Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AMS–FV–11–0085; FV11–930–3 PR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2011–12 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on the establishment of final free and restricted percentages for the 2011–12 crop year under the marketing order for tart cherries grown in the states of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin (order). The order is administered locally by the Cherry Industry Administrative Board (Board). This action would establish the proportion of tart cherries from the 2011 crop which may be handled in commercial outlets at 88 percent free and 12 percent restricted. These percentages should stabilize marketing conditions by adjusting supply to meet market demand and help improve grower returns.

DATES: Comments must be received by April 2, 2012.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, 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 document 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, 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: Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or Email: *Jennie.Varela@ams.usda.gov* or *Christian.Nissen@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order and Agreement Division, 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 Email: *Laurel.May@ams.usda.gov.*

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

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

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order provisions now in effect, final free and restricted percentages may be established for tart cherries handled during the crop year. This proposed rule would establish final free and restricted percentages for tart cherries for the 2011–12 crop year, beginning July 1, 2011, through June 30, 2012.

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

This rule invites comments on the establishment of final free and restricted percentages for the 2011–12 crop year. This action would establish the proportion of tart cherries from the 2011 crop which may be handled in commercial outlets at 88 percent free and 12 percent restricted. These percentages should stabilize marketing conditions by adjusting supply to meet market demand and help improve grower returns. The action was recommended by the Board at a meeting on September 15, 2011.

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

Under § 930.52, only those districts with an annual average production of at least six million pounds are subject to regulation and any district producing a crop which is less than 50 percent of its annual average is exempt. The regulated districts for the 2011–2012 crop year would be: District 1—Northern Michigan; District 2—Central Michigan; District 3—Southern Michigan; District

4—New York; District 7—Utah; and District 8—Washington. Districts 5, 6, and 9 (Oregon, Pennsylvania, and Wisconsin, respectively) would not be regulated for the 2011–12 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. The Board, aware of this economic relationship, focuses on using the volume control provisions in the order to balance supply and demand to stabilize industry returns.

Pursuant to § 930.50 of the order, the Board meets on or about July 1 to review sales data, inventory data, current crop forecasts and market conditions for the upcoming season and, if necessary, to recommend preliminary free and restricted percentages if anticipated supply would exceed demand. After harvest is complete, but no later than September 15, the Board meets again to update their 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.

To assist in this process, the Board uses an optimum supply formula (OSF), a series of mathematical calculations using 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 marketing demand until the new crop is available. Desirable carry-out is set by the Board after considering market circumstances and needs. This figure can range from zero to a maximum of 20 million pounds.

To determine whether the industry would be in an oversupply situation for the coming year, the Board compares the optimum supply figure and the total anticipated supply for the coming year. Anticipated supply includes any inventory available at the beginning of the season (carry-in) and the current year's estimated production. The carry-in figure is subtracted from the optimum supply to determine the volume of cherries that would need to be produced in the current year to provide what is needed to meet the optimum supply. If estimated production is less than the optimum supply minus carry-in, the Board is required to establish a free percentage of 100 percent and a restricted percentage of zero. If production is greater than the optimum supply minus carry-in, the difference is considered surplus. To calculate the restricted percentage, this surplus tonnage is divided by the sum of production in the regulated districts.

The Board met on June 23, 2011, and computed an optimum supply of 174 million pounds for the 2011–12 crop year, using the free sales for the three previous seasons and setting the desirable carry-out at zero. The Board then subtracted the estimated carry-in of 57 million pounds from the optimum supply to calculate the production needed from the 2011–12 crop to meet optimum supply. This number, 117 million pounds, was subtracted from USDA's estimated 2011–12 production of 266 million pounds to calculate a surplus of 149 million pounds of tart cherries. The surplus was then divided by the expected production in the regulated districts (253 million pounds) to reach a preliminary restricted percentage of 59 percent for the 2011–12 crop year.

In discussing the results of the OSF calculations, members were in agreement that a restriction was necessary in order to avoid oversupplying the market. However, there was discussion that a 59 percent restriction may be too restrictive considering current market conditions. Board members recognized that the previous season, inventory had been tight, requiring two releases from reserves to meet sales needs. Further, it was stated that exports would likely remain strong in the coming season due to poor production in Europe. Consequently, the Board concluded market conditions justified making an economic adjustment, and the Board voted to add 30 million pounds to free supply, reducing the calculated surplus from 149 million pounds to 119 million pounds.

In addition, 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. Accordingly, § 930.50(g) of the order 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). The Board complied with this requirement by adding 17 million pounds (174 million times 10 percent) to the free supply, further reducing the surplus to 102 million pounds. After these two adjustments, the preliminary restricted percentage was recalculated as 40 percent, as outlined in the following table:

	Millions of pounds
Preliminary Calculations:	
(1) Average sales of the prior three years	174
(2) Plus desirable carry-out	0
(3) Optimum supply calculated by the Board	174
(4) Carry-in as of June 23, 2011	57
(5) Adjusted optimum supply (item 3 minus item 4)	117
(6) USDA crop estimate	266
(7) Surplus (item 6 minus item 5)	149
(8) Economic adjustment	30
(9) Market growth factor	17
(10) Adjusted Surplus (item 7 minus items 8 and 9)	102
(11) Crop estimate for regulated districts	253
	Percent
Preliminary Percentages:	
Restricted (item 10 divided by item 11 × 100)	40
Free (100 minus restricted percentage)	60

The Board met again September 15, 2011, to consider establishing final volume regulation percentages for the 2011–12 season. The final percentages are based on the Board's reported production figures and the supply and demand information available in September. The actual production for the 2011–12 season was 231 million pounds, 35 million pounds below USDA's June estimate. Concerned about having an adequate volume of cherries in the free market with actual production below the estimate, the Board voted to make a further adjustment of 40 million pounds in addition to the June adjustment. Using the actual production numbers, and accounting for the two adjustments, as well as the market growth factor, the restricted percentage was recalculated.

The Board used the same carry-in figure used in June of 57 million pounds, and subtracted it from the optimum supply of 174 million pounds, calculating the 2011–12 production volume required to meet the optimum supply of 117 million pounds. The 117 million pounds was subtracted from the actual production of 231 million pounds, resulting in a surplus of 114 million pounds of tart cherries. The surplus was then reduced by subtracting the two economic adjustments of 30 million pounds and 40 million pounds, and the market growth factor of 17 million pounds, resulting in an adjusted surplus of 27 million pounds. This surplus was then divided by the actual production in the regulated districts (218 million pounds) to calculate a restricted percentage of 12 percent with a corresponding free percentage of 88 percent for the 2011–12 crop year, as outlined in the following table:

	Millions of pounds
Final Calculations:	
(1) Average sales of the prior three years	174
(2) Plus desirable carry-out	0
(3) Optimum supply calculated by the Board	174
(4) Carry-in as of July 1, 2011	57
(5) Adjusted optimum supply (item 3 minus item 4)	117
(6) Board reported production	231
(7) Surplus (item 6 minus item 5)	114
(8) Total economic adjustments	70
(9) Market growth factor	17
(10) Adjusted Surplus (item 7 minus items 8 and 9)	27
(11) Crop estimate for regulated districts	218
	Percent
Final Percentages:	
Restricted (item 10 divided by item 11 × 100)	12
Free (100 minus restricted percentage)	88

The primary purpose of setting restricted percentages is an attempt to bring supply and demand into balance. If the primary market is oversupplied with cherries, grower prices decline substantially. Restricted percentages have benefited grower returns and helped stabilize the market as compared to those seasons prior to the implementation of the order. The Board believes the available information indicates that a restricted percentage should be established for the 2011–12 crop year to avoid oversupplying the market with tart cherries. Consequently, based on its discussion of this issue and the result of the above calculations, the Board recommended final percentages of 88 percent free and 12 percent restricted by a vote of 13 in favor and 4 against.

Of the four Board members who opposed the recommendation, one believed regulation was unnecessary for the current crop year, while the other three believed the recommended percentages were not restrictive enough. The member who believed the regulation was too restrictive cited strong sales in the previous season and moderate production volume for this crop year. In its discussion regarding the establishment of a restricted percentage for the 2011–12 crop year, the Board did recognize the strong sales in the previous season, as well as the fact that actual production had come in below the production estimate. In response, the Board voted to make two adjustments to make additional volume available. However, the majority of Board members still held that market conditions warranted some level of restriction. Further, the Board could meet and recommend the release of additional volume during the crop year, if warranted.

One of those who opposed the recommendation as not being restrictive enough stated that making the two adjustments and increasing the free volume this season could result in large inventories carrying over into the next season, which would require increased restrictions and dampen prices. Another stated that strong demand might not be sustained in the coming year and making additional fruit available at the onset of the season was premature and could result in an oversupply of the market. One opponent also stated that rather than making adjustments now, the Board could vote to release a portion of reserves later in the season to provide more fruit if necessary. However, most Board members believed that making more fruit available to the market was warranted. Board members cited the two releases from the previous season, sales volume from last year, and the smaller than anticipated crop in support of making more free tonnage available. It was also argued that increasing the volume of cherries available at the onset of the season could facilitate additional sales.

After reviewing the available data, and considering the concerns expressed, the majority of the Board determined that a 12 percent restriction would meet sales needs without oversupplying the market. Thus, the Board recommended establishing final percentages of 88 percent free and 12 percent restricted.

Initial 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 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.

There are approximately 40 handlers of tart cherries who are subject to regulation under the marketing order and approximately 600 producers of tart cherries in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (SBA) 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 (13 CFR 121.201).

According to the National Agricultural Statistics Service, and Board data, the average annual grower price for tart cherries during the 2010–11 season was $0.221 per pound, and total shipments were around 270 million pounds. Therefore, average receipts for tart cherry producers were around $99,000, well below the SBA threshold for small producers. In 2010, The Food Institute estimated an f.o.b. price of $0.84 per pound for frozen tart cherries, which make up the majority of processed tart cherries. Using this data, average annual handler receipts were about $5.7 million, also 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 the National Agricultural Statistics Service, tart cherry production in 2007 was 253 million pounds, 214 million pounds in 2008, 359 million pounds in 2009, and in 2010, production was 190 million pounds. Because of these fluctuations, the supply and demand for tart cherries are rarely in equilibrium.

Demand for tart cherries is inelastic, meaning changes in price have a minimal effect on total sales volume. However, prices are very sensitive to changes in supply, and grower prices vary widely in response to the large swings in annual supply, with prices ranging from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991.

Because of this relationship between supply and price, oversupplying the market with tart cherries would have a sharp negative effect on prices, driving down grower returns. The Board, aware of this economic relationship, focuses on using the volume control authority in the order in an effort to balance supply and demand in order to 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, be diverted or used for exempted purposes.

This proposal would establish final free and restricted percentages for the 2011–12 crop year under the order for tart cherries. This action would control the supply of tart cherries by establishing percentages of 88 percent free and 12 percent restricted for the 2011–12 crop year. These percentages should stabilize marketing conditions by adjusting supply to meet market demand and help improve grower returns. The action would regulate tart cherries handled in Michigan, New York, Utah, and Washington. The authority for this action is provided for in §§ 930.51(a) and 930.52 of the order. The Board recommended this action at a meeting on September 15, 2011.

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

This action would result in some fruit being diverted from the primary domestic markets. However, 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 market for tart cherries. Last season, these areas accounted for more than 50 million pounds in sales.

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

In addition, this action would be less restrictive than in previous seasons and would be the lowest restricted percentage since 2008. At this level of restriction, nearly all restricted fruit should be utilized by the end of the crop year. Consequently, it is not anticipated that this action would unduly burden growers or handlers.

While this action could result in some additional costs to the industry, these costs are more than outweighed by the benefits. The purpose of setting restricted percentages is to attempt to bring supply and demand into balance. If the primary market (domestic) is oversupplied with cherries, grower prices decline substantially. Without volume control, the primary market would likely be oversupplied, resulting in lower 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 with a combined total production of 218.4 million pounds. A 12 percent restriction means 192.2 million pounds would be available to be shipped to primary markets from these four states. The 192.2 million pounds from the restricted districts, the 12.2 million pounds from the unrestricted districts (Oregon, Pennsylvania, and Wisconsin), and the 57 million pound carry-in inventory would make a total of 261.4 million pounds available as free tonnage for the primary markets.

To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been developed. Based on the model, the use of volume control would have a positive impact on grower returns for this crop year. With volume control, grower prices are estimated to be approximately $0.06 per pound higher, and total grower revenue from processed cherries is estimated to be $6.2 million higher than without restrictions. The without-restrictions scenario assumes that all tart cherries produced would be delivered to processors for payments.

Prior to the implementation of the order, grower price often did not come close to covering the cost of production. For the 2011–12 crop year, yield is estimated at approximately 6,470 pounds per acre. At this level of yield, the cost of production is estimated to be $0.33 per pound (costs were estimated by representatives of Michigan State University).

In addition, absent volume control, the industry could start to build large amounts of unwanted inventories. These inventories would have a depressing effect on grower prices. The econometric model shows for every 1 million-pound increase in carry-in inventories, a decrease in grower prices of $0.0037 per pound occurs.

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

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

The stabilizing effects of this action would benefit all handlers by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all growers and handlers by allowing them to better anticipate the revenues their tart cherries would generate. Growers and handlers, regardless of size, would benefit from the stabilizing effects of this restriction.

One alternative to this action considered was to not regulate the volume of the 2011–12 crop. However, Board members believed that although sales have been strong, there is enough of a surplus to necessitate restricting a portion of the crop to keep prices stable.

Another alternative considered was setting the carry-out value at 10 or 20 million pounds in the OSF. Board members indicated that such a change would require further consideration by the Board, and did not receive sufficient support.

The Board also considered differing levels of adjustments under the OSF when considering supply. The alternative adjustments were deemed to be either too small to address industry needs, or so large that members were concerned with creating an oversupply. Therefore, these 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 the Office of Management and Budget (OMB) and assigned OMB No. 0581–0177, Tart cherries Grown in the States of MI, NY, PA, OR, UT, WA, and WI. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action would 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.

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.

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

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 15, 2011, 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 comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *www.ams.usda.gov/MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Laurel May 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 2011–12 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 2011–12 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2011, which shall be free and restricted, respectively, are designated as follows: Free percentage, 88 percent and restricted percentage, 12 percent.

Dated: February 28, 2012.

Robert C. Keeney,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2012–5171 Filed 3–1–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[Doc. No. AMS–LS–11–0086]

Beef Promotion and Research; Amendment to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would expand the contracting authority as established under the Beef Promotion and Research (Order). The Beef Research and Information Act (Act) requires that the Beef Promotion Operating Committee (BPOC) enter into contracts with established national non-profit industry-governed organizations including the Federation of State Beef Councils to implement programs of promotion, research, consumer information, and industry information. The Act does not define ''national non-profit industry governed organization,'' however, the Order states that these organizations must be governed by a board of directors representing the cattle or beef industry on a national basis and that they were active and ongoing prior to enactment of the Act. This proposed rule would change the date requirement in the Order so that organizations otherwise qualified could be eligible to contract with the BPOC for the implementation and conduct of Beef Checkoff programs if they have been active and ongoing for at least two years.

DATES: Written comments must be received by May 1, 2012.

ADDRESSES: Comments must be posted online at *www.regulations.gov* or sent to Craig Shackelford, Agricultural Marketing Specialist, Marketing Programs Division, Livestock and Seed Program, Agricultural Marketing Service, USDA, Room 2628–S, STOP 0251, 1400 Independence Avenue SW., Washington, DC 20250–0251; or fax to (202) 720–1125. All comments should reference the docket number, the date, and the page number of this issue of the **Federal Register**. Comments will be available for public inspection at the aforementioned address, as well as on the Internet at *http://www.regulations.gov/*.

FOR FURTHER INFORMATION CONTACT: Craig Shackelford, Agricultural Marketing Specialist, Marketing Programs Division, on 202/720–1115, fax 202/720–1125, or by email at *craig.shackelford@ams.usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

Section 11 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.