production of cantaloups is distributed throughout other various growing regions of the United States. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (SBA) (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 cantaloup industry is characterized by producers and handlers whose farming operations involve more than one commodity, and whose income from farming operations is not exclusively dependent on cantaloup production. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the cantaloup production season is complete. Typical cantaloup producers and handlers either produce multiple crops or alternate crops within a single year. Therefore, it is difficult to obtain an exact number of cantaloup producers and handlers that can be classified as small entities based on the SBA's definition. However, it is estimated that the majority of handlers and producers of cantaloups may be classified as small entities.

This rule will revise the U.S. Standards for Grades of Cantaloups that was issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). In addition, the regulations under Marketing Order No. 979 (7 CFR Part 979), as issued under the Agricultural Marketing Act of 1937 (7 U.S.C. 601–674) references the U.S. Standards for Grades of Cantaloups, including the term ''decay'' and accordingly, the regulation of cantaloups grown in South Texas is affected. In the standards, the definition of decay applies to all four grades; U.S. Fancy, U.S. No. 1, U.S. Commercial and U.S. No. 2. This action changes the definition of decay to provide that dry type decays will not be scored against the decay tolerance unless penetrating the rind and extending into the edible flesh of the melon. This revision will be a benefit to producers and handlers by allowing a more accurate scoring of dry type decays. As a result, more melons are expected to be marketed that would otherwise be graded as defective.

It is estimated that total commercial cantaloup production in the U.S. was approximately 67 million cartons with an estimated value of $401 million. Cantaloup production covered under the Marketing Order for Melons Grown in South Texas comprises approximately 5 percent of the domestic market share.

AMS has determined that this action would not impose an additional reporting or recordkeeping requirement on either small or large cantaloup growers and handlers.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule, except that the regulation of cantaloups grown in South Texas under 7 CFR Part 979 would be affected by this action.

With regard to alternatives to this action, if no action were taken by the Agency, this could result in continued scoring of marketable melons with possible revenue loss by growers, shippers or handlers of these melons.

Accordingly, this action will make the standards more consistent and uniform with marketing trends and commodity characteristics.

Pursuant to 5 U.S.C. 553, it is 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 30 days after publication in the **Federal Register** because: (1) Harvesting of the year's crop will begin in late April; (2) this revision should be made as soon as possible to make the standards more consistent and uniform with marketing trends and commodity characteristics; (3) cantaloup production is increasing on a yearly basis and further delaying the standards revision would result in the increased loss of marketable melons and subsequent revenue loss by growers and handlers; and, (4) this interim final rule provides a 60 day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

For reasons set forth in the preamble, 7 CFR Part 51 is amended as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. In part 51, § 51.490 is revised to read as follows:

§ 51.490 Decay.

Decay means breakdown, disintegration or fermentation of the flesh or rind of the cantaloup caused by bacteria or fungi; except that *dry type* decays will only be scored when penetrating the rind and extending into the edible flesh of the melon.

Dated: April 20, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–11040 Filed 4–24–98; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV97–930–6 FR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 1997–98 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes final free and restricted percentages for the 1997–98 crop year. The percentages are 55 percent free and 45 percent restricted. These percentages establish the proportion of cherries from the 1997 crop which may be handled in normal commercial outlets and are intended to stabilize supplies and prices, and strengthen market conditions. The percentages were recommended by the Cherry Industry Administrative Board (Board), the body which locally administers the marketing order. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

EFFECTIVE DATE: April 28, 1998 through June 30, 1998, and applies to all tart cherries handled from the beginning of the 1997–98 crop year.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491. Small businesses may request information on compliance with this regulation 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.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing

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

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and restricted percentages may be established for tart cherries handled by handlers during the crop year. This rule establishes final free and restricted percentages for tart cherries for the 1997–98 crop year, beginning July 1, 1997, through June 30, 1998. 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 requesting a modification of the order or to be exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The order prescribes procedures for computing an optimum supply and preliminary and final percentages that establish the amount of tart cherries that can be marketed throughout the season. The regulations apply to all handlers of tart cherries that are in the regulated districts. Tart cherries in the free percentage category may be shipped to any market, while restricted percentage tart cherries must be held by handlers in a primary or secondary reserve, or be diverted in accordance with section 930.59 or used for exempt purposes under section 930.62. The regulated Districts for this season are: District one—Northern Michigan; District two—Central Michigan; District four—New York; and District seven—Utah. Districts three, five, six, eight and nine (Southwest Michigan, Oregon, Pennsylvania, Washington, and Wisconsin, respectively) are not regulated for the 1997–98 season.

The order prescribes under section 930.52 that upon adoption of the order, those districts to be regulated shall be those districts in which the average annual production of cherries over the prior three years has exceeded 15 million pounds. Handlers not meeting the 15 million pound requirement shall not be regulated in such crop year. Therefore, for this season, handlers in the districts of Oregon, Pennsylvania, Washington, and Wisconsin are not subject to volume regulation. In addition, Southwest Michigan handlers are not subject to volume regulation this season because the estimated production fell below 50 percent of the average annual processed production in that district in the previous five years. Southwest Michigan's tart cherry production was subjected to a freeze during early bud development that reduced its crop yield for the 1997–1998 crop year.

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

The order also provides that on or about July 1 of each crop year, the Board is required to establish preliminary free and restricted percentages. These percentages are computed by deducting the carryin inventory from the optimum supply figure (adjusted to raw product equivalent—the actual weight of cherries handled to process into cherry products) and dividing that figure by the current year's USDA crop forecast. The carryin inventory figure reflects the amount of cherries that handlers actually have in inventory. If the resulting quotient is 100 percent or more, the Board should establish a preliminary free market tonnage percentage of 100 percent. If the quotient is less than 100 percent, the Board should establish a preliminary free market tonnage percentage equivalent to the quotient, rounded to the nearest whole percent, with the complement being the preliminary restricted percentage.

The Board met on June 26–27, 1997, and computed, for the 1997–98 crop year, an optimum supply of 247 million pounds. This number was calculated by using 270 million pounds for the average three year sales figure and subtracting 23 million pounds for exports that could have received diversion credit. The Board recommended that the carryout figure be zero pounds. Also at the June 26–27 meeting, the Board established preliminary free and restricted percentages. The Board calculated the preliminary free and restricted percentages as follows: The USDA estimate of the crop was 242 million pounds; a 70 million pound carryin added to that equaled a total available supply of 312 million pounds. The optimum supply was subtracted from the total estimated available supply resulting in a surplus of 65 million pounds of tart cherries. The surplus was divided by the production in the regulated districts and resulted in 66 percent free and 34 percent restricted for the 1997–98 season. The Board recommended these percentages by a 17 to 1 vote. No reason was provided for the one dissenting vote. No rulemaking was necessary at that time. The Board recommended the percentages and announced them to the industry as required by the order.

The preliminary percentages were based on the USDA production estimate and the following supply and demand information for the 1997–98 crop year:

		Millions of pounds
Optimum supply formula:		
(1) Average sales of the prior three years		270
(2) Plus carryout		0
(3) Less amount for exports that would have received diversion credit		23
(4) Optimum Supply calculated by the Board at the June meeting		247

		Millions of pounds
Preliminary percentages:		
(5) Less carryin as of July 1, 1997		70
(6) Tonnage requirement for current crop year		177
(7) USDA crop estimate		242
(8) Estimated restricted percentage tonnage (item 7 minus item 6)		65
(9) USDA crop estimate for regulated districts		192
Percentages	Free	Restricted
(10) Preliminary percentages (item 8 divided by item 9) × 100	66	34

The Board may adjust the estimated crop production as the actual pack is realized and interim percentages may be announced between July 1 and September 15 of the crop year.

Section 930.50(d) of the order requires the Board to meet no later than September 15 to recommend final free and restricted percentages to the Secretary for approval. The Board met on September 11–12, 1997, and recommended final free and restricted percentages of 55 and 45, respectively. The Board recommended that the interim percentages and final percentages be the same percentages. At that time, the Board had available actual production amounts to review and made the necessary adjustments to the percentages.

The Secretary establishes final free and restricted percentages through an informal rulemaking process. These percentages would make available the tart cherries necessary to achieve the optimum supply figure calculated earlier by the industry. The difference between any final free market tonnage percentage designated by the Secretary and 100 percent is the final restricted percentage.

The Board used a revised optimum supply figure of 270 million pounds for its final percentage calculations because it was determined that exports of 23 million pounds should not have been deducted from the average sales figure. At its March 1997 meeting, the Board had recommended that the Department modify the average sales under the optimum supply formula by deducting exports from the figure. The Department did not proceed with that recommendation since the promulgation record shows that average sales, as defined in the order, includes sales to all markets, including exports.

The optimum supply, therefore was 270 million pounds. The actual production recorded by the Board was 284 million pounds, a 42 million pound increase from the USDA crop estimate. The increase in the crop is due to very favorable growing conditions in portions of the State of Michigan this season.

A 70 million pound carryin was subtracted from the optimum supply, which yields a tonnage requirement for the current crop year of 200 million pounds. Subtracted from the actual production of 284 million pounds reported by the Board is the tonnage required for the current crop year (200 million pounds) which results in an 84 million pound surplus. An adjustment for changed economic conditions of 23 million pounds was added to the surplus, pursuant to section 930.50(f). This adjustment is discussed later in this document. This yielded a total surplus of 107 million pounds of tart cherries. The free and restricted percentages would only apply to those handlers in regulated districts. Therefore, the percentages would be calculated by dividing the restricted tonnage volume by the regulated districts' production. The total surplus of 107 million pounds is divided by the 239 million pound volume of tart cherries produced in the regulated districts. This results in a 45 percent restricted percentage and a corresponding 55 percent free percentage for the regulated districts.

Section 930.51(d) of the order provides that handlers should have a grace period of up to 30 days to establish their inventory reserves after final percentages have been established. Therefore, handlers have 30 days after the effective date of this rule to comply with the 45 percent restricted obligation requirement.

The final percentages are based on the Board's reported production figures and the following supply and demand information for the 1997–98 crop year:

		Millions of pounds
Optimum supply formula:		
(1) Average sales of the prior three years		270
(2) Plus carryout		0
(3) Optimum Supply calculated by the Board at the September meeting		270
Final percentages:		
(4) Less carryin as of July 1, 1997		70
(5) Tonnage required current crop year		200
(6) Board reported production		284
(7) Surplus (item 6 minus item 5)		84
(8) Economic adjustment to surplus		23
(9) Adjusted surplus (item 7 plus item 8)		107
(10) Production in regulated districts		239
Percentages	Free	Restricted
(11) Final Percentages (item 9 divided by item 10)×100	55	45

As previously mentioned, the Board had made an earlier recommendation to modify the optimum supply formula by defining average sales to not include exports that were granted diversion credit. It was determined that exports

should not have been excluded. Thus, the Board was unable to make the 23 million pound adjustment this season in the optimum supply. The Board thus recommended at its September meeting that the marketing policy be modified due to changes in economic conditions as specified under section 930.50(e)(5) and (7) and (f). Specifically, the Board recommended that the proviso in § 930.59(b) of the order be suspended for the 1997–98 year only and that diversion credit for exports of juice and juice concentrate be allowed for the 1997–98 crop year.

Also, at its meeting in March 1997, the Board recommended that handler exports of cherry products, including juice and juice concentrate, to countries other than Canada, Mexico, and Japan, receive diversion credit. During the production and processing of the crop, handlers have exported, or have contracted to export, tart cherry products, including juice or juice concentrate, and were operating under the impression that they could apply for and receive, diversion credit for such sales. Many of these exports were for the purpose of expanding existing markets or developing new markets. This issue was further addressed in a separate rulemaking action (see 63 FR 399, January 6, 1998).

By recommending the marketing policy modification, the Board believed that it would provide stability to the marketplace and the industry would be in a better situation for future years since new markets will have been developed. Board members discussed at that meeting that, if this adjustment is not made, growers could be paid less than their production costs, because handlers could suffer financial losses that would be passed on to growers. Handlers would have to meet their reserve obligations by other means. In addition, the value of cherries already in inventory could be depressed by 20 to 50 percent due to the abundant supply of available cherries, a result inconsistent with the intent of the order and the Act.

The changes in economic conditions that justified the recommended marketing policy modification are as follows: (1) The determination that export sales could not be removed from the optimum supply formula calculation was made late in the season; (2) handlers had made marketing plans, sales and sales commitments (including exports) based on the Board's recommendations made in March and June; and (3) prices received for tart cherries and tart cherry products could be severely impacted by an additional large volume of cherries being made available to the market when there is already an abundant supply of cherries.

The Department'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. This goal is met by the establishment of a final percentage which releases 100 percent of the optimum supply and the additional release of tart cherries provided under section 930.50(g). This release of tonnage, equal to 10 percent of the average sales of the prior three years sales, is made available to handlers each season. The Board recommended that such release shall be made available to handlers the first week of December and the first week of May. Handlers can decide how much of the 10 percent release they would like to receive during the December and May release dates. Once released, such cherries are released for free use by such handler. Approximately 27 million pounds will be made available to handlers this season in accordance with Department Guidelines. This release would be made available to every handler and released to such handler in proportion to its percentage of the total regulated crop handled. If such handler does not take such handler's proportionate amount, such amount shall remain in the inventory reserve.

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 final regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) would allow 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 issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 1,220 producers of tart cherries in the regulated area. Small agricultural service firms, which include 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.

Board and subcommittee meetings are publicized in advance and are held in a location central to the production area. The meetings are open to all industry members (including small business entities) and other interested persons—who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations usually represent the interests of both small and large business entities in the industry.

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 1996/97, approximately 94 percent of the U.S. tart cherry crop, or 285.7 million pounds, was processed annually. Of the 285.7 million pounds of tart cherries processed, 63 percent was frozen, 32 percent canned and 3 percent utilized for juice. The remaining 2 percent was dried or assembled into juice packs.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward since the 1991/92 season. In the ten-year period, 1986/87 through 1996/97, tart cherry area decreased from 48,180 acres, to less than 42,000 acres. Approximately 78 percent of domestic tart cherry acreage is located in four States: Michigan, New York, Utah and Wisconsin. Michigan leads the nation in tart cherry acreage with 65 percent of the total. Michigan produces about 72 percent of the U.S. tart cherry crop each year. In 1996/97, tart cherry acreage in Michigan was down 2,700 acres, to 27,300.

In crop years 1986 through 1993, tart cherry production ranged from a high of 359 million pounds in 1987 to a low of 189.9 million pounds in 1991. The price per pound to tart cherry growers ranged from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991. These problems of

wide supply and price fluctuation in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the average prices of 12 to 17 cents per pound which they received during this period did not come close to covering the costs of production for the vast majority of tart cherry growers. They also testified that production costs for most growers range between 20 and 22 cents per pound, which is well above average prices received.

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

In discussing the possibility of marketing percentages for the 1997–98 crop year, the Board considered: (1) The estimated total production of tart cherries; (2) the estimated size of the crop to be handled; (3) the expected general quality of such cherry production; (4) the expected carryover as of July 1 of canned and frozen cherries and other cherry products; (5) the expected demand conditions for cherries in different market segments; (6) supplies of competing commodities; (7) an analysis of economic factors having a bearing on the marketing of cherries; (8) the estimated tonnage held by handlers in primary or secondary inventory reserves; and (9) any estimated release of primary or secondary inventory reserve cherries during the crop year.

The Board's review of the factors resulted in the computation and announcement in July 1997 of preliminary free and restricted percentages, and subsequent recommendation of interim and final percentages at its September meeting.

The Board recognized that the demand for tart cherries is inelastic at high and low levels of production. At the extremes, different factors become operational. The promulgation record states that in very short crops there is limited but sufficient exclusive demand for cherries that can cause processor prices to double and grower prices to triple. In the event of large crops, there seems to be no price low enough to expand tart cherry sales in the marketplace sufficient to market the crops.

The Board discussed alternatives to this recommendation. The Board discussed the feasibility of not having volume regulation this season. However, it was the Board's overall feeling that no volume regulation would be detrimental to the tart cherry industry. Returns to growers would probably not cover their production costs for this season.

The Board also discussed not granting exemptions, and diversion credit for such exemptions, for exports to eligible countries (including juice and juice concentrate), other exempt uses, and charitable donations. However, the Board felt this would not be in the best interest of the industry or the public. The Board expressed that not allowing the export and other exemptions would have a detrimental effect on the market this season if free and restricted percentages are imposed. Without such exemptions and diversion credits for export sales, new market development and other specified uses, about 50 million pounds of cherries would not be removed from the domestic market this season, depressing grower returns for all cherries. The marketing order was designed to increase grower returns by stabilizing supplies with demand as well as stabilizing prices and creating a more orderly and predictable marketing environment. Expanding markets and developing new products is key to meeting this marketing order's goals.

Not granting exemptions and diversion credit for exports to countries other than Canada, Mexico, and Japan was also discussed at Board meetings. However, the Board expressed that this recommendation is very important to creating stable conditions in the export marketplace this season and would encourage future market growth. The Board further stated that such action will improve returns to growers because of the tremendous growth in the export market this season. Exemptions and diversion credit have been addressed in other rulemaking actions.

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

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

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

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

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

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

A proposed rule concerning this action was published in the **Federal Register** on Wednesday, January 21, 1998 (63 FR 3048). Copies of the rule were also mailed or sent via facsimile to

all Board members and cherry handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register.

A 15-day comment period was provided to allow interested persons to respond to the proposal. Fifteen days was deemed appropriate because a rule finalizing the action would need to be in place as soon as possible since handlers are currently marketing 1997–98 crop cherries.

One comment was received during the comment period in response to the proposal. The comment addressed the proposed rule published in the **Federal Register** on January 21, 1998, concerning final free and restricted percentages which are being finalized in this rulemaking. The commenter represents a tart cherry association in the State of Oregon. The comment also responded to a request for comments made in the interim final rule published in the **Federal Register** on January 6, 1998 (63 FR 399). That document established regulations for handler diversion and included a temporary suspension of order provisions. To the extent that the comment addressed issues relating to the January 6, 1998, publication, that portion of the comment will be discussed, as appropriate, in the final action concerning that document which will be published separately from this action.

With respect to the proposed rule which preceded this action, the commenter disagreed with a statement contained in the initial regulatory flexibility analysis and that also appears in the final regulatory flexibility analysis in this action. The statement indicated that Board meetings are widely publicized in advance and are held in a location central to the production area. The commenter stated that to date meetings have been central only to those producers and handlers in the Michigan districts. No fewer than five Board members and their alternates spend almost a full day commuting to Board meetings. Secondly, the commenter commented that access to the meetings is limited to those who have the resources of money and time to make such a commitment. Most of those present represent large growers and handlers. The commenter believes that Board recommendations usually represent the interests of primarily large business entities. The commenter also stated that the Board does a poor job of publicizing Board and subcommittee meetings. To the commenter's knowledge, meetings are announced among participants and in no way are published in agricultural or business trade journals or newspapers in the production districts. According to the commenter, growers and handlers are not receiving a notice of all meetings. Finally, the commenter urged the Department to rule on the identity and nature of CherrCo, Inc., a new entity in the tart cherry industry, as it relates to the Federal tart cherry marketing order.

In regard to the commenter's first issue of meetings being held in a location central to the production, the Board also has to consider the cost of travel for all Board members since the Board pays travel expenses for all of its members. The first meetings held in December of 1996 and throughout 1997 were attended by all members and their alternates. A Board recommendation was passed that the start-up meetings be attended by the alternates so they would be involved and aware of Board activities. It would have resulted in considerable expense to the Board to hold the meetings outside of Michigan since 16 members and alternates are from the State of Michigan. The Board realizes the time spent in travel could be inconvenient for some of the other Board members and has made a commitment to hold the June marketing policy meeting in Michigan and the September marketing policy meeting in a district outside of Michigan. The Board is also committed to holding meetings outside the Michigan districts to allow producers and handlers to attend the meetings and cut down on travel time for those not located in Michigan.

In regard to the second issue raised by the commenter concerning access to the meetings being limited to those who have money and time to commit, the meetings held in Michigan were held frequently to do the groundwork needed to implement the many marketing order authorities. It was more cost effective to the industry to have such meetings in Michigan. As previously mentioned, the Board pays all travel costs for its members and 16 Board members and alternates are from Michigan. Growers and handlers are welcome to attend these meetings. The Board has made the commitment to rotate meeting sites throughout the production area to allow growers and handlers from other districts to participate. Recommendations are not made by the Board for only the benefit of large growers and handlers. The Board, which is comprised of small entities, discusses the impacts of such recommendations on small and large growers and handlers. The Board has been given the responsibility to make recommendations that benefit the industry as a whole.

In regard to the commenter's contention that the Board does a poor job of publicizing Board and subcommittee meetings, we disagree. The Board has and will continue to take appropriate action to provide the widest possible notice of upcoming meetings to all handlers and Board members and alternate Board members. The Board sends meeting notices to all Board members and several tart cherry industry organizations. In fact, the Board is currently developing a newsletter which will be distributed to all growers and handlers of record to further publicize upcoming Board meetings.

Finally, in regard to the CherrCo issue, the Department is continuing to work with the Board on this issue. This issue will be addressed separately.

Accordingly, no changes will be made to the rule as proposed, based on the comments received.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are currently marketing 1997–98 tart cherries. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 930

Marketing agreements, Tart cherries, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 930 is amended to read 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. A new subpart—Supplementary Regulations and a new section 930.250 are added to read as follows:

§ 930.250 Final free and restricted percentages for the 1997–98 crop year.

The final percentages for tart cherries handled by handlers in volume

regulated districts during the crop year beginning on July 1, 1997, which shall be free and restricted, respectively, are designated as follows: Free percentage, 55 percent and restricted percentage, 45 percent.

Dated: April 20, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–11023 Filed 4–24–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–124–AD; Amendment 39–10391; AD 98–06–13]

RIN 2120–AA64

Airworthiness Directives; Dornier Luftfahrt GmbH Models 228–100, 228–101, 228–200, and 228–201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of Airworthiness Directive (AD) 98–06–13 which applies to Models 228–100, 228–101, 228–200, and 228–201 airplanes equipped with certain main landing gear (MLG). AD 98–06–13 requires replacing the MLG axle assembly with an MLG axle assembly of improved design. This AD was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified in this AD are intended to prevent main landing gear failure, which, if not corrected, could result in loss of control of the airplane during landing operations.

DATES: Effective June 15, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Karl M. Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with request for comments in the **Federal Register** on March 16, 1998 (63 FR 12605). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA anticipates 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 regulation would become effective on June 15, 1998. No adverse comments were received, and thus this notice confirms that this final rule will become effective on that date.

Issued in Kansas City, Missouri, on April 17, 1998.

James A. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–11010 Filed 4–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–6]

Amendment to Class D and Class E Airspace; St. Joseph, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class D and Class E airspace areas at Rosecrans Memorial Airport, St. Joseph, MO. A review of the Class E airspace for Rosecrans Memorial Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace area has been enlarged to conform to the criteria of FAA Order 7400.2D. A revision to the Airport Reference Point (ARP) coordinates is included in this document. The intended effect of this rule is to revise the ARP coordinates, comply with the criteria of FAA Order 7400.2D, and provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR).

DATES: *Effective date:* 0901 UTC, August 13, 1998.

Comment date: Comments for inclusion in the Rules Docket must be received on or before June 15, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–6, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class D and Class E airspace at St. Joseph, MO. A review of the Class E airspace for Rosecrans Memorial Airport, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace area has been enlarged to conform to the criteria in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL, is based on a standard climb gradient of 200 feet per mile, plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The Class D and Class E areas are amended to indicate the new ARP coordinates. The amendment at Rosecrans Memorial Airport will meet the criteria of FAA Order 7400.2D, revise the ARP coordinates, provide additional controlled airspace at the above 700 feet AGL, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The areas will be depicted on appropriate aeronautical charts. Class D airspace areas are published in paragraph 5000, Class E airspace areas designated as an extension to a Class D or Class E surface area are published in paragraph 6004, and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all