

selected option and all expenses of such reserve are borne by the handler.

The term "Restricted percentage cherries" should be defined to mean that proportion of cherries handled in a crop year which must be withheld from marketing in normal commercial outlets in that crop year under a volume regulation established under the marketing order. Such cherries would be either placed into a primary or secondary inventory reserve or diverted in accordance with the diversion provisions of the marketing order. Testimony indicated that the Board would be responsible for evaluating supply and demand conditions and recommending to the Secretary, if necessary, the implementation of volume control percentages.

The term "sales constituency" should be defined to mean a common marketing organization or brokerage firm or individual representing a group of handlers or growers. The record indicates, that in this case, the largest single sales constituency currently in the industry is Cherry Central, Inc.

(b) Pursuant to the Act, it is desirable to establish an agency to administer the order locally as an aid to the Secretary in carrying out the declared policy of the Act and to provide for effective and efficient operation of the order. The establishment and membership of a Board is addressed in § 930.20 of the proposed order. The record shows that the Board should consist of 18 members, including one public member. Seventeen members should be growers or handlers of tart cherries, or individuals involved in both the growing and handling of tart cherries. One member should be selected from the general public. Each member should have an alternate possessing the same qualifications as the member.

For the purpose of Board representation, the order should provide that the production area be divided into nine districts. The record indicates that the 17 industry members of the Board should be composed of growers and handlers from within each district as follows: (1) Two grower members and two handler members from District 1, which would consist of that portion of the State of Michigan that is North of a line drawn along the northern boundary of Mason County and extended east to Lake Huron; (2) Three grower and handler members from District 2, which would consist of that portion of the State of Michigan that is South of District 1 and North of a line drawn along the southern boundary of Allegan County and extended east to Lake St. Clair. The number of grower and handler representatives in District 2

would alternate each full term of the Board. For example, evidence indicated that during the initial three-year term of the proposed Board, District 2 would be represented by two handler members and one grower member. During the second three-year term, District 2 would be represented by two grower members and one handler member. This would thus alternate for each succeeding term of office; (3) One grower member and one handler member from District 3, which would consist of that portion of the State of Michigan not included in Districts 1 and 2; (4) One grower member and one handler member from each of Districts 4 and 7, which would consist of the states of New York and Utah, respectively; and (5) One grower member or handler member from each of Districts 5, 6, 8, and 9, which would consist of the states of Oregon, Pennsylvania, Washington, and Wisconsin, respectively. The districts were developed based on the actual cherry production in those areas.

The order should provide that the Board positions for Districts 5, 6, 8, and 9 could be filled by individuals who are either growers or handlers of tart cherries, or by individuals involved in both the growing and handling of tart cherries. Furthermore, should any one of Districts 5, 6, 8, and 9 become subject to volume regulation under § 930.52(a), the Board should be realigned by the Secretary to provide that such district be represented by at least one grower member and one handler member rather than just one or the other.

The order should provide that, within any district represented by multiple seats, not more than one Board member may be elected from a single sales constituency. As addressed earlier, sales constituency is defined in § 930.16 to mean "a common marketing organization or brokerage firm or individual representing a group of handlers or growers." However, there should be no prohibition on the number of Board representatives from differing districts that may be elected from a single sales constituency which may have operations in more than one district.

The proponents testified that a limit to the total number of Board members from a single sales constituency should not be warranted, with the condition that there is no more than one such member from each district. The proponents suggested that it would be desirable to have Board membership reflect any potential industry affiliation with a single sales constituency. The proponents also testified that the single largest sales constituency in the tart cherry industry, Cherry Central, Inc.,

could possibly gain up to five seats on the Board under current industry conditions, but was doubtful that Board domination by such sales constituency would ever occur.

Testimony was received that the order should prohibit any sales constituency from gaining a majority of the seats on the Board. The record indicates that the order, as currently proposed, would prevent any single sales constituency from gaining a majority of the Board positions. With nine districts, any single sales constituency would have the maximum potential of nine members on the Board.

The Board should elect a chairperson, vice-chairperson, and any other officers it may find appropriate from among its members at its first meeting and annually thereafter. Testimony supports the position that all such officers should be voting members of the Board.

Upon recommendation of the Board and approval of the Secretary, reestablishment of districts or subdivisions of districts, and the distribution of grower and handler representation within any district or subdivisions thereof, is provided for in proposed § 930.21. Any such recommended change is subject to the provisions of § 930.23, as well as to consideration by the Board of the relative levels of production of tart cherries within each district, and the relative importance of new concentrations of tart cherry production within the overall production area. Prior to any such recommendation, the Board should also consider how the efficiency of marketing order administration is effected by geographic location of areas of production, as well as whether shifts in cherry production within the production area have occurred. The Board should also take into consideration any changing of the roles, or functions, of growers and handlers as it pertains to the production and handling of tart cherries. Any changes in the proportion of growers to handlers that may occur, as well as any other relevant factors, should also be considered by the Board before making any recommendations for redistribution or reestablishment.

Proposed § 930.22 provides that the term of office of Board members and their respective alternates should be three fiscal years. Approximately one-third of the Board terms should end each year. As defined earlier, fiscal year should mean the period beginning on July 1 and ending on June 30, or such other period as the Board may recommend and the Secretary approve. The record indicates that the term of office should begin on July 1, the