

transactions. Such an agreement should also specify that the contractor make periodic reports to the Board of its activities and funds received and expended or any other reports required by the Board or the Secretary. It should also clearly indicate that the Board or the Secretary may periodically audit the records of the contracting party as they pertain to the agreement.

(19) Pending the expenditure of funds as set forth in the annual budget, the Board should have the authority to invest funds collected through assessments as well as income generated by such assessments. Any investments made should be in accordance with applicable Departmental policies. The Board should maximize income opportunities while not putting the funds at risk.

(20) The Board, with the Secretary's approval, may establish standards and grade requirements for cherries produced for frozen and canned cherry products. Prior to making such recommendations, the Board should poll all handlers that would be affected by such regulations to obtain a consensus as to if, when, and how standards and grade requirements might be implemented. The Board, with the Secretary's approval, could establish a requirement for mandatory inspection pursuant to § 930.44.

After review of the requirement for the Board to poll handlers on how the standards and grade requirements might be implemented, the USDA is deleting such requirement from the proposed order. The Board, which is comprised of grower and handler members, has the responsibility of representing the growers or handlers from the district in which such member was represented to serve. It is the Board's responsibility to develop recommendations and/or rules and regulations to implement the sections in the proposed marketing order. Therefore, it is not necessary for the Board to poll handlers on this issue since handlers are represented by members on the Board.

An opponent to this provision testified that this section should be deleted from the proposed order. It was the opponent's position that the market should be allowed to function on utilization of relationships between handlers and buyers and use of the current USDA standards and specifications. However, the preponderance of the testimony supports the authority to authorize the Board to recommend to the Secretary standards or grade requirements in order to provide a consistent quality cherries to be processed into cherry products.

(21) The Board should be able to borrow funds necessary to administer its responsibilities and obligations under this part. Any such transaction should be subject to the Secretary's approval and should not exceed one fiscal period's budget. The Board should normally be required to pay any borrowed funds back within the same fiscal period.

(22) With the Secretary's approval, the Board should establish rules and procedures relative to the administration of this order. Such rules and procedures should be consistent with the provisions of this subpart and necessary for efficient operation of the order and to accomplish the purposes of the Act.

The duties listed in proposed § 930.31 are reasonable and necessary if the Board is to function in the manner prescribed under the Act and the order. It should be recognized that the duties specified are not necessarily all-inclusive, and it may develop that there are other duties that the Board may need to perform which are incidental to, and not inconsistent with, these specified duties.

As set forth in proposed § 930.32, the order should specify a procedure for the Board to conduct its meetings. Conflicting testimony was received during the hearing process pertaining to the number of Board members that should constitute a quorum, as well as to the number of favorable votes required of Board members to pass any recommendations by the Board. The proponents proposed that 12 members, or their alternates acting in their stead, should constitute a quorum. Further, the proponents proposed that for any action of the Board to pass, a simple majority of those present should concur. For example, if the minimum number of 12 Board members, the proposed quorum, were present at a meeting, seven members could conceivably carry a recommendation for regulatory action. The proponent argued that a general voting procedure requiring a higher degree of support for regulatory and administrative Board actions would potentially allow minority district representatives to boycott meetings and thereby disrupt the Board's ability to recommend rules and regulations to the Secretary. This proposal excluded Board action taken to elect the public member and alternate public member, however, in which case affirmation by at least two-thirds of the entire Board was proposed.

During the hearing process, an amendment to § 930.32 was offered by Mr. Lee Schrepel proposing that (1) a quorum consist of at least 14 members,

(2) any action approved by the Board would not be effective upon any district affected by such action unless a simple majority of the Board members from such district also approved the action, and (3) actions involving enactment of volume control, implementation of assessments, inspection, grading, procedural considerations and district representation should require a two-thirds affirmative vote of the entire Board.

In support of his proposed amendments, Mr. Schrepel testified that a quorum requirement of less than 14 Board members could potentially allow a single sales constituency to dominate the Board. He also indicated that the rights and responsibilities of all participants should be protected and that any regulations recommended by the Board not be imposed on a segment of the industry that objects to such regulations.

As indicated earlier, a single sales constituency would have a maximum potential representation on the Board of nine members. Therefore no such sales constituency could dominate the Board if the quorum requirement is less than 14 members, because, as discussed hereinafter the voting requirement for an action to pass should be two-thirds of the entire board. The proponents testified that they anticipate that most of the members would be present for full Board meetings. The proposal that each district must ratify any action by the Board should also not be adopted. Such a proposal is synonymous with requiring Board unanimity on any action and could cripple the effectiveness of the order.

However, Mr. Schrepel's third recommendation is a sound one. Therefore, the order should provide that 12 members of the Board, including alternates acting for absent members, should constitute a quorum and any action by the Board should require that two-thirds of the entire Board support such action. A voting procedure requiring the consensus of at least a two-thirds majority of the entire Board is similar to many of the other fruit, vegetable and specialty crop marketing orders now in effect. Such a voting procedure helps ensure that the industry majority supports any action of the Board and that minority interests are addressed.

If Board membership is increased in the future due to Districts 5, 6, 8, or 9 becoming permanently regulated as proposed in § 930.20(e), the order should authorize a like increase of the quorum requirement through implementing regulations. For example, if District 5 picked up one seat on the