

cherries. It was contended that if States such as Oregon and Washington must be included in the proposed order, then Montana and Colorado should be as well. Evidence presented at the hearing showed, however, that bearing acreage and production in Montana and Colorado is insignificant and will likely remain insignificant. Therefore, Montana and Colorado should be excluded from the production area at this time.

Opponents to the proposed inclusion of the Pacific Northwest in the order asserted that climatic and general production characteristic differences in the various tart cherry producing areas are significant enough to warrant exclusion of Oregon and Washington from the order. It is true that climatic differences in the various regions can be quite significant—they are even quite different between the producing regions in Oregon and Washington. However, there is insufficient evidence to show that climate, or cultural practices for that matter, have a significant effect on the various regions with respect to pricing or markets.

To create orderly marketing conditions through volume regulations with the goal of achieving parity prices should require that all significant tart cherry producing areas in the United States be included under the proposed order, since all would be competing in the same market. To exclude any portion of the proposed production area, as defined, would tend to defeat the purpose of the proposed order and could result in depressed prices of the regulated tart cherries. All territory included within the boundaries of the production area constitutes the smallest regional production area that is practicable, and thus consistent with carrying out the declared policy of the Act. The production area, therefore, should be defined as hereinafter set forth.

4. The term "handler" should be defined to identify the persons who would be subject to regulation under the order. Such term should apply to any person who handles cherries or causes cherries to be handled for his or her own account. The term is also used to identify those persons who are eligible to vote for, and serve as, handler members and alternate handler members on the Board. Such term should apply to any person who first performs any of the activities within the scope of the term "handle" as hereinafter defined. Record evidence indicates that the term should also include growers that deliver cherries to a handler but keep title of the cherries and pay to have them processed. This is

referred to in the industry as custom processing. Evidence supports the position that the grower would be performing a handler function by retaining the right to sell the product and should therefore be covered under the definition of handler. The definition of the term "Handler" identifies persons who would be responsible for meeting the requirements of the order, including paying assessments and submitting reports and maintaining inventory reserves.

The term "handle" should be defined in the order to establish the specific functions that would place tart cherries in the current of commerce within the production area or between the production area and any point outside thereof, and to provide a basis for determining which functions are subject to regulation under authority of the marketing order.

The record indicates that the term "handle" should include the acts of processing cherries by brining, canning, concentrating, freezing, dehydrating, pitting, pressing or pureeing cherries, or in any other way, converting cherries commercially into a processed product. The definition also includes diverting cherries at the handler's plant and acquiring grower diversion certificates under the marketing order. Diversion will be discussed in material issue 5(f). However, the term "handle" shall not include the brining, canning, concentrating, freezing, dehydrating, pitting, pressing or the converting, in any other way, of cherries into a processed product for home use and not for resale. The term also does not include: (1) The transportation within the production area of cherries from the orchard where grown to a processing facility located within such area for preparation for market; (2) the delivery of cherries to a processing facility for such preparation; (3) the sale or transportation of cherries by a producer to a handler of record within the production area; and (4) the sale of cherries in the fresh market in an unpitted condition. In the first three cases, the tart cherries have not been prepared for market nor are they in their existing condition being transported to market. The sale of fresh unpitted cherries should not be regulated because there are very few sales into this market.

Testimony presented at the hearing by Mr. Schrepel stated that the terms hot pack, pie filling and culls should be added to the definition of handle. The term "handle" as proposed includes these terms since hot pack and pie filling are canned products. Mr. Schrepel stated that he wanted these terms added to make the definition

more explicit. However, it would be redundant to include these terms in the definition.

5. (a) Certain terms should be defined for the purpose of specifically designating their applicability and limitations whenever they are used in the order. The definition of terms discussed below is necessary and incidental to attain the declared policy and objectives of the order and Act.

"Secretary" should be defined to mean the Secretary of Agriculture of the United States, or any officer, or employee of the United States Department of Agriculture who has been or who may be delegated the authority to act for the Secretary.

"Act" should be defined to mean the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This is the statute under which the proposed regulatory program would be operative, and this definition avoids the need to refer to the citation throughout the order.

"Board" should be defined to mean the administrative agency known as the Cherry Industry Administrative Board established under the provisions of the marketing order. Such a board is authorized by the Act, and this definition is merely to avoid the necessity of repeating the full name each time it is used. The Board is discussed in detail in material issue 5(b).

"Crop Year" should be defined to mean the annual period that tart cherries are harvested and marketed. Record evidence indicated that the harvesting and marketing cycle for tart cherries begins in July. Therefore, "Crop Year" should be defined as the 12-month period beginning on July 1 and ending on June 30 of each year. Volume control regulations are implemented based on upcoming crop year forecasts and reports of final crop delivered to handlers. With the approval of the Secretary, the Board also has the authority to change the crop year if another period is found to be more appropriate. The proponents testified that a change would be necessary if a new variety of tart cherry was developed that would have an earlier harvest cycle.

The term "Cherries" should be defined to specify the commodity covered by the proposed order and to which the terms and provisions of the marketing order would be applicable. The record indicates that "Cherries" means all tart/sour cherry varieties grown in the production area classified as *Prunus cerasus*, *Prunus cerasus* by *Prunus avium*, or *Prunus cerasus* by *Prunus fruticosa*. Record evidence