(d) The payment is equal to the payment calculation factor multiplied by your policy protection for each insured crop practice and type specified in the actuarial documents.

(e) The payment will not be recalculated even though the NASS yield may be subsequently revised.

State and county	Cancellation and termination dates	Contract change date
All Colorado counties except Alamosa, Conejos, Costilla, Rio Grande, and Saguache; all Montana counties except Daniels and Sheridan Counties; all South Dakota counties except Corson, Walworth, Edmonds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, and Yankton Counties and all South Dakota counties east thereof; all Wyoming counties except Big Horn, Fremont, Hot Springs, Park, and Washakie Counties; and all other states except Alaska, Arizona, California, Maine, Minnesota, Nevada, New Hampshire, North Dakota, Utah, and Vermont..	September 30	June 30.
Arizona; California; Nevada; and Utah	October 31	June 30.
Alaska; Alamosa, Conejos, Costilla, Rio Grande, and Saguache Counties, Colorado; Maine; Minnesota; Daniels and Sheridan Counties, Montana; New Hampshire; North Dakota; Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, and Yankton Counties South Dakota, and all South Dakota counties east thereof; Vermont; and Big Horn, Fremont, Hot Springs, Park, and Washakie Counties, Wyoming..	March 15	November 30.

Signed in Washington, DC, on May 26, 1999.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 99–13983 Filed 6–4–99; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV99–930–2 IFR]

Tart Cherries Grown in the States of Michigan, et al.; Revision of the Sampling Techniques for Whole Block and Partial Block Diversions and Increasing the Number of Partial Block Diversions Per Season for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule revises the sampling techniques for whole and partial block diversions and increases the number of allowable partial block diversions under the Federal marketing order for tart cherries. These changes are intended to make the voluntary grower diversion program more flexible for grower participants. The order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin and is administered locally by the Cherry Industry Administrative Board (Board). The Board unanimously recommended this action.

DATES: Effective June 8, 1999; comments received by August 6, 1999, 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 to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456, Fax: (202) 720–5698; or E-mail: moabdocket.clerk@usda.gov. 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 or Kenneth G. Johnson, Marketing Order Administration Branch, F&V, AMS, USDA, room 2530–S, P.O. Box 96456, Washington, DC 20090–6456, telephone: (202) 720–2491. Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax: (202) 720–5698; or E-mail: Jay.Guerber@usda.gov. You may also view the marketing agreements and orders small business compliance guide at the following website: http://www.ams.usda.gov/fv/moab.html.

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.'' This 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 or USDA) is issuing this rule in conformance with Executive Order 12866.

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

This rule revises the sampling techniques used in determining the amount of production diverted from whole blocks and partial blocks of cherry trees, and increases the number of allowable partial block diversions per season under the order. Whole block diversion results when an entire orchard block is left unharvested. Partial block diversion occurs when a contiguous portion of a definable block is diverted. An orchard block is defined as a group of cherry trees of similar age, with rows aligned in the same direction, and

having definable boundaries (e.g., roads, ditches, or other permanent landmarks).

Section 930.58 of the tart cherry marketing order provides authority for voluntary grower diversion. Growers can divert all or a portion of their cherries which otherwise, upon delivery to a handler, would be subject to volume regulation. One of the ways handlers can satisfy their restricted percentage obligations is by redeeming grower diversion certificates. After the Board confirms that the grower diverted his/her crop, the Board issues a diversion certificate to the grower stating the weight of cherries diverted. The grower can present the certificate to a handler in lieu of actual cherries. The handler, in turn, can present the certificate to the Board. The Board then applies the weight of cherries represented by the certificate against the handler's restricted percentage obligation, which reduces the handler's restricted obligation.

Section 930.158 provides rules and regulations for grower diversion. Included in this section are procedures and deadline dates for applying for diversion and choosing the type of diversion available to growers. There are four types of diversion-random row, whole block, partial block, and in-orchard tank. This rule only makes changes to the whole and partial block diversions.

Grower applications for diversion must be filed by April 15 and growers must inform the Board by July 1 whether they elect to whole or partial block divert their tart cherries. If whole block or partial block diversion is not selected by July 1, the grower would have to choose the random row method or the in-orchard tank methods of diversion.

In whole and partial block diversion, the quantity of the fruit diverted is determined by application of a statistical sampling protocol. Currently, § 930.158 specifies that, if a block has 5 rows or less, 3 rows are randomly chosen to be sampled. If a block has 6 to 15 rows, 4 rows are randomly chosen to be sampled. If a block has 16 or more rows, 5 rows are randomly chosen to be sampled. Ten contiguous tree sites would be sampled from each row.

During its review of the grower diversion program, the Board concluded that the current sampling procedure, which is based solely on the number of rows in a block, requires more trees to be sampled on smaller blocks or on blocks that had short rows than is necessary to accurately determine the amount of tart cherries diverted. The Board determined that a sample size of approximately 10 to 15 percent which had been taken on larger orchard blocks with more trees in a row, was adequate to accurately calculate the quantity of fruit diverted from such orchard blocks. That sample size could easily be twice as large in small orchards having fewer trees per row. Therefore, the Board recommended that the regulations be amended so that the sample taken from both large and small orchard blocks would be about 10 to 15 percent.

To achieve this goal, the Board recommended that the sampling procedure be revised by taking into account the number of rows and number of tree sites in each particular block. The sampling method used would be the one requiring the smaller number of trees. A tree site is a planted tree or an area where a tree was planted and may have been uprooted or died. The recommended sampling procedure is as follows: If a block has 5 rows or less, or 200 or less tree sites, 3 rows would be randomly chosen to be sampled. If a block has 6 to 15 rows or 201–400 tree sites, 4 rows would be randomly chosen to be sampled. If a block has 16 or more rows and greater than 400 tree sites, 5 rows would be randomly chosen to be sampled. This procedure is expected to result in a sample size of about 12 to 15 percent whether the orchard block has long rows or short rows.

For example, under the current sampling criteria, if a grower has 10 rows with 20 tree sites per row (10×20 equals 200 tree sites), 4 rows would have to be sampled. Under these rules, only 3 rows would have to be sampled since there are 200 tree sites.

As is currently required, prior to sampling, the grower must notify the Board to allow observation of the sampling process by a compliance officer. The sampling method used would be the one requiring the smaller number of trees to be sampled. The compliance officer will use an orchard map in determining how many trees to sample.

To determine the yield for whole block diversion when five rows are to be sampled, 10 contiguous tree sites in each of the five rows are sampled. A total of 50 tree sites would be sampled ((10 original tree sites) X (5 rows)= 50 tree sites). If, for example, a total of 4,600 pounds is harvested from the sample tree sites and this is divided by 50 tree sites, a yield of 92 pounds per tree site will be obtained. The yield for the block is found by multiplying the calculated 92 pounds per tree site yield by the 880 tree sites that were mapped in the block to yield 80,960 pounds for that block.

For partial block diversion, the yield for the partial block is found by multiplying the calculated pounds per tree site yield by the number of trees in the rows mapped in the partial block. Partial blocks shall consist of contiguous rows.

After harvest, the compliance officer could again visit the grower's orchard to verify that diversion actually took place. A diversion certificate would be issued for an amount equal to the volume of cherries diverted. The grower could then present the certificate to a handler to be redeemed.

The second change to the regulations increases the number of partial blocks that growers may divert each season. Partial block diversion is when a contiguous portion of a definable block is diverted. Using this method of diversion, a grower having a block with 35 rows could divert contiguous rows 1 through 22 and harvest rows 23 through 35. Currently, section 930.158(b)(3) limits the number of partial block diversions to one partial block diversion for each grower per year. This limitation was intended to reduce the time that compliance officers needed to spend observing sampling and diversion activities at growers' orchards and the administrative costs involved.

After one year of diversion under these rules, the Board reevaluated the program and determined that the number of partial block diversions per grower per year could be increased from one to five, or 50 percent of a producer's total number of blocks. For example, if a grower has 12 separate orchard blocks mapped by the Board, such grower would now be able to divert up to 6 partial blocks. After reviewing last year's operations, the Board believes that its administrative costs will not increase materially by making this change. Because this method of diversion allows growers to divert cherries based on quality, the Board further believes that the ability to take advantage of partial block diversion on a larger scale will foster increased participation in the voluntary program.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this initial regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) allows AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any

rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

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 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 order and approximately 900 producers of tart cherries in the regulated area. The number of reported tart cherry producers in the regulated area is lower this crop year than in previous years (down from 1,220 producers) due to the Board receiving more accurate producer information. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of tart cherries may be classified as small entities.

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 1993/94 through 1997/98, approximately 89 percent of the U.S. tart cherry crop, or 281.1 million pounds, was processed annually. Of the 281.1 million pounds of tart cherries processed, 63 percent was frozen, 25 percent canned and 4 percent utilized for juice. The remaining 8 percent was dried or assembled into juice packs.

In 1998, 37.7 million pounds of cherries were diverted in the orchard. Of that total, 16.3 million pounds were whole block diversions and 8.4 million were partial block diversions. The balance of the grower diversions were random row and in-orchard tank diversions.

Section 930.58 of the tart cherry marketing order provides authority for voluntary grower diversion. Growers can divert all or a portion of their cherries which otherwise, upon delivery to a handler, would be subject to volume regulation. One of the ways handlers can satisfy their restricted percentage obligations is by redeeming grower diversion certificates. After the Board confirms that the grower diverted his/her crop, the Board issues the grower a diversion certificate stating the weight of cherries diverted. The grower can present the certificate to a handler in lieu of actual cherries. The handler, in turn, can present the certificate to the Board. The Board then applies the weight of cherries represented by the certificate against the handler's restricted percentage obligation, which reduces the handler's restricted obligation.

Section 930.158 provides rules and regulations for grower diversion. Included in this section are procedures and dates for applying for diversion. There are four types of diversion. However, this action only makes changes to the rules and regulations for whole and partial block diversions.

Grower applications for diversion must be filed by April 15 and growers must inform the Board by July 1 whether they elect to whole or partial block divert their tart cherries. If whole block or partial block diversion is not selected by July 1, the grower would have to choose the random row method or the in-orchard tank methods of diversion.

In whole and partial block diversions, the quantity of the fruit diverted is determined by application of a statistical sampling protocol. Currently, § 930.158 specifies that, if a block has 5 rows or less, 3 rows are randomly chosen to be sampled. If a block has 6 to 15 rows, 4 rows are randomly chosen to be sampled. If a block has 16 or more rows, 5 rows are randomly chosen to be sampled. Ten contiguous tree sites would be sampled from each row.

During its review of the grower diversion program, the Board concluded that the current sampling procedure which is based solely on the number of rows in a block, requires more trees to be sampled on smaller blocks or on blocks that had short rows than is necessary to accurately determine the amount of tart cherries diverted. The Board determined that a sample size of approximately 10 to 15 percent which had been taken on larger orchard blocks with more trees in a row, was adequate to accurately calculate the quantity of fruit diverted from such orchard blocks. That sample size could easily be twice as large in small orchards having fewer trees per row. Therefore, the Board recommended that the regulations be amended so that the sample taken from both large and small orchard blocks would be about 10 to 15 percent.

To achieve this goal, the Board recommended that the sampling procedure be revised by taking into account the number of rows and number of tree sites in each particular block. The sampling method used would be the one requiring the smaller number of trees. A tree site is a planted tree or an area where a tree was planted and may have been uprooted or died. The recommended sampling procedure is as follows: If a block has 5 rows or less, or 200 or less tree sites, 3 rows would be randomly chosen to be sampled. If a block has 6 to 15 rows or 201–400 tree sites, 4 rows would be randomly chosen to be sampled. If a block has 16 or more rows and greater than 400 tree sites, 5 rows would be randomly chosen to be sampled. This procedure is expected to result in a sample size of about 12 to 15 percent whether the orchard block has long rows or short rows.

The second change to the regulations increases the number of partial blocks that growers may divert each season. Partial block diversion is when a contiguous portion of a definable block is diverted. Using this method of diversion, a grower having a block with 35 rows could divert contiguous rows 1 through 22 and harvest rows 23 through 35. Currently, section 930.158(b)(3) limits the number of partial block diversions to one partial block diversion for each grower per year. This limitation was intended to reduce the time that compliance officers needed to spend observing sampling and diversion activities at growers' orchards and the administrative costs involved.

After one year of diversion under these rules, the Board reevaluated the program and determined that the number of partial block diversions per grower per year could be increased from one to five, or 50 percent of a producer's total number of blocks, without materially increasing administrative costs. Because this method of diversion allows growers to divert cherries based on quality, the Board further believes that the ability to take advantage of partial block diversion on a larger scale will foster increased participation in the voluntary program.

The Board considered not changing the partial block diversion limitation as well as allowing an unlimited number of diversions. However, after much discussion, the Board decided that the diversion program could best be improved by increasing the opportunities for grower diversion, but believed a reasonable limit was needed to keep Board administrative costs as low as possible. Last year's experience showed that partial block diversion is the most flexible diversion option

available to the grower because it allows growers to divert tart cherries based on quality. For example, if a grower observes that part of a block of tart cherries is of low quality, the problem rows can be diverted allowing the grower to deliver high quality fruit to a handler. The ability to choose in this manner benefits both growers, handlers, and the industry as a whole.

At the end of the upcoming season, the Board plans to review the number of partial block diversions approved and decide if the number of such diversions is appropriate for upcoming crop years.

This rule does not require any new forms and will not impose any additional recordkeeping requirements on either small or large tart cherry diversion participants. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules which duplicate, overlap or conflict with this rule.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements imposed by this order have been previously approved by OMB and assigned OMB Number 0581–0177.

The Board's meetings were widely publicized throughout the tart cherry industry and all interested persons were invited to attend them and participate in Board deliberations. Like all Board meetings, the December 11–12, 1998, meeting was a public meeting and all entities, both large and small, were able to express their views on these issues. The Board itself is composed of 18 members, of which 17 members are growers and handlers and one represents the public. Also, the Board has a number of appointed committees to review program issues and make recommendations.

This rule invites comments on revising the sampling techniques for whole and partial block diversions and for increasing the number of allowable partial block diversions under the Federal marketing order for tart cherries. All comments received will be considered in making a final decision on this action. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes requirements by allowing growers the opportunity to divert more partial blocks and changes the sampling techniques for partial and whole block diversions to assure similar sample sizes regardless of orchard size; (2) this rule should be effective as soon as possible so growers can take advantage of these changes; (3) the Board unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

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

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

Authority: 7 U.S.C. 601–674.

2. In § 930.158, paragraphs (b)(2) and (b)(3) are revised to read as follows:

§ 930.158 Grower diversion and grower diversion certificates.

* * * * *

(b) * * *

(2) *Whole block diversion.* Based on maps supplied by the grower, a sampling procedure will be used to determine the amount of cherries in the orchard to be diverted. A block is defined as rows that run in the same direction, are similar in age, and have definable boundaries. The Board will require a number of tree sites to be sampled depending on the size of the block. A tree site is a planted tree or an area where a tree was planted and may have been uprooted or died. If a block has 5 rows or less, or 200 or less tree sites, 3 rows would be randomly chosen to be sampled, if a block has 6 to 15 rows, or 201–400 tree sites, 4 rows would be randomly chosen to be sampled, and if a block has 16 or more rows and greater than 400 tree sites, 5 rows would be randomly chosen to be sampled. The Board's compliance officer will apply the sampling procedure (based on the number of rows or the number of tree sites) which results in the fewest number of tree sites required to be sampled. From each of the rows to be sampled, ten contiguous tree sites will be sampled. Only trees more than five years old will be harvested for the sample. For example, if it is determined that five rows are to be sampled, 10 contiguous tree sites in each of the five rows will be subject to harvest. Trees within the 10 sites which are more than five years old will be harvested. The harvested tonnage will be converted to a volume that represents the entire block of cherries. If, for example, a total of 4,600 pounds is harvested from the sample tree sites and this total is divided by 50 tree sites a yield of 92 pounds per tree site is obtained. To find the total yield for the block, the 92 pounds per tree site yield is multiplied by the 880 tree sites that were mapped in the block and that equals 80,960 pounds for that block. The compliance officer would be allowed access to the block to oversee the sampling process and to confirm that the block has been diverted.

(3) *Partial block diversion.* Partial block diversion will also be accomplished using maps supplied by the grower. Sampling will be done as in whole block diversion except that only partial blocks would be selected and sampled. Growers may divert up to five partial blocks, or 50 percent of a grower's total number of blocks per year. Such block(s) must be mapped and will be sampled as described under whole block diversion. Rows used in partial block diversion must be contiguous.

* * * * *

Dated: June 1, 1999.

Bernadine M. Baker,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–14310 Filed 6–4–99; 8:45 am]

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