

not granting diversion credit and continuing to impose limitations on the volume of exempted product receiving diversion credit. However, this was determined as not being in the best interest of the industry.

This rule invites comments on granting handlers diversion credit for accidentally destroyed marketable finished tart cherry products, and removing the one million pound limitation on exempted products. Also, 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 60 days after publication in the **Federal Register** because: (1) This rule relaxes requirements by providing an additional opportunity for handlers to receive diversion credit and fulfill such handler's restricted obligation; (2) the Board needs this rule to be in place for the 1998-99 crop year beginning July 1, 1998, through June 30, 1999, so handlers can take advantage of this option; (3) the Board unanimously recommended this change 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 section 930.159 paragraph (a) is revised, paragraph (f) is removed, paragraph (d) is redesignated as paragraph (e), paragraph (e) is redesignated as paragraph (f), and a new paragraph (d) is added to read as follows:

**§ 930.159 Handler diversion.**

(a) *Methods of diversion.* Handlers may divert cherries by redeeming grower diversion certificates, by destroying cherries at handlers' facilities (at-plant), by diverting cherry products accidentally destroyed at a handlers' facility, by donating cherries or cherry products to charitable organizations or by using cherries or cherry products for exempt purposes under § 930.162, including export to countries other than Canada, Mexico and Japan. Once diversion has taken place, handlers will receive diversion certificates stating the weight of cherries diverted. Diversion credit may be used to fulfill any restricted percentage requirement in full or in part. Any information of a confidential and/or proprietary nature included in this application would be held in confidence pursuant to § 930.73 of the order.

\* \* \* \* \*

(d) *Diversion of finished products.* Handlers may be granted diversion credit for diverting finished tart cherry products accidentally destroyed at a handler's facility. In order to receive diversion credit under this added option the cherry products must be owned by the handler at the time of accidental destruction, be a marketable product at the time of processing, be included in the handler's end of the year handler plan, and have been assigned a Raw Product Equivalent (RPE) by the handler to determine the volume of cherries. In addition, the accidental destruction and disposition of the product must be verified by either a USDA inspector or Board agent or employee who witnesses the disposition of the accidentally destroyed product. Products will be considered destroyed if they sustain damage which renders them unacceptable in normal market channels.

\* \* \* \* \*

Dated: February 19, 1999.

**Robert C. Keeney,**  
*Deputy Administrator, Fruit and Vegetable Programs.*

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

[Airspace Docket No. 98-ASW-52]

**Revision of Class E Airspace; San Angelo, TX**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This notice confirms the effective date of a direct final rule which revises Class E airspace at San Angelo, TX.

**EFFECTIVE DATE:** The direct final rule published at 63 FR 70330 is effective 0901 UTC, March 25, 1999.

**FOR FURTHER INFORMATION CONTACT:** Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193-0520, telephone: 817-222-5593.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on December 21, 1998 (63 FR 70330). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulations would become effective on March 25, 1999. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on February 18, 1999.

**Albert L. Viselli,**  
*Acting Manager, Air Traffic Division, Southwest Region.*

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