Act of 1995 (Pub. L. 104-13), the information collection and recordkeeping requirements that may be imposed by this order would be submitted to OMB for approval. Those requirements would not become effective prior to OMB review. Any recordkeeping and reporting requirements imposed would be evaluated against the potential benefits to be derived and it is expected that any added burden resulting from increased reporting and recordkeeping would not be significant when compared to those anticipated benefits derived from administration of the order.

The purpose of the RFA is to fit regulatory and informational requirements to the size and scale of the business entities in a manner that is consistent with the objectives of the rule and applicable statutes. The proposed marketing order provisions have been carefully reviewed and every effort has been made to eliminate any unnecessary costs or requirements. As discussed in the RFA, Congress' intent, among other objectives, was to direct agencies to identify the need for any "special accommodation" (e.g., exemption or relaxation) on regulated small entities (i.e., handlers) because, in the past, some Federal regulatory and reporting requirements imposed unnecessary and disproportionately burdensome demands on small businesses. Thus, the AMS closely reviewed the record evidence and could not find any evidence to suggest that any direct or indirect costs imposed under the marketing order regulation would be proportionately greater on small handlers than on large handlers, or conversely, that any projected order benefits would be proportionately smaller for small handlers than for large handlers.

The record evidence indicated that the order may impose some additional costs and requirements on handlers, but those costs are insignificant and are directly proportional to the sizes of the regulated handlers. The record evidence also indicated that, given the severe economic conditions and unstable markets facing the majority of the industry, the benefits to small (as well as large) handlers are likely to be greater than would accrue under the alternatives to the order proposed herein, namely no marketing order, or an order without the proposed combination of volume controls and other order authorities.

The record evidence indicates that the proposed order would be instrumental in providing expanding markets and sales, and raising and stabilizing prices of tart cherries, primarily for the

primary benefit of producers, but the evidence also indicates that, since handlers (including cooperatives that market the crops of their producer members) market the producers' crops, they would benefit as well. While the level of such benefits to handlers is difficult to quantify, it is also clear the provisions of the proposed order are designed to benefit small entities. For example, the record evidence indicated that small handlers (and small producers) are more likely to be minimally capitalized than large entities, and are less likely to survive without the stability the proposed order would provide.

Accordingly, based on the information discussed above and in the following discussion, it is determined that the marketing order would not have a significant economic impact on a substantial number of small entities.

Material Issues

The material issues presented on the record of the hearing are as follows:

- 1. Whether the handling of tart cherries grown in the proposed production area is in the current of interstate or foreign commerce, or directly burdens, obstructs, or affects such commerce;
- 2. Whether the economic and marketing conditions are such that they justify a need for a Federal marketing agreement and order which would tend to effectuate the declared policy of the Act:
- 3. What the definition of the production area and the commodity to be covered by the order should be;
- 4. What the identity of the persons and the marketing transactions to be regulated should be; and
- 5. What the specific terms and provisions of the order should be, including:
- (a) The definitions of terms used therein which are necessary and incidental to attain the declared objectives and policy of the Act and order;
- (b) The establishment, composition, maintenance, procedures, powers and duties of a Cherry Industry Administrative Board (Board) that would be the local administrative agency for assisting the Secretary in the administration of the order:
- (c) The authority to incur expenses and the procedure to levy assessments on handlers to obtain revenue for paying such expenses;
- (d) The authority to establish or provide for the establishment of production, processing and marketing research and market development projects, including paid advertising;

- (e) The authority to establish regulations that would require minimum quality and inspection requirements;
- (f) The authority to establish regulations that would provide for a volume control program;
- (g) The authority to establish other regulations and procedures necessary and incidental to the administration of the order:
- (h) The establishment of requirements for handler reporting and recordkeeping;

(i) The requirement of compliance with all provisions of the order and with any regulations issued under it; and

(j) Additional terms and conditions as set forth in § 930.81 through § 930.91 of the Notice of Hearing published in the Federal Register of November 30, 1993, which are common to all marketing agreements and orders, and other terms and conditions published at § 930.92 through § 930.94 that are common to marketing agreements only.

Findings and Conclusions

The following proposed findings and conclusions on the material issues are based on the record of the hearing.

1. The record indicates that the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin is in the current of interstate or foreign commerce or directly burdens, obstructs or affects such commerce. The proposed production area is discussed in material issue no. 3.

Red tart cherries, also known as red sour cherries, are grown in commercially significant amounts in these seven states: Michigan, New York, Utah, Pennsylvania, Oregon, Washington, and Wisconsin. Between 1988 and 1992, Michigan, New York, and Utah accounted for 90 percent of the United States' production, with Michigan producing 71 percent of the total industry product. Pennsylvania, Oregon, Washington, and Wisconsin's current tart cherry production averages 9 percent of the total. One handler handles all of Pennsylvania's production, while a substantial portion of Oregon and Washington's production is marketed almost entirely in those states as cherry juice concentrate. Colorado, which is excluded from the proposed marketing order because of its consistently small production, has averaged only 1.3 million pounds of cherries annually since 1986.

Handlers, through their sales agents, market in all U.S. markets and in exports to Europe and Asia. For example, Michigan cherries are sold in