Dated: October 15, 1997.

Yvette S. Jackson,

Acting Administrator, Food and Consumer Service.

[FR Doc. 97–28062 Filed 10–22–97; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Part 247

RIN 0584–AC60

Commodity Supplemental Food Program—Caseload Assignment

AGENCY: Food and Consumer Service, USDA.

ACTION: Direct final rule.

SUMMARY: This direct final rule amends provisions of the Commodity Supplemental Food Program Regulations to provide for the allocation of a single caseload to State agencies each year, instead of the allocation of two separate caseloads, one for women, infants, and children, and one for the elderly. This rule will permit State agencies, and the local agencies with which they have signed agreements, to utilize this single caseload to serve low-income women, infants, and children and elderly populations as needed, provided they give priority in service to women, infants, and children over the elderly. This rule will also streamline and simplify program management at the State and local level.

DATES: This rule will become effective on December 8, 1997, unless the Department receives written adverse comments or notices of intent to submit adverse comments postmarked on or before November 24, 1997. If adverse comments within the scope of this rulemaking are received, the Department will publish timely notification of withdrawal of this rule in the **Federal Register**.

ADDRESSES: Comments should be sent to Lillie Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Consumer Service, U.S. Department of Agriculture, Park Office Center, Room 502, 3101 Park Center Drive, Alexandria, VA 22302–1594. Comments in response to this rule may be inspected at 3101 Park Center Drive, Room 502, Alexandria, Virginia during normal business hours (8:30 a.m. to 5 p.m., Mondays through Fridays).

FOR FURTHER INFORMATION CONTACT: Lillie Ragan at the above address or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This direct final rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Administrator of the Food and Consumer Service (FCS) has certified that this action will not have a significant economic impact on a substantial number of small entities. While procedures in this rulemaking will affect State and local agencies that administer the Commodity Supplemental Food Program, any economic effect will not be significant.

Unfunded Mandate Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FCS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FCS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or lease burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this direct final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance under 10.565, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, Subpart V and final rule-related notices published at 48 FR 29114, June 24, 1983 and 49 FR 22676, May 31, 1984).

Paperwork Reduction Act

This final rule reflects no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The existing recordkeeping and reporting requirements for 7 CFR part 247, which were approved by OMB under control number 0584–0293, will not change as a result of this final rule.

Executive Order 12988

This direct final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of the preamble. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Background

The primary purpose of the Commodity Supplemental Food Program (CSFP) is to provide nutritious commodities and nutrition education to low-income pregnant, postpartum, and breastfeeding women, infants, and children up to the age of six, to help meet their dietary needs at a critical life stage of growth and development. This has been the program's basic goal since the initiation of a ''supplemental food program'' for pregnant and breastfeeding women and infants in 1968, utilizing funds appropriated for child feeding programs, and its subsequent designation as the ''Commodity Supplemental Food Program'' in the Food and Agriculture Act of 1977 (Pub. L. 95–113), which added sections 4 and 5 to the Agriculture and Consumer Protection Act of 1973 (Pub. L. 93–86). However, legislation expanded the eligible population in 1981 and 1982 to include elderly persons under a pilot project. With the passage of the Food Security Act of 1985 (Pub. L. 99–198) authority to provide program benefits to the low-income elderly was extended to all State agencies that had resources remaining after providing benefits to all eligible applicant women, infants, and children. Thus, while women, infants, and children retained priority in service, the elderly were established as a second eligible population group in the program. This requirement is found

in section 5(g) of the Agriculture and Consumer Protection Act of 1983 (7U.S.C. 612c note).

The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) also provides benefits (in the form of food vouchers) to pregnant, breastfeeding, and postpartum women, infants and children, with modest differences in categorical eligibility requirements from CSFP. In WIC, women are eligible up to six months postpartum, compared to 12 months in CSFP; and children are eligible up to five years of age in WIC, and up to six years in CSFP. WIC participation increased significantly during the period 1988–1996, from 3.6 million to approximately 7.2 million—an average increase of 450,000 per year. The increased scope of the WIC Program contributed to a decline in participation of women, infants, and children in CSFP, as persons eligible for both programs may only participate in one of them. From 1993 to 1996, participation of women, infants, and children in CSFP declined by 40 percent, while elderly participation in that period increased by 35.4 percent. By fiscal year 1996, elderly participation in CSFP averaged 219,281 per month, or 61.5 percent of total program participation.

Resources are allocated to participating State agencies in CSFP in the form of caseload, which is the monthly average number of participants a State agency is authorized to serve over a specified 12-month period (the caseload cycle). State agencies' caseload allocations each year are based on program participation from the previous year, and requests to expand the program. In implementing the authority to serve elderly pursuant to the Food Security Act of 1985, the Department provided, through program regulations, for the assignment of an elderly caseload to State agencies, separate from the assignment of the women, infants, and children caseload. While State agencies may not serve more elderly persons than their assigned elderly caseload level, they may request a conversion of caseload slots for women, infants, and children that are unutilized during the caseload cycle to service for the elderly, if State agencies have more elderly applicants seeking program benefits. As evidence that the conversion request will not restrict the participation of women, infants and children, State agencies may include evidence of outreach efforts conducted by the State and/or local agency to promote and facilitate service to eligible women, infants, and children in the service area. To further ensure that this priority group is adequately served, current regulations do not permit submission of caseload conversion requests until 90 days after the assignment of caseload.

Allocation of separate caseloads for the two population groups served in CSFP, and the caseload conversion requirement, serve the purpose of protecting program resources for women, infants, and children, while allowing unused resources to be redirected for use by the elderly. However, with the decline in participation of women, infants, and children, and the increased participation of the elderly in CSFP, the caseload restrictions, and caseload conversion requirement, have become obstacles to the efficient use of program resources to serve States' needy populations. Until caseload conversion requests can be made, and acted upon, caseload slots allocated to State agencies for women, infants, and children may remain unused. State and local agencies need more flexibility in caseload management to allow them to fill caseload slots throughout the caseload cycle.

In order to provide State agencies with greater flexibility in caseload management, this direct final rule amends regulatory requirements in part 247 to assign participating State agencies a single caseload, instead of separate women-infants-children, and elderly, caseloads. Local agencies within States may serve women, infants, and children, and the elderly, on a first-come, first-served basis, up to the single caseload limit assigned to them by the State agency, but must continue to meet the priority requirements in § 247.7(b)(2)—i.e., if eligible women, infants, and children are waiting to be served, the next available caseload slots must be utilized to serve them.

The Department will continue to transform all funds available for CSFP commodity purchases each year into caseload, and to allocate all available caseload among the State agencies. Procedures for establishing total available caseload are not governed by legislation or regulations and will be modified only to the minor extent necessary to reflect the shift from two caseloads to one. In accordance with sections 5(a) and (1) of the Agriculture and Consumer Protection Act of 1973, the Department will make 20 percent of the annual appropriation and 20 percent of any unspent food funds carried over from the previous year available to State agencies in the form of administrative funds. The Department will convert remaining funds to caseload based on estimates of the percentage of total participation to be accounted for by each subgroup—e.g., pregnant and breastfeeding women, the elderly—and projections of the average cost of foods to be taken by participants in each subgroup. These data will be used to compute a single, blended average cost of food per participant per year, and that cost will be divided into available food funds to yield total CSFP caseload.

The amendments to the regulatory requirements addressing caseload assignment and the State plan of operation are discussed in more detail below. The Department invites comments only on the regulatory amendments in this rulemaking, which establish a single caseload for the program, and not on any other sections of program regulations. The Department considers the regulatory amendments in this direct final rule to be noncontroversial and unlikely to elicit adverse comments. In order for the Department to issue CSFP caseload by the December 1, 1997 deadline, as required by § 247.10(a), this rule will be effective on December 8, 1997, rather than on a date conforming with the 60-day time period generally provided to effectuate direct final rules.

Caseload Assignment

Section 247.10 of the current regulations describes the procedures for assigning caseload to State agencies each year, the procedures and restrictions for requesting caseload conversion, and the use of elderly caseload to serve women, infants, and children. The transition to a single caseload assignment in this final rule requires the revision of paragraph (a)(2) of this section, which addresses the specific order and manner in which caseload assignments are made, and the removal of paragraphs (a)(3), (a)(4), and (a)(5) of this section, which address caseload conversion—not necessary in a single caseload system—and the use of elderly caseload slots. As part of the amendment of paragraph (a)(2), the method for assigning caseload to State agencies requesting expansion of service to women, infants, and children is revised. The present assignment of expansion caseload to State agencies based on their capacity to serve their categorically eligible women, infants, and children in WIC and CSFP is overly complicated, and no longer necessary, as the expansion of the WIC Program has resulted in a much more extensive coverage of the target population. Furthermore, reliable data on this capacity are no longer available. Hence, the Department is revising this method to bring it into conformance with the means of addressing expansion requests for the elderly.

Additionally, all references to caseload cycles beginning on specific dates are removed, since these cycles have long since passed.

In assigning caseload, the Department will continue to attach a higher priority to requests to expand service for women, infants, and children over requests to expand service for the elderly. Although State agencies will always be allocated caseload that is not designated for use by a particular population group, if they request expansion caseload to serve additional women, infants, and children, they will be expected to promote and facilitate use of such caseload for the intended purpose, for example, by assigning the caseload to areas where women, infants, and children are underserved by the WIC Program, and by intensifying outreach efforts to this population group in areas where the additional caseload is assigned. In States which currently do not operate the program, requests for initiation of program service to women, infants, and children will likewise be considered ahead of requests to initiate service to the elderly.

Below, the primary features of each of the steps in the current order of caseload assignment, as delineated in § 247.10(a)(2), are described, together with any changes that this rulemaking makes to that step. As at present, caseload assignment will proceed through as many of the steps in the process as available resources permit.

Under paragraph (a)(2)(i), State agencies receive caseload for the three elderly pilot projects in Detroit, New Orleans, and Des Moines, equal to December 1985 levels. This remains unchanged.

Under paragraph (a)(2)(ii), currently participating State agencies receive caseload, first for women, infants, and children, and then for elderly persons, based on participation in one of three time periods in the previous year, but not to exceed the caseload allocations for each of these two groups in the preceding caseload cycle. This step is revised to assign to currently participating State agencies a single caseload based on total participation of women, infants, and children, and the elderly in one of the three time periods in the previous year, but not to exceed total caseload assigned to State agencies in the preceding caseload cycle. As at present, State agencies entering their second caseload cycle of program service will receive caseload equal to the level assigned for their first cycle of program service, and not in accordance with first-year participation levels. However, the distinction between women, infants, and children, and elderly caseload will cease to be made.

Under paragraph (a)(2)(iii), requests from currently participating State agencies for expansion caseload for women, infants, and children are considered. As delineated in paragraph (a)(2)(iii)(A), a State's participation level for this group must equal 90 percent of assigned caseload for any of three time periods in the previous year in order for the State to be considered for expansion caseload. If the State meets this criterion, expansion caseload is assigned based on the State's capacity to serve its categorically eligible women, infants, and children in WIC and CSFP, and in an amount that will increase the number of this population served in the State to a specific level, as delineated in paragraphs (a)(2)(iii) (B) and (C). First, this rulemaking revises paragraph (iii) to add a new sentence stating that expansion requests to increase service to women, infants, and children will receive priority over expansion requests to increase service to the elderly, in accordance with program priorities established in § 247.7(b)(2). Second, a revised § 247.10(a)(2)(iii)(A) addresses expansion requests for either women, infants, and children, or the elderly, utilizing the 90 percent participation requirement for both populations together. Finally, paragraph (a)(2)(iii)(B) is revised to address expansion requests for service to women, infants, and children in the same manner as presently utilized for fulfilling expansion requests for the elderly: i.e., each State agency requesting expansion caseload for women, infants, and children will receive an equal share of the available caseload, or the amount that FCS determines the State agency needs and can effectively manage, whichever is less. A new paragraph (a)(2)(iii)(C) addresses the distribution of caseload for expanded service to the elderly, which is unchanged from the present procedure, as currently described in paragraph (a)(2)(iv)(B).

Under paragraph (a)(2)(iv), requests from currently participating State agencies to initiate or expand service to the elderly are considered. As delineated in paragraph (a)(2)(iv)(A), a State's participation level for this group must equal 90 percent of assigned caseload for any of three time periods in the previous year, in order to be considered for expansion caseload. If State agencies meet this criterion, expansion caseload is assigned in equal amounts to State agencies, or in amounts that FCS determines that State agencies need and can effectively manage, whichever is less, as delineated in paragraph (a)(2)(iv)(B). Paragraph (a)(2)(iv)(C) states that, if State agencies' shares exceed their approved requests, the excess amount is redistributed among State agencies whose allocations did not meet their approved requests. This rulemaking removes paragraph (a)(2)(iv), since the revised paragraph (a)(2)(iii) establishes uniform procedures which cover expansion requests for the elderly, as well as women, infants, and children.

Under paragraph (a)(2)(v), requests from State agencies to initiate service to women, infants, and children (i.e., those States not presently participating in CSFP), are considered, and caseload assigned. Paragraph (a)(2)(v)(A) utilizes the same means of determining a State agencies' capacity to serve its potentially eligible women, infants, and children, and for assigning caseload based on this determination, as described in paragraphs (a)(2)(iii) (B) and (C). State agencies may not request to serve the elderly in their initial year of service; if they wish to serve the elderly, they must wait for the following caseload cycle, as described in paragraph (a)(4) of this section, which, as previously mentioned, is removed. This rulemaking redesignates paragraph (a)(2)(v) as (a)(2)(iv), and revises it to address requests to initiate service to elderly persons, as well as women, infants, and children. A new sentence is added stating that requests to initiate service to women, infants, and children shall receive priority over requests to initiate service to the elderly, in accordance with program priorities established in § 247.7(b)(2). Section 247.10(a)(2)(v)(A) is revised to utilize the same means of caseload assignment described above in revised paragraphs (a)(2)(iii) (B) and (C).

Subparagraph (B) is removed. State agencies are no longer restricted to serving only women, infants, and children in their first year of operations.

Section 247.24, which refers to temporary caseload assignment procedures that were applied to a previous caseload cycle, is removed, as these procedures are no longer relevant.

State Plan of Operation

In accordance with § 247.5, before the beginning of the fiscal year, State agencies submit to FCS a plan describing the means by which the program will be operated and administered. Included in the information that State agencies must submit, which is detailed in this section, are caseload conversion requests, plans for caseload utilization, outreach activities, and documentation of data supporting requests to serve the elderly. Revisions to the regulatory

requirements for the submission of this information in the State plan are described below.

Currently, under § 247.5, State agency requests to convert unfilled women, infants, and children caseload slots to serve the elderly are made during the fiscal year as an amendment to the State plan, and must include documentation supporting the need for elderly service in the proposed service area, and assurances that caseload conversion may be accomplished without restricting service to women, infants, and children in the service area. The assignment of a single caseload to State agencies, in this rule, makes caseload conversion, and the attendant documentation, unnecessary. Hence, language in the introductory text of § 247.5, and paragraph (a)(16) of that section addressing caseload conversion, its timing, scope, and attendant documentation, are removed.

Section 247.5(a)(4), which addresses a description of plans for conducting outreach to reach maximum caseload, is amended to define the objective of outreach activities as ensuring that women, infants, children, and elderly persons are aware of program benefits, without the present language referring to reaching maximum caseload. Since, by this rulemaking, caseload may be utilized to serve either population group, it is important to specify the two population groups that should be targeted in outreach activities. In addition, although reaching maximum caseload is an objective that this rulemaking is designed to help State agencies achieve, it is not a regulatory requirement, as current language implies.

Section 247.5(a)(15) currently requires that State agencies wishing to serve the elderly provide documentation, as part of the State plan, describing the extent of need for elderly service in the proposed service area. Since this rule is intended to provide State agencies with the flexibility to utilize a single assigned caseload to serve their needy elderly without the need to request caseload conversion or provide attendant documentation, this section is amended to require such documentation only of State agencies wishing to initiate service to the elderly, or requesting expansion caseload to serve the elderly. Additionally, paragraph (a)(15)(i) is revised to remove the requirement that demographic statistics be included as part of the supporting documentation. Lastly, the language in paragraph (a)(15)(ii) concerning descriptions of how a State agency will meet the needs of homebound elderly is clarified, without changing its meaning.

List of Subjects in 7 CFR Part 247

Agricultural commodities, Food assistance programs, Infants and children, Maternal and child health, Public assistance programs, nutrition, women, aged.

Accordingly, 7 CFR Part 247 is amended as follows.

PART 247—COMMODITY SUPPLEMENTAL FOOD PROGRAM

1. The authority citation for part 247 is revised to read as follows:

Authority: Sec. 5, Pub.L. 93–86, 87 Stat. 249, as added by sec. 1304(b)(2), Pub.L. 95–113, 91 Stat. 980 (7 U.S.C. 612c note); sec. 1335, Pub.L. 97–98, 95 Stat. 1293 (7 U.S.C. 612c note); sec. 209, Pub.L. 98–8, 97 Stat. 35 (7 U.S.C. 612c note); sec. 2(8), Pub.L. 98–92, 97 Stat. 611 (7 U.S.C. 612c note); sec. 1562, Pub.L. 99–198, 99 Stat. 1590 (7 U.S.C. 612c note); sec. 101(k), Pub.L. 100–202; sec. 1771(a), Pub.L 101–624, 101 Stat. 3806 (7 U.S.C. 612c note); sec. 402(a), Pub.L. 104–127, 110 Stat. 1028 (7 U.S.C. 612c note).

2. In § 247.5:

a. The fifth, sixth, and seventh sentences of the introductory text of paragraph (a) are removed;

b. Paragraphs (a)(4) and (a)(15) are revised;

c. Paragraph (a)(16) is removed.

The revisions read as follows:

§ 247.5 State agency plan of program operation and administration.

(a) * * *

(4) A description of any plans for conducting outreach to ensure that all women, infants, and children, and elderly persons are aware of program benefits.

* * * * *

(15) If a State agency wishes to initiate service to the elderly, or request expansion caseload to serve the elderly, a description of plans for providing program benefits to elderly persons within the State during the caseload cycle. Such description shall include—

(i) An identification of the elderly population to be served, including documentation of the extent of need in the proposed service area; and

(ii) A description of the means by which the State agency will meet the needs of the homebound elderly.

* * * * *

3. In § 247.10:

a. Paragraph (a)(2) is revised;

b. Paragraphs (a)(3), (a)(4), and (a)(5) are removed.

The revision reads as follows:

§ 247.10. Caseload assignment and administrative funding.

(a) * * *

(2) To the extent that funds are available, FCS shall assign caseload to State agencies in the following order.

(i) State agencies for the three elderly feeding projects in Detroit, New Orleans, and Des Moines shall be assigned caseload equal to the level of participation for each project in December 1985.

(ii) Currently participating State agencies, except those entering their second cycle of program service, shall receive caseload in amounts equal to the greatest of their total participation of women, infants, and children, and elderly persons (except for caseload equal to the December 1985 level of participation at the three elderly feeding projects) during September, or monthly average participation for the period July through September, or for the prior fiscal year; provided, however, that a State agency shall not receive caseload under this paragraph in excess of caseload assigned for the preceding caseload cycle. State agencies entering their second caseload cycle of program service shall receive caseload equal to the caseload level assigned for their first cycle of program service.

(iii) Requests from currently participating State agencies to expand service to women, infants, and children, and the elderly, shall be addressed in the following manner. Expansion requests to increase service to women, infants, and children shall receive priority over expansion requests to increase service to the elderly.

(A) State agencies shall be eligible to receive expansion caseload only if, during the preceding September, the period July through September, or the prior fiscal year, their monthly average participation equaled at least 90 percent of their assigned caseload level for the preceding caseload cycle.

(B) State agencies requesting expansion caseload to increase service to women, infants, and children shall be assigned the lesser of an equal share of available caseload or the amount of expansion caseload FCS has determined that the State agency needs and can effectively manage. If any State agencies' shares exceed their approved requests, the excess caseload shall be divided equally among State agencies whose approved requests exceed their shares.

(C) State agencies requesting expansion caseload to increase service to the elderly shall be assigned the lesser of an equal share of available caseload or the amount of expansion caseload FCS has determined that the State agency needs and can effectively manage. If any State agencies' shares exceed their approved requests, the

excess caseload shall be divided equally among State agencies whose approved requests exceed their shares.

(iv) Requests from State agencies to initiate program service for women, infants, and children, and the elderly shall be addressed in the following manner. Requests to initiate service to women, infants, and children shall receive priority over requests to initiate service to the elderly.

(A) State agencies with approved State plans incorporating requests for program initiation to provide service to women, infants, and children shall be assigned caseload in the same manner described in paragraph (a)(2)(iii)(B) of this section.

(B) State agencies with approved State plans incorporating requests for program initiation to provide service to the elderly shall be assigned caseload in the same manner described in paragraph (a)(2)(iii)(C) of this section.

* * * * *

§ 247.24 [Removed]

4. Section 247.24 is removed.

Dated: October 15, 1997.

Yvette S. Jackson,

Acting Administrator, Food and Consumer Service.

[FR Doc. 97–28060 Filed 10–22–97; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV97–930–1 IFR]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Assessment Rate and Establishment of Late Payment and Interest Charges on Delinquent Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the 1997–98 and subsequent fiscal periods to cover expenses incurred by the Cherry Industry Administrative Board (Board) under Marketing Order No. 930. This rule also establishes an interest rate and late payment charge on delinquent assessments owed by handlers under the tart cherry marketing order. The Board is responsible for local administration of the marketing order. Authorization to assess tart cherry handlers will enable the Board to incur expenses that are reasonable and necessary to administer the program. The interest rate and late payment charges will contribute to the efficient operation of the program by ensuring adequate funds are available to cover budgeted expenses incurred under the marketing order. The 1997–98 fiscal period covers the period July 1, through June 30.

DATES: Effective on October 24, 1997. Comments received by December 22, 1997 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, and Kenneth G. Johnson, Regional Manager, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax (202) 720–5698.

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

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, tart cherry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable tart cherries beginning July 1, 1997, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted 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 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 tart cherry marketing order in section 930.31 provides that one of the duties of the Board is to submit to the Secretary a budget for each fiscal period, prior to the beginning of such period, including a report explaining the items appearing therein and a recommendation as to the rates of assessments for such period. The recommendations concerning the proposed assessment rate are discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

At its meeting on January 8 and 9, 1997, the Board unanimously recommended expenditures of $650,000, and an assessment rate of $0.0025 per pound of tart cherries handled during the 1997–1998 crop year and subsequent crop years. The recommended expenditure figure covers expenses for the 1997–98 fiscal period, as well as expenses incurred in connection with the start-up of the program beginning on January 1, 1997, when the first public meeting of the newly formed Board took place. The tart cherry marketing order became effective on September 25, 1996. The Department has approved the Board's 1997–98 budget of expenses. Until assessment income is available, the Board may obtain funds through a lending institution to fund Board operations.