

**§ 930.56**

**7 CFR Ch. IX (1-1-05 Edition)**

of inspection issued with respect to such cherries.

(d) Handlers shall be compensated for inspection costs incurred on cherries placed in the primary inventory reserve. All reporting of cherries placed in, rotated in and out, or released from an inventory reserve shall be in accordance with rules and procedures established by the Board, with the approval of the Secretary. The Board could, with the approval of the Secretary, also limit the number of inspections of reserve cherries being rotated into inventory reserves for which the Board would be financially liable.

(e) Except as provided in § 930.54, handlers may not sell inventory reserve cherries prior to their official release by the Board. Handlers may rotate cherries in their inventory reserves with prior notification to the Board. All cherries rotated into the inventory reserve must meet the applicable inspection requirements.

**§ 930.56 Off-premise inventory reserve.**

Any handler may, upon notification to the Board, arrange to hold inventory reserve, of his or her own production or which was purchased, on the premises of another handler or in an approved commercial storage facility in the same manner as though the inventory reserve were on the handler's own premises.

**§ 930.57 Secondary inventory reserve.**

(a) In the event the inventory reserve established under § 930.55 of this part is at its maximum volume, and the Board has announced, in accordance with § 930.50, that volume regulation will be necessary to maintain an orderly supply of quality cherries for the market, handlers in a regulated district may elect to place in a secondary inventory reserve all or a portion of the cherries the volume regulation would otherwise require them to divert in accordance with § 930.59.

(b) Should any handler in a regulated district exercise his or her right to establish a secondary inventory reserve under paragraph (a) of this section, all costs of maintaining that reserve, as well as inspection costs, will be the responsibility of the individual handler.

(c) The secondary inventory reserve shall be established in accordance with §§ 930.55 (b) and (c) and such other rules and regulations which the Board, with the approval of the Secretary, may establish.

(d) The Board shall retain control over the release of any cherries from the secondary inventory reserve. No cherries may be released from the secondary reserve until all cherries in any primary inventory reserve established under § 930.55 have been released. Any release of the secondary inventory reserve shall be in accordance with the annual marketing policy and with § 930.54.

**§ 930.58 Grower diversion privilege.**

(a) *In general.* Any grower may voluntarily elect to divert, in accordance with the provisions of this section, all or a portion of the cherries which otherwise, upon delivery to a handler, would become restricted percentage cherries. Upon such diversion and compliance with the provisions of this section, the Board shall issue to the diverting grower a grower diversion certificate which such grower may deliver to a handler, as though there were actual harvested cherries. Any grower diversions completed in accordance with this section, but which are undertaken in districts subsequently exempted by the Board from volume regulation under § 930.52(d), shall qualify for diversion credit.

(b) *Eligible diversion.* Grower diversion certificates shall be issued to growers only if the cherries are diverted in accordance with the following terms and conditions or such other terms and conditions that the Board, with the approval of the Secretary, may establish. Diversion may take such of the following forms which the Board, with the approval of the Secretary, may designate: uses exempt under § 930.62; nonhuman food uses; or other uses, including diversion by leaving such cherries unharvested.

(c) *Application/mapping.* The Board, with the approval of the Secretary, shall develop rules and regulations providing for the diversion of cherries by growers. Such regulations may include, among other things:

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(1) The form and content of applications and agreements relating to the diversion, including provisions for supervision and compensation; and

(2) Provisions for mapping areas in which cherries will be left unharvested.

(d) *Diversion certificate.* If the Board approves the application it shall so notify the applicant and conduct such supervision of the applicant's diversion of cherries as may be necessary to assure that the cherries have been diverted. After the diversion has been accomplished, the Board shall issue to the diverting grower a diversion certificate stating the weight of cherries diverted. Where diversion is carried out by leaving the cherries unharvested, the Board shall estimate the weight of cherries diverted on the basis of such uniform rule prescribed in rules and regulations as the Board, with the approval of the Secretary, may recommend to implement this section.

[61 FR 49942, Sept. 24, 1996, as amended at 67 FR 51715, Aug. 8, 2002]

### § 930.59 Handler diversion privilege.

(a) *In general.* Handlers handling cherries harvested in a regulated district may fulfill any restricted percentage requirement in full or in part by acquiring diversion certificates or by voluntarily diverting cherries or cherry products in a program approved by the Board, rather than placing cherries in an inventory reserve. Upon voluntary diversion and compliance with the provisions of this section, the Board shall issue to the diverting handler a handler diversion certificate which shall satisfy any restricted percentage or diversion requirement to the extent of the Board or Department inspected weight of the cherries diverted.

(b) *Eligible diversion.* Handler diversion certificates shall be issued to handlers only if the cherries are diverted in accordance with the following terms and conditions or such other terms and conditions that the Board, with the approval of the Secretary, may establish. Such diversion may take place in any form which the Board, with the approval of the Secretary, may designate. Tart cherry juice and juice concentrate may receive diversion credit but only if diverted in forms approved under the

terms of this section. Such forms may include, but are not limited to:

(1) Contribution to a Board-approved food bank or other approved charitable organization;

(2) Use for new product and new market development;

(3) Export to designated destinations; or

(4) Other uses or disposition, including destruction of the cherries at the handler's facilities.

(c) *Notification.* The handler electing to divert cherries through means authorized under this section shall first notify the Board of such election. Such notification shall describe in detail the manner in which the handler proposes to divert cherries including, if the diversion is to be by means of destruction of the cherries, a detailed description of the means of destruction and ultimate disposition of the cherries. It shall also contain an agreement that the proposed diversion is to be carried out under the supervision of the Board and that the cost of such supervision is to be paid by the handler. Uniform fees for such supervision may be established by the Board, pursuant to rules and regulations approved by the Secretary.

(d) *Diversion certificate.* The Board shall conduct such supervision of the handler's diversion of cherries under paragraph (c) of this section as may be necessary to assure that the cherries are diverted as authorized. After the diversion has been completed, the Board shall issue to the diverting handler a handler diversion certificate indicating the weight of cherries which may be used to offset any restricted percentage requirement.

(e) *Transfer of certificates.* Within such restrictions as may be prescribed in rules and regulations, including but not limited to procedures for transfer of diversion credit and limitations on the type of certification eligible for transfer, a handler who acquires diversion certificates representing diverted cherries during any crop year may transfer such certificates to another handler or handlers. The Board must be notified in writing whenever such transfers take place during a crop year.

(f) The Board, with the approval of the Secretary, may establish rules and