

certification of tart cherries would be carried out by USDA. The proponents testified that cherries should be required to be inspected again if they are regraded, resorted, repackaged or in any way further prepared for market. This would be done to cover those situations where a handler may need to repackage or resort a product that was already packaged and inspected for a client. This provision is a safety valve designed to prevent poor quality product from entering the channels of commerce.

The Board should also have the authority to recommend to the Secretary such standards of grade, quality or condition of cherries to be placed in the inventory reserve. This would insure the quality of the inventory reserve once it is released to the handlers and sold in the marketplace.

After obtaining inspection and certification of tart cherries, a handler would be required to submit a copy of the inspection certificate to the Board. The Board, with the approval of the Secretary, should have the authority to establish rules and regulations to implement the provisions of this section.

An opponent offered testimony concerning § 930.44 providing exemptions for very small handlers and specialty packs for which grading may be inappropriate. The Board should establish a fixed cost per pound that small handlers would pay for inspection. The opponent testified that handlers that handle less than one million pounds of cherries per year should be exempt from the proposed order regulations, if implemented. One million pounds was chosen because these handlers would be severely burdened with providing personnel to comply with reporting requirements under a marketing order.

The preponderance of the testimony supports providing authority for minimum quality and inspection regulations. Also, several witnesses testified that the burden for handlers would not be severe. The information required to be submitted to the Board under a marketing order would be similar to information already available to handlers. Therefore, this provision would remain as proposed.

(f) In accordance with proposed section 930.50, whenever the Board believes that regulations issued pursuant to section 930.51 regarding free and restricted percentages would be appropriate, it should have the authority to recommend such regulations to the Secretary. The proponents have testified that the proposed volume control regulations would result in a supply management program which would

compensate for the extremely erratic natural production cycles of tart cherries and which would provide the market with a more stable supply of tart cherries. Record evidence shows that a major flaw in the previous tart cherry order was that the process used to establish the marketing policy was prone to too much subjective decision-making by the Board which led to non-uniform policies and political skirmishes. The proponents therefore sought to develop a more objective system that is less subject to outside influences and is more market driven.

#### Marketing Policy

Record evidence indicates that a volume control program should entail several steps. Section 930.50 of the proposed marketing order states that the Board would meet on or before July 1 of each crop year. At this meeting, the Board would review sales data, inventory data, current crop forecasts and market conditions in order to establish an "optimum supply" level for the crop year. The proponents testified that the USDA forecast is the most accurate estimate available at that time to use in the marketing policy calculations. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year for both buyers and sellers. The optimum supply would be calculated as 100 percent of the average sales of the prior three years, plus a desirable carryout inventory that would not exceed 20 million pounds. In addition, there should be authority, through informal rulemaking, to adjust the 20 million pound desirable carryout figure upward, if necessary. Record evidence shows that the 20 million pound figure is based on a historical pattern of the amount needed in inventory for the industry to operate. Once the optimum supply is calculated, it would be announced to the industry by the Board. Testimony showed that this could be done as early as May or June but definitely by July 1.

After the calculation of the optimum supply, the Board would establish preliminary free and restricted percentages. This would be done on or about July 1 of each crop year. Subsequently, as discussed below, the Board may also establish interim percentages and recommend final percentages to the Secretary. Evidence indicates that when the Board computes preliminary and interim percentages, or when it determines final percentages for recommendation to the Secretary, it should also consider the following factors: (1) The estimated total production of tart cherries; (2) the

estimated size of the crop to be handled; (3) the expected general quality of such cherry production; (4) the expected carryover as of July 1 of canned and frozen cherries and other cherry products; (5) the expected demand conditions for cherries in different market segments; (6) supplies of competing commodities; (7) an analysis of economic factors having a bearing on the marketing of cherries; (8) the estimated tonnage held by handlers in primary or secondary inventory reserves; and (9) any estimated release of primary or secondary inventory reserve cherries during the crop year.

Record evidence indicates that preliminary free and restricted percentages should then be calculated in the following manner. The Board would deduct the carryin inventory from the optimum supply figure (adjusted to raw fruit equivalent) and divide that figure by the current year's USDA crop forecast. The carryin inventory figure reflects the amount of cherries that handlers actually have in inventory. If the resulting quotient is 100 percent or more, the Board should establish a preliminary free market tonnage percentage of 100 percent. If the quotient is less than 100 percent, the Board should establish a preliminary free market tonnage percentage equivalent to the quotient, rounded to the nearest whole percent, with the complement being the preliminary restricted percentage. The Board would be responsible for announcing these percentages to the industry in an expedited manner. If a restricted percentage is announced, each handler would be responsible for setting aside a portion of tart cherries which that particular handler handled.

If necessary, the Board should be able to modify the preliminary free and restricted percentages to adjust to the actual pack occurring in the industry. The Board may adjust the percentages between July 1 and September 15 of the crop year. However, the optimum supply could not be adjusted. Record evidence shows that the Board would review weekly production reports to determine if it is necessary to adjust the preliminary percentages. If interim percentages are established, the Board would be responsible for announcing them quickly to the industry. Timely announcement would be crucial since the proponents testified that these percentages could be adjusted as often as once per week.

Finally, no later than September 15 of each crop year, the Board would recommend the establishment of final free and restricted percentages to the Secretary. At this time, the Board would