(ii) Relocated with the member of the armed forces to the new duty station specified in the documentation ordering a permanent change of station.

(2) A spouse of a member of the armed forces as defined in paragraph (b)(4)(iii) of this section must be the un-remarried widow or widower of the member of the armed forces killed on active duty in the armed forces.

(3) A spouse's eligibility for noncompetitive appointment under this section is limited to the geographic area, as specified on the member of the armed forces' permanent change of station orders. It includes the service member's duty station and the surrounding area from which people reasonably can be expected to travel daily to and from work. The head of an agency may waive this limitation (i.e., accept applications from spouses) if no Federal agency exists in the spouse's geographic area.

(d) *Conditions.*

(1) In accordance with the provisions of this section, spouses are eligible for noncompetitive appointment for a maximum of 2 years from the date of:

(i) The service member's permanent change of station orders;

(ii) Documentation verifying the member of the armed forces is 100 percent disabled; or

(iii) Documentation verifying the member of the armed forces was killed while on active duty.

(2) A spouse may receive only one noncompetitive appointment under this section to a permanent position per the service member's orders authorizing a permanent change of station.

(3) In accordance with the provisions of this section, spouses who relocated with a member of the armed forces to the location provided in the service member's permanent change of station orders within 1 year prior to the effective date of these regulations are eligible for noncompetitive appointment under this section.

(4) Any law, Executive order, or regulation that disqualifies an applicant for appointment also disqualifies a spouse for appointment under this section.

(e) *Proof of Eligibility.*

(1) Prior to appointment, the spouse of a member of the armed forces as defined in paragraph (b)(4)(i) of this section must submit to the employing agency:

(i) A copy of the service member's active duty orders which authorize a permanent change of station. This authorization must include:

(A) A statement authorizing the service member's spouse to accompany the member to the new permanent duty station;

(B) The specific location to which the member of the armed forces is to be assigned, reassigned, or transferred pursuant to permanent change of station orders; and

(C) The effective date of the permanent change of station; and

(ii) Documentation verifying marriage to the member of the armed forces (e.g., a marriage license or other legal documentation verifying marriage).

(2) Prior to appointment, the spouse of a member of the armed forces as defined in paragraph (b)(4)(ii) of this section must submit to the employing agency copies of:

(i) Documentation showing the member of the armed forces was released or discharged from active duty due to a service-connected disability;

(ii) Documentation showing the member of the armed forces retired, or was released or discharged from active duty, with a disability rating of 100 percent; and

(iii) Documentation verifying marriage to the member of the armed forces (e.g., a marriage license or other legal documentation verifying marriage).

(3) Prior to appointment, the spouse of a member of the armed forces as defined in paragraph (b)(4)(iii) of this section must submit to the employing agency copies of:

(i) Documentation showing the individual was released or discharged from active duty due to his or her death while on active duty;

(ii) Documentation verifying the member of the armed forces was killed while serving on active duty; and

(iii) Documentation verifying marriage to the member of the armed forces (e.g., a marriage license or other legal documentation verifying marriage); and

(iv) A statement certifying that he or she is the un-remarried widow or widower of the service member.

(f) *Acquisition of competitive status.* A person appointed under paragraph (a) of this section acquires competitive status automatically upon completion of probation.

(g) *Tenure on appointment.* An appointment under paragraph (a) of this section is career-conditional unless the appointee has already satisfied the requirements for career tenure or is exempt from the service requirement pursuant to § 315.201.

PART 316—TEMPORARY AND TERM EMPLOYMENT

3. The authority citation for part 316 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

4. Section 316.302(b)(3) is revised to read as follows:

§ 316.302 Selection of term employees.

* * * * *

(b) * * *

(3) Career-conditional appointment under § 315.601, 315.604, 315.605, 315.606, 315.607, 315.608, 315.609, 315.612, or 315.711 of this chapter;

* * * * *

5. Section 316.402(b)(3) is revised to read as follows:

§ 316.402 Procedures for making temporary appointments.

* * * * *

(b) * * *

(3) Career-conditional appointment under § 315.601, 315.604, 315.605, 315.606, 315.607, 315.608, 315.609, 315.612, 315.703, or 315.711 of this chapter;

* * * * *

[FR Doc. E8–28747 Filed 12–4–08; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2007–0153]

RIN 0579–AC88

Importation of Eggplant From Israel

Correction

In proposed rule document E8–26814 beginning on page 66807 in the issue of Wednesday, November 12, 2008 make the following correction:

§319.56–48 [Corrected]

On page 66811, in the third column, in §319.56–48(e), in the last line, ''7 CFR 319.56*48.'' should read ''7 CFR 319.56–48.''

[FR Doc. E8–26814 Filed 12–4–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. AMS–FV–08–0089; FV09–930–1 PR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2008–2009 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on the establishment of final free and restricted percentages for the 2008–2009 crop year tart cherries covered under the Federal marketing order regulating tart cherries grown in seven States (order). The percentages are 73 percent free and 27 percent restricted and will establish the proportion of cherries from the 2008 crop which may be handled in commercial outlets. The percentages are intended to stabilize supplies and prices, and strengthen market conditions. The percentages were recommended by the Cherry Industry Administrative Board (Board), the body that locally administers the marketing order. The order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

DATES: Comments must be received by *January 5, 2009.*

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

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

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

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

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

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and restricted percentages may be established for tart cherries handled by handlers during the crop year. This proposed rule would establish final free and restricted percentages for tart cherries for the 2008–2009 crop year, beginning July 1, 2008, through June 30, 2009. This proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposed rule.

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

The order prescribes procedures for computing an optimum supply and preliminary and final percentages that establish the amount of tart cherries that can be marketed throughout the season. The regulations apply to all handlers of tart cherries that are in the regulated districts within the production area. Tart cherries in the free percentage category may be shipped immediately to any market, while restricted percentage tart cherries must be held by handlers in a primary or secondary reserve, or be diverted in accordance with § 930.59 of the order and § 930.159 of the regulations, or used for exempt purposes (to obtain diversion credit) under § 930.62 of the order and § 930.162 of the regulations. The regulated districts for the 2008–2009 season are: District one—Northern Michigan; District two—Central Michigan; District three—Southern Michigan; District four—New York; District seven—Utah; and District eight—Washington. Districts five, six and nine (Oregon, Pennsylvania, and Wisconsin, respectively) will not be regulated for the 2008–2009 season.

The order prescribes under § 930.52 that those districts to be regulated shall be those districts in which the average annual production of cherries over the prior three years has exceeded six million pounds. A district not meeting the six million-pound requirement shall not be regulated in such crop year. Because this requirement was not met in the Districts of Oregon, Pennsylvania, and Wisconsin, handlers in those districts would not be subject to volume regulation during the 2008–2009 crop year.

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

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

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

The Board met on June 19, 2008, and computed, for the 2008–2009 crop year, an optimum supply of 183 million pounds. The Board recommended that the desirable carryout figure be zero pounds. Desirable carryout is the amount of fruit required to be carried into the succeeding crop year and is set by the Board after considering market circumstances and needs. This figure can range from zero to a maximum of 20 million pounds.

The Board calculated preliminary free and restricted percentages as follows: The USDA estimate of the crop for the entire production area was 177 million pounds; a 31 million pound carryin (based on Board estimates) was subtracted from the optimum supply of 183 million pounds which resulted in the 2008–2009 poundage requirements (adjusted optimum supply) of 152 million pounds. The carryin figure reflects the amount of cherries that handlers actually have in inventory at the beginning of the 2007–2008 crop year. Subtracting the adjusted optimum supply of 152 million pounds from the USDA crop estimate (177 million pounds) leaves a surplus of 25 million pounds of tart cherries. Subtracting an additional 8 million pounds for USDA committed sales results in a final surplus of 17 million pounds of tart cherries. The surplus was divided by the production in the regulated districts (161 million pounds) and resulted in a restricted percentage of 10 percent for the 2008–2009 crop year. The free percentage was 90 percent (100 percent minus 10 percent). The Board established these percentages and announced them to the industry as required by the order.

The preliminary percentages were based on the USDA production estimate and the following supply and demand information available at the June meeting for the 2008–2009 year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	183
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board at the June meeting	183
Preliminary Percentages:	
(4) USDA crop estimate	177
(5) Carryin held by handlers as of July 1, 2008	31
(6) Adjusted optimum supply for current crop year (Item 3 minus Item 5)	152
(7) Surplus (Item 4 minus Item 6)	25
(8) Subtract pounds designated for USDA	8
(9) Surplus (Item 7 minus Item 8)	17
(10) USDA crop estimate for regulated districts	161

	Percentages	
	Free	Restricted
(11) Preliminary percentages (item 9 divided by item 10 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	90	10

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

The Secretary establishes final free and restricted percentages through the informal rulemaking process. These percentages would make available the tart cherries necessary to achieve the optimum supply figure calculated by the Board. The difference between any final free percentage designated by the Secretary and 100 percent is the final restricted percentage. The Board met on September 12, 2008, to recommend final free and restricted percentages.

The actual production reported by the Board was 210 million pounds, which is a 33 million pound increase from the USDA crop estimate of 177 million pounds.

A 35 million pound carryin (based on handler reports estimates) was subtracted from the optimum supply of 183 million pounds which resulted in the 2008–2009 poundage requirements (adjusted optimum supply) of 148 million pounds. Subtracting the adjusted optimum supply of 148 million pounds from the USDA crop estimate (210 million pounds) and subtracting 8 million pounds for USDA committed sales results in a surplus of 54 million pounds of tart cherries. The surplus was divided by the production in the regulated districts (203 million pounds) and resulted in a restricted percentage of 27 percent for the 2008–2009 crop year. The free percentage was 73 percent (100 percent minus 27 percent).

The final percentages are based on the Board's reported production figures and the following supply and demand information available in September for the 2008–2009 crop year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	183
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board	183
Final Percentages:	
(4) Board reported production	210
(5) Plus carryin held by handlers as of July 1, 2008	35
(6) Subtract USDA committed sales	8
(7) Tonnage available for current crop year	237
(8) Surplus (item 7 minus item 3)	54
(9) Production in regulated districts	203

	Percentages	
	Free	Restricted
(10) Final Percentages (item 8 divided by item 9 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	73	27

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

Initial Regulatory Flexibility Analysis

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

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

There are approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. A majority of the producers and handlers are considered small entities under SBA's standards.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 1997/98 through 2007/08, approximately 96 percent of the U.S. tart cherry crop, or 247.3 million pounds, was processed annually. Of the 247.3 million pounds of tart cherries processed, 61 percent was frozen, 27 percent was canned, and 12 percent was utilized for juice and other products.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. Bearing acreage has declined from a high of 50,050 acres in 1987/88 to 34,700 acres in 2007/08. This represents a 31 percent decrease in total bearing acres. Michigan leads the nation in tart cherry acreage with 70 percent of the total and produces about 75 percent of the U.S. tart cherry crop each year.

The 2008/09 crop is moderate in size at 210 million pounds. The largest crop occurred in 1995 with production in the regulated districts reaching a record 395.6 million pounds. The price per pound received by tart cherry growers ranged from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991. These problems of wide supply and price fluctuations in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices they received often did not come close to covering the costs of production.

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

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

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

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

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

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

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

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

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

To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been developed. The econometric model provides a way to see what impacts volume control may have on grower prices. The three districts in Michigan, along with the districts in Utah, New York, and Washington are the restricted areas for this crop year and their combined total production is 203 million pounds. A 27 percent restriction means 148 million pounds is available to be shipped to primary markets from these four states. Production levels of 0.6 million pounds for Wisconsin, 2.8 million pounds for Oregon, and 3.7 million pounds for Pennsylvania (the unregulated areas in 2008/09), result in an additional 7.1 million pounds available for primary market shipments.

In addition, USDA requires a 10 percent release from reserves as a market growth factor. This results in an additional 18 million pounds being available for the primary market. The 148 million pounds from Michigan, Utah, Washington, and New York, the 7.1 million pounds from the other producing states, the 18 million pound release, and the 35 million pound carryin inventory gives a total of 208 million pounds being available for the primary markets.

The econometric model is used to estimate the impact of establishing a reserve pool for this year's crop. With the volume controls, grower prices are estimated to be approximately $0.11 per pound higher than without volume controls.

The use of volume controls is estimated to have a positive impact on growers' total revenues. With regulation, growers' total revenue from processed cherries is estimated to be $4.3 million higher than without restrictions. The without restrictions scenario assumes that all tart cherries produced would be delivered to processors for payments.

It is concluded that the 27 percent volume control would not unduly burden producers, particularly smaller growers. The 27 percent restriction would be applied to the growers in Michigan, New York, Utah, and Washington. The growers in the other three states covered under the marketing order will benefit from this restriction.

The use of volume controls is believed to have little or no effect on consumer prices and will not result in fewer retail sales or sales to food service outlets.

Without the use of volume controls, the industry could be expected to start to build large amounts of unwanted inventories. These inventories have a depressing effect on grower prices. The econometric model shows for every 1 million-pound increase in carryin inventories, a decrease in grower prices of $0.0036 per pound occurs. The use of volume controls allows the industry to supply the primary markets while avoiding the disastrous results of over-supplying these markets. In addition, through volume control, the industry has an additional supply of cherries that can be used to develop secondary markets such as exports and the development of new products. The use of reserve cherries in the production shortened 2002/03 crop year proved to be very useful and beneficial to growers and packers.

In discussing the possibility of marketing percentages for the 2008–2009 crop year, the Board considered the following factors contained in the marketing policy: (1) The estimated total production of tart cherries; (2) the estimated size of the crop to be handled; (3) the expected general quality of such cherry production; (4) the expected carryover as of July 1 of canned and frozen cherries and other cherry products; (5) the expected demand conditions for cherries in different market segments; (6) supplies of competing commodities; (7) an analysis of economic factors having a bearing on the marketing of cherries; (8) the estimated tonnage held by handlers in primary or secondary inventory reserves; and (9) any estimated release of primary or secondary inventory reserve cherries during the crop year.

The Board's review of the factors resulted in the computation and announcement in September 2008 of the free and restricted percentages proposed to be established by this rule (73 percent free and 27 percent restricted).

One alternative to this action would be not to have volume regulation this season. Board members stated that no volume regulation would be detrimental to the tart cherry industry due to the size of the 2008–2009 crop. Returns to growers would not cover their costs of production for this season which might cause some to go out of business.

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

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

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

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

In addition, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 12, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

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

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

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

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule would need to be in place as soon as possible since handlers are already shipping tart cherries from the 2008–2009 crop. All written comments timely received will be considered before a final determination is made on this matter.

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 proposed to be amended as follows:

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

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

Authority: 7 U.S.C. 601–674.

2. Section 930.256 is added to read as follows:

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

§ 930.256 Final free and restricted percentages for the 2008–2009 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2008, which shall be free and restricted, respectively, are designated as follows: Free percentage, 73 percent and restricted percentage, 27 percent.

Dated: November 26, 2008.

James E. Link,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–28769 Filed 12–4–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[Docket No. AMS–LS–08–0074]

Soybean Promotion, Research, and Information Program: Amend Procedures To Request a Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would amend the regulations that provide for procedures to request a referendum under the Soybean Promotion, Research, and Consumer Information Program, commonly known as the soybean checkoff program. The number of soybean producers referred to the in the regulations would change from 663,880 to 589,182, based on information provided by the Department of Agriculture (USDA), Farm Service Agency (FSA). This change is necessary to establish the number of soybean producers who are eligible to participate in the 2009 Request for Referendum. Additionally, this rule would amend the regulations pursuant to administrative changes to Web site addresses and office locations made for the USDA's Agricultural Marketing Service (AMS).

DATES: Comments must be received by December 22, 2008.

ADDRESSES: Comments may be posted online at *http://www.regulations.gov,* or sent to Kenneth R. Payne, Chief, Marketing Programs Branch, Livestock and Seed Program, AMS, USDA, Room 2628–S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251; or via Fax to (202) 720–1125. Comments will be made available for public inspection at the above address during regular business hours or via the Internet at *http://www.regulations.gov.* Comments received will be posed