food does not contain detectable modified genetic material (83 FR 65843).

On December 17, 2019, AMS published a document in the **Federal Register** announcing the publication of a draft Instruction to Ensure Acceptable Validation of Refining Processes (84 FR 68816), with a comment period that closed on January 16, 2020. On January 23, 2020, in response to multiple requests for an extension of the comment period, AMS extended the comment period another 15 days (85 FR 3860). The new comment period closed on February 7, 2020.

On February 3, 2020, AMS published a document in the **Federal Register** announcing publication of Draft Instructions on Testing Methods (85 FR 5927), with a comment period that closed on March 4, 2020.

This document announces the publication of the final guidance to validate a refining process and to select an acceptable testing method. In addition to these two guidance documents, AMS is publishing two corresponding question and answer documents that respond to a number of questions and comments it received during the public comment periods. These four documents are available on the AMS bioengineered food disclosure website at <https://www.ams.usda.gov/rules-regulations/be>. These final instructions pertain to the requirements of the existing regulations, which can be found at <https://www.federalregister.gov/documents/2018/12/21/2018-27283/national-bioengineered-food-disclosure-standard>.

Authority: 7 U.S.C. 1639.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020-14643 Filed 7-7-20; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AMS—SC—19—0100; SC—20—930-1 FR]

Tart Cherries Grown in the States of Michigan, et al.; Free and Restricted Percentages for the 2019–20 Crop Year

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 2019–20 crop year pursuant to the marketing order for tart cherries grown in the states of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. This action establishes the proportion of tart cherries from the 2019–20 crop that may be handled in commercial outlets. This action should stabilize marketing conditions by adjusting supply to meet market demand and help improve grower returns. Also, a correction is made to section 930.151 to reflect the correct desirable carry-out inventory not

to exceed a maximum of 100 million pounds (81 FR 63676).

DATES: Effective August 7, 2020.

FOR FURTHER INFORMATION CONTACT:

Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 291-8614, or Email: Jennie.Varela@usda.gov or Christian.Nissen@usda.gov.

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@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). 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. Part 930 (referred to as 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 Board locally administers the Order and is comprised of producers and handlers of tart cherries operating within the production area, and a public member.

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Orders 13563 and 13175. This final rule falls within a category of regulatory action that the Office of Management and Budget (OMB) 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, free and restricted percentages may be established for tart cherries handled during the crop year. This rule establishes free and restricted

percentages for tart cherries for the 2019-20 crop year, beginning July 1, 2019, through June 30, 2020.

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 the 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 the proportion of tart cherries from the 2019-20 crop that may be handled in commercial outlets at 67 percent free and 33 percent restricted. The Secretary of Agriculture (Secretary) has determined that designating free and restricted percentages of tart cherries for the 2019-20 crop year effectuates the declared policy of the Act to stabilize marketing conditions by adjusting supply to meet market demand and help improve grower returns. A correction is also made to § 930.151 to reflect the correct desirable carry-out inventory not to exceed a maximum of 100 million pounds (81 FR 63676). These recommendations were made by the Board at meetings on June 27, 2019, and September 12, 2019.

Section 930.51(a) provides the Secretary 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. 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.

Section 930.52 states that only 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 that is less than 50 percent of its annual average of the previous five years is exempt. The regulated districts for the 2019-20 crop year are: District 1—Northern Michigan; District 2—Central Michigan; District 3—Southern Michigan; District 7—Utah; District 8—Washington; and District 9—Wisconsin. Districts 4, 5, and 6 (New York, Oregon and Pennsylvania, respectively) will not be regulated for the 2019-20 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 would have a sharp negative effect on prices, driving down grower returns. Aware of this economic relationship, the Board focuses on using the volume control provisions in the Order to balance supply and demand to stabilize industry returns.

Pursuant to § 930.50, 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. In June 2015, after considering market circumstances and needs, the Board recommended a desirable carry-out inventory not to exceed a maximum of up to 100 million pounds beginning with the 2016 crop year. That action was subsequently approved by the Secretary (81 FR 63676). Therefore, a correction will be made to § 930.151 to reflect the correct desirable carry-out inventory not to exceed a maximum of 100 million pounds.

In addition, USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (<https://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), 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 27, 2019, and computed an optimum supply of 313 million pounds for the 2019–20 crop year using the average of free sales for the three previous seasons and desirable carry-out. To determine the carry-out

figure, the Board discussed and considered a range of alternatives. One member suggested a carry-out value of 20 million pounds, noting high carry-out puts downward pressure on grower prices. Another member agreed, noting the actual carry-out is often twice what the Board has estimated as desirable. Some members favored a carry-out of 50 million pounds. Other members were concerned that too low of a carry-out may push the restricted percentage too high for the industry to implement and suggested repeating the carry-out of 80 million pounds from the previous season. The Board's executive director noted average sales are about 21 million pounds a month. Using that average, it would take 84 million pounds to supply the industry for four months. After considering the alternatives, the Board determined a carry-out of 85 million pounds would be enough to supply the industry's needs at the beginning of the next season.

The Board subtracted the estimated carry-in of 174 million pounds from the optimum supply to calculate the production quantity needed from the 2019–20 crop to meet optimum supply. This number, 139 million pounds, was subtracted from the Board's estimated 2019–20 total production (from regulated and unregulated districts) of 248.2 million pounds to calculate a surplus of 109.2 million pounds of tart cherries. The Board also complied with the market growth factor requirement by removing 22.8 million pounds (average sales for prior three years of 228 million times 10 percent) from the surplus. The adjusted surplus of 86.4 million pounds was then divided by the expected production in the regulated districts (240 million pounds) to reach a preliminary restricted percentage of 36 percent for the 2019–20 crop year.

The Board then discussed whether this calculation would supply enough cherries to grow sales and fulfil orders that have not yet shipped. Some members reported that there had been excessive rainfall, especially in Michigan, during the growing season. This could lead to poor fruit quality and handlers would need additional available tonnage to meet sales needs. As a result, the Board recommended an additional economic adjustment of 20

million pounds, which is subtracted from the surplus. The Board also anticipated that orchard diversion would be about 50 million pounds, which is subtracted from the expected production. With these modifications, the preliminary restricted percentage was calculated at 35 percent.

The Board met again on September 12, 2019, to consider final volume regulation percentages for the 2019–20 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 2019–20 season was 257.2 million pounds, 9 million pounds above the Board's June estimate. In addition, growers diverted 18.3 million pounds in the orchard, about a third of what had been anticipated. As a result, 238.9 million pounds would be available to market, 230.2 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 174 million pounds, from the optimum supply of 313 million pounds to determine 139 million pounds of 2019–20 production would be necessary to reach optimum supply. The Board subtracted the 139 million pounds from the actual production of 257.2 million pounds, resulting in a surplus of 118.2 million pounds of tart cherries.

The recalculated surplus was reduced by subtracting the revised economic adjustment of 20 million pounds and the market growth factor of 22.8 million pounds, resulting in an adjusted surplus of 75.4 million pounds. The Board then divided this final surplus by the available production of 230.2 million pounds in the regulated districts (248.5 million pounds minus 18.3 million pounds of in-orchard diversion) to calculate a restricted percentage of 33 percent with a corresponding free percentage of 67 percent for the 2019–20 crop year, as outlined in the following table:

	Millions of pounds
Final Calculations:	
(1) Average sales of the prior three years	228
(2) Plus desirable carry-out	85
(3) Optimum supply calculated by the Board	313
(4) Carry-in as of July 1, 2019	174
(5) Adjusted optimum supply (item 3 minus item 4)	139
(6) Board reported production	257.2

	Millions of pounds
(7) Surplus (item 6 minus item 5)	118.2
(8) Total economic adjustments	20
(9) Market growth factor	22.8
(10) Adjusted Surplus (item 7 minus items 8 and 9)	75.4
(11) Production in regulated districts	248.5
(12) In-Orchard Diversion	18.3
(13) Production minus in orchard diversion	230.2
Final Percentages:	
Restricted (item 10 divided by item 13 \times 100)	33%
Free (100 minus restricted percentage)	67%

The final restriction of 33 percent is lower than the preliminary restriction percentage of 35 percent. The change is due to the increase in production from the June estimate and lower in-orchard diversion volume. The desired carry-out remained the same at 85 million pounds. In discussing the calculation, members indicated the quality concerns that led to the adjustment were accurate. Members did not propose any changes to the adjustment following harvest.

During the preliminary and final discussions, attendees raised concerns about the age of free inventory and the impact of imported tart cherry products. The Board voted to form a committee to develop a proposal for collecting additional data regarding inventory. Regarding the impact of imports, the Board approved a research proposal to gather additional data. The Board anticipates these actions will help provide additional data for future volume regulation discussions.

Establishing free and 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, based on its discussion of this issue and the result of the above calculations, believes the available information indicates a restricted percentage should be established for the 2019–20 crop year to avoid oversupplying the market with tart cherries.

Consequently, the Board recommended final percentages of 67 percent free and 33 percent restricted by a vote of 15 in favor, and 3 opposed. The Board could meet and recommend the release of additional volume during the crop year if conditions so warranted. The Secretary finds, from the recommendation and supporting information supplied by the Board, that

designating final percentages of 67 percent free and 33 percent restricted tends to effectuate the declared policy of the Act, and so designates these percentages.

Final Regulatory Flexibility Analysis

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 rule 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 400 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 \$1,000,000, and small agricultural service firms have been defined as those whose annual receipts are less than \$30,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS) and Board data, the average annual grower price for tart cherries utilized for processing during the 2018–19 season was approximately \$0.196 per pound. With total utilization at 288.8 million pounds for the 2018–19 season, the total 2018–19 value of the crop utilized for processing is estimated at \$56.6 million. Dividing the crop value by the estimated number of producers (400) yields an estimated average receipt per producer

of \$141,500. This is well below the SBA threshold for small producers.

A free on board (FOB) price of \$0.80 per pound for frozen tart cherries was reported by the Food Institute during the 2018–19 season. Based on utilization, this price represents a good estimate of the price for processed cherries. Multiplying this FOB price by total utilization of 288.8 million pounds results in an estimated handler-level tart cherry value of \$231 million. Dividing this figure by the number of handlers (40) yields estimated average annual handler receipts of \$5.8 million, which is below the SBA threshold for small agricultural service firms. Assuming a normal 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 utilized tart cherry production for the years 2014 through 2018 were 301 million, 251 million, 319 million, 254 million, and 289 million, respectively. Because of these fluctuations, supply and demand for tart cherries are rarely in balance.

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. Grower prices per pound for processed utilization have ranged from a low of \$0.073 in 1987 to a high of \$0.588 per pound in 2012 when a weather event substantially reduced supply.

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. Aware of this economic relationship, the Board 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 67 percent free and 33 percent restricted for the 2019–20 crop year. These percentages should stabilize marketing conditions by adjusting supply to meet market demand and help improve grower returns. This action regulates tart cherries handled in Michigan, Utah, Washington, and Wisconsin. The authority for this action is provided in §§ 930.50, 930.51(a), and 930.52. The Board recommended this action at a meeting on September 12, 2019.

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" (<https://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 available quantity under this regulation (337.5 million pounds) is 148 percent of the average sales for the last three years (228 million pounds).

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 2018–19, these activities accounted for over 88 million pounds in sales, a 6-million-pound increase from the previous season.

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 help the industry to mitigate the impact of oversupply in large crop years, while allowing the industry to supply 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.

The Board recommended a carry-out of 85 million pounds and made a demand adjustment of 20 million pounds in order to make the regulation less restrictive to account for fruit quality concerns. With 174 million pounds of carry-in, 8.7 million pounds of production in the unregulated districts, and 154.8 million pounds of free tonnage from the regulated districts, 337.5 million pounds of fruit will be available for the domestic market. This amount is comparable to the 336.9 million pounds made available in the previous season. Even with the recommended restriction, the domestic market will have an ample supply of tart cherries. Further, should marketing conditions change, and market demand exceed existing supplies, the Board could meet and recommend the release of an additional volume of cherries. Consequently, it is not anticipated that this rule will unduly burden growers or handlers.

While this action could result in some additional costs to the industry, these costs are 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 would likely be oversupplied, resulting in lower grower prices.

An econometric model has been developed to assess the impact volume control has on the price growers receive for their product. 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 \$0.04 per pound higher than without restrictions. In addition, in the absence of 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 the 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 action will provide the market with optimum supply and will 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 that their tart cherries would generate. Growers and handlers, regardless of size, benefit from the stabilizing effects of the volume restriction.

As noted earlier, the Board had extensive discussions on carry-out inventory alternatives. The alternatives ranged from 20 million pounds to 100 million pounds. Some expressed a concern that the relatively low reserves compared to high carry-in signaled that not enough fruit had been put in reserve in previous seasons. Some attendees indicated excess carry-in over the past few seasons has had a negative effect on returns and growers are seeking relief. The Board noted if the carry-out number was too large, it could have a negative impact on grower returns, but enough fruit was needed to supply processors before the new harvest. After consideration of the alternatives, the Board recommended a carry-out of 85 million pounds.

The Board also weighed alternatives when discussing the economic adjustment. Some members suggested making no adjustment to the formula. However, at its June meeting, the Board recommended a 20-million-pound adjustment to account for fruit quality concerns. When fruit is too large or too small, it does not move as efficiently through the pitting process. The Board was concerned excessive rainfall would result in large, soft, fruit that would not process as well as average-sized fruit. As a result, more fruit would be necessary to get the needed final product. Following harvest, Board members confirmed weather had indeed affected the size of fruit, and that the recommended adjustment was accurate and should not be changed.

In discussing the preliminary recommendation, the Board heard a report from a committee that examined import issues. During the discussion there was a suggestion that the Board might consider using the previous year's import numbers to estimate imported volume in the coming year. However, there was no motion to make an adjustment for imports. To better address these issues, the Board allocated funds to a research project to provide

additional information on the volume and impact of imported cherry products.

Given the concerns with regulation expressed by Board members and industry members in attendance, the Board also considered recommending no volume regulation. However, the data indicated a high carryover from previous seasons has created a substantial surplus. During this discussion, attendees questioned the age of the products in inventory. While all types of products can be stored for multiple years, their value does diminish over time. Reserve inventory must be under two years old, but there are no restrictions on free inventory. Industry members expressed concern that not all inventory is of equal value and suggested the Board should collect information on the age and quality of free inventory. A vote to recommend no volume regulation failed, but the Board did agree to form a committee to investigate potential reporting requirements to provide the industry better data regarding the available inventory. Thus, the 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 to those requirements are necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule 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.

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.

The Board's meetings were widely publicized throughout the tart cherry industry, and all interested persons were invited to attend the meetings and participate in Board deliberations on all issues. Like all Board meetings, the June

27, 2019, and September 12, 2019, 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 23, 2020 (85 FR 16273). Copies of the proposed rule were sent via email to all Board members and tart cherry handlers. The proposed rule was also made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period was provided to allow interested persons to respond to the proposal.

One comment was received in opposition to the proposal. This comment came from a tart cherry handler who expressed concern that the marketing order does not allow flexibility to serve changing markets. The comment also stated that the handler submitted a request to the Board to release reserves. Finally, the comment also attributed difficulties in meeting changing demands to current food safety regulations and food industry practices.

Regarding the flexibility of supplying different tart cherry products, it is correct that the marketing order does not distinguish between product segments. The marketing order authorizes the Secretary to designate free and restricted percentages that apply to all handlers, regardless of the type of tart cherry product. Thus, the regulation is spread proportionally among handlers. Under any regulation, handlers can move restricted tonnage through approved diversion channels including but not limited to, supplying new markets or making charitable donations.

Regarding a release of reserves, as mentioned earlier in this rule, the Board can meet and recommend a release of reserves at any time. The Board can make such a recommendation, regardless of whether a volume regulation is in place for the current fiscal year. This process is described in § 930.154. The Board may request this action, which releases apportioned volume to handlers based on their total volume handled in the three previous years. In its discussions regarding volume regulation the Board indicated 174 million pounds of carry-in were available; the unregulated districts accounted for 8.7 million pounds of production; and this volume restriction will place 154.8 million pounds of free tonnage from the regulated districts on the market for a total of 337.5 million pounds of fruit available for the domestic market. This is well above the average sales of 228 million pounds.

The Board met multiple times following the volume regulation recommendation, and neither Board members nor public participants offered any evidence that sales had increased to the point of needing a release of reserves. Further, at these meetings, no requests for a release were made, nor were any motions introduced regarding a release. The Board's most recent sales report indicates that as of February 29, 2020, some product category sales reported by handlers were up and others were down. In total, year over year sales were virtually unchanged; down one tenth of a percent, or 146,322 pounds. Given this information, there should be more than adequate fruit available to supply the market following this action.

The concerns expressed regarding the limitations of food safety practices are outside the authorities of the marketing order and therefore not relevant to this action.

Accordingly, based on the comment received, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://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 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.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, amend 7 CFR part 930 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. Revise § 930.151 to read as follows:

§ 930.151 Desirable Carry-out inventory.

Beginning with the crop year starting July 1, 2016, for the purposes of

determining an optimum supply volume, the Board may recommend a desirable carry-out inventory not to exceed 100 million pounds.

■ 3. Revise § 930.256 to read as follows:

§ 930.256 Free and restricted percentages for the 2019–20 crop year.

The percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2019, which shall be free and restricted, respectively, are designated as follows: Free percentage, 67 percent and restricted percentage, 33 percent.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–13125 Filed 7–7–20; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0638; Project Identifier MCAI–2020–00308–E; Amendment 39–21158; AD 2020–14–04]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG (Type Certificate Previously Held by Rolls-Royce plc) Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Rolls-Royce Deutschland Ltd. & Co KG (RRD) Trent 1000–A, Trent 1000–AE, Trent 1000–C, Trent 1000–CE, Trent 1000–D, Trent 1000–E, Trent 1000–G, and Trent 1000–H model turbofan engines. This AD requires removing and replacing one or both affected engines, depending on whether the engine pairing combinations are compliant or non-compliant, as described in the service information. This AD was prompted by occurrences of in-service engine surges on affected RRD Trent model turbofan engines with a high number of intermediate pressure compressor (IPC) module flight hours since new (HSN) or cycles since new (CSN). The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 23, 2020.

The Director of the Federal Register approved the incorporation by reference

of a certain publication listed in this AD as of July 23, 2020.

The FAA must receive comments on this AD by August 24, 2020.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202–493–2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, 15827 Blankenfelde-Mahlow, Germany; phone: +49 (0) 33 708 6 0; email: <https://www.rolls-royce.com/contact-us.aspx>. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2020–0638.

Examining the AD Docket

You may examine the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2020–0638; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Stephen Elwin, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7236; fax: 781–238–7199; email: stephen.l.elwin@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

The European Union Aviation Safety Agency (EASA), which is the Technical

Agent for the Member States of the European Community, has issued EASA AD 2020–0010R2, dated March 4, 2020 (referred to after this as “the MCAI”), to address an unsafe condition for the specified products. The MCAI states:

Occurrences have been reported of engine surges on certain Trent 1000 engines, particularly those that have accumulated a high number of flight hours (FH) and engine flight cycles (EFC). The investigation into the cause(s) of these events is on-going. This condition, if not corrected, could lead to a dual engine surge, possibly resulting in a dual engine in-flight shut-down and consequent reduced control of the aeroplane.

To address this potential unsafe condition, Rolls-Royce published the NMSB to provide de-pairing instructions, reducing the risk of a dual surge event. Instructions for in-shop performance recovery are being developed. Prompted by some errors detected in Table 1 of the NMSB, Appendix 1 of this [EASA] AD must be used instead. Rolls-Royce will revise the NMSB to correct those errors.

For the reasons described above, EASA issued AD 2020–0010 (later revised) to require de-pairing of the affected engines.

Since EASA AD 2020–0010R1 was issued, Rolls-Royce issued NMSB TRENT 1000 72–K494, providing instructions for in-shop action to restore the surge margin. Embodiment of Part B of this NMSB allows relaxation of the de-pairing actions as required by this [EASA] AD. Rolls-Royce have revised NMSB TRENT 1000 72–AK468 accordingly, including a new Table 1, defining de-pairing upper and lower thresholds (pre- and post-NMSB 72–K494 embodied) and Table 2 (which was Table 1 in the NMSB 72–AK468 at original issue) for de-pairing when one engine has embodied Part B of NMSB TRENT 1000 72–K494, and when both engines have embodied Part B of NMSB TRENT 1000 72–K494.

Consequently, this [EASA] AD is revised to include references to NMSB TRENT 1000 72–K494 and to NMSB TRENT 1000 72–AK468 Revision 1, and Table 2 thereof.

You may obtain further information by examining the MCAI in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2020–0638.

Related Service Information Under 14 CFR Part 51

The FAA reviewed Rolls-Royce plc (RR) Alert Non-Modification Service Bulletin (NMSB) Trent 1000 72–AK468, Revision 1, dated March 3, 2020. The Alert NMSB describes compliant and non-compliant engine pairing combinations based on IPC module flight HSN or CSN. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.