

indicated that the definition should not include *Prunus avium*, which is the sweet cherry variety. The proponents testified that in order to embrace the activities that are taking place in plant breeding programs, the definition should include all the varieties as proposed under the "Cherries" definition. These varieties are grown throughout the proposed production area.

"Department" or "USDA" should be defined to mean the United States Department of Agriculture which is the governmental body responsible for oversight of Federal marketing orders and agreements.

"District" should be defined to mean each subdivision of the production area described in the marketing order. The district delineations defined would be important for the purposes of Board nominations and implementation of volume control provisions. Testimony indicated that authority should be provided to allow the Board to recommend to the Secretary the establishment of other districts or addition of other districts, as may be necessary, through informal rulemaking procedures. Therefore the definition of "district" contains such authority. This term is further discussed under material issue no. 3.

The term "Fiscal period" should be defined to mean the 12-month period for which the Board would plan the use of its funds. This period should be established to allow sufficient time prior to the time tart cherries are first marketed for the Board to organize and develop its budget for the ensuing season. However, it should also be set to minimize the incurring of expenses during a fiscal period prior to the time assessment income is available to defray such expense.

The Notice of Hearing proposed that "fiscal period" mean the 12-month period beginning on July 1 and ending on June 30 of the following year. Record evidence indicates that the harvesting and marketing cycle for tart cherries grown in the production area begins in July and ends in August. The fiscal period should coincide with the tart cherry crop year, because the industry typically plans its operation on this basis. Hearing testimony supported the fiscal period being established for a 12-month period beginning on July 1 and ending on June 30 of the following year.

However, based on future experience, it may be desirable to establish a fiscal period other than one ending on June 30. Thus, authority should be included in the order to provide for the establishment of a different fiscal period if recommended by the Board and

approved by the Secretary through informal rulemaking procedures. In any event, the beginning date of any new fiscal period should be sufficiently in advance of the harvesting season to permit the committee to formulate its marketing policy and perform other administrative functions. Also, it should be recognized that if at some future date there is a change in the fiscal period, such change would result in a transition period being more or less than 12 months. For example, the Board may decide to change the fiscal period from beginning on July 1 through June 30 to August 1 through July 31. If that occurred, the fiscal period would be longer in one year running from July 1 through July 31 of the following year, to incorporate the new fiscal period.

The term "Free market tonnage percentage cherries" should be defined to mean that portion of cherries handled in a crop year which are free to be marketed in commercial outlets under any volume regulation established under the order. Testimony indicated that the definition was taken from volume control formulas under other established marketing order programs.

The term "grower" should be synonymous with "producer" and should be defined to identify those persons who are eligible to vote for, and serve as, grower members and alternate grower members on the Board and those who may vote in any referendum. The term should mean any person engaged in a proprietary capacity in the production of tart cherries for market within the production area. The term "grower" should not include a person who produces cherries to be marketed exclusively for the fresh market in an unpitted condition. Each business unit (such as a corporation or partnership) should be considered a single grower and should have a single vote in nomination proceedings and referenda. The term "grower" should include any person who owns or shares in the ownership of tart cherries such as a landowner landlord, tenant, or sharecropper. A person who rents and produces tart cherries resulting in that person's ownership of all or part of the tart cherries produced in that land should also be considered a grower.

Also, any person who owns land which that person does not farm, but as rental for such land obtains ownership of a portion of the tart cherries produced thereon, should be regarded as a grower for that portion of the tart cherries received as rent. The tenant on such land should be regarded as a grower for the remaining portion produced on such land.

A joint venture is one whereby several persons contribute resources to a single endeavor to produce and market a tart cherry crop. In such venture, one party may be the farmer who contributes one or more factors such as labor, time, production facilities or cultural skills, and the other party may be a handler who contributes money and cultural, harvesting, and marketing supervision. Normally, a husband and wife operation would be considered a partnership. Any individual, partnership, family enterprise, organization, estate, or other business unit currently engaged in the production of tart cherries for market would be considered a grower under the marketing order, and would be entitled to vote in referenda and Board nominations. Each party would have to have title to at least part of the crop produced, electing its disposition, and receiving the proceeds therefrom. This control would come from owning and farming land producing tart cherries, payment for farming services performed, or a landlord's share of the crop for the use of the producing land. A landlord who only receives cash for the land would not be eligible to vote. A business unit would be able to cast only one vote regardless of the number and location of its farms, but each legal entity would be entitled to vote.

"Person" should be defined to mean an individual, partnership, corporation, association, or any other business unit. This definition is the same as that contained in the Act.

"Primary inventory reserve" should be defined to mean that portion of handled cherries that are placed into inventory in accordance with any restricted percentage established under the volume control provisions of the marketing order. Testimony indicated that handlers would be responsible for maintaining the reserve and selling the reserve once it is released by the Board into certain outlets. The Board would reimburse handlers for the inspection of the primary inventory reserve. The Board could also establish quality requirements that cherries may need to meet before they are placed in an inventory reserve. Testimony supported that handlers could place tart cherries in the primary inventory reserve in any processed form.

"Secondary inventory reserve" should be defined to mean any portion of handled cherries voluntarily placed into inventory by a handler under the volume control provisions of the order. This definition is used to define the additional option handlers may use in the event free and restricted percentages are announced by the Board. The secondary inventory reserve is a handler