have available actual production and delivery figures to review to make any needed adjustments to the percentages. The Secretary would establish the final free and restricted percentages through the informal rulemaking process. These percentages would release the tart cherries necessary to achieve the optimum supply figure calculated earlier. The difference between any final free market tonnage percentage designated by the Secretary and 100 percent would be the final restricted percentage.

An example of the marketing policy calculations is discussed below. The USDA crop forecast for the example is 256 million pounds and the optimum supply is 263 million pounds. The total industry carryin is 40 million pounds. The total production in the regulated districts is 233 million pounds. For this example, the average sales of the prior three years is 243 million pounds, and added to it is a 20 million pound desirable carryout, which equals an optimum supply of 263 million pounds. The preliminary percentages would then be calculated by deducting the carryin from the optimum supply to equal a free tonnage of 223 million pounds. The free tonnage would then be deducted from the USDA crop forecast. This would result in a requirement for a 33 million pound inventory reserve. The free and restricted percentages would only apply to those handlers in the regulated districts. Therefore, the percentages would be calculated by dividing the restricted tonnage volume by the regulated district production (233 million pounds would be divided into 33 million pounds to obtain the restricted percentage). This would result in a preliminary free percentage of 86 percent and a restricted percentage of 14 percent for those districts that are being regulated.

Illustration

1. Average movement is based on a three year rolling average of sales and movement, plus a desirable carryout of up to 20 million pounds. For example, if tart cherry sales for 1992–1994 had been, respectively:

1992—243 million pounds
1993—245 million pounds
1994—241 million pounds

The average movement for the 1992–94 three year period would have been 243 million pounds. Adding a carryout of 20 million pounds produces an Optimum Supply Formula (OSF) of 263 million pounds.

2. Annually, deduct the free carryin inventory from the optimum supply. This would provide the tonnage requirement from current year production to meet market needs. In this illustration, if OSF is 263 million pounds and the carryin inventory is 40 million pounds, the free tonnage requirement for this year's crop would be 223 million pounds (263 million − 40 million).

3. Thus, using an initial estimated production of 256 million pounds, with 223 million pounds required, processors in the regulated districts would have to set-aside or divert 33 million pounds. Assuming for this illustration that the regulated districts produced 233 million of the industry's total of 256 million pounds, handlers would have a restricted tonnage set-aside of 14 percent (33 million/233 million). This would result in a preliminary free percentage of 86 percent.

Once harvest begins in late August or early September, the Board would be able to obtain better information on the final volume of product being packaged and adjust the percentages using actual figures. The Board could calculate and announce interim free and restricted percentages between July 1 and September 15 based on this new information.

No later than September 15, the Board would compute the final free and restricted percentages. At that time, the Board would recommend the percentages to the Secretary to establish them through the informal rulemaking process. For this example, we would use the crop year free tonnage of 223 million pounds calculated from the previous example. If the final crop year estimate is 296 million pounds and the final production for the regulated States is 256 million pounds, the final percentages would be calculated by deducting the current crop year free tonnage from the 296 million pound final crop estimate to equal a 73 million pound inventory reserve. The 73 million pound inventory reserve would be divided by the Regulated districts final production of 256 million pounds. This would equate to a 33 percent restricted percentage and a 66 percent free tonnage. Since 73 million pounds is above the 50 million pound maximum allowable in the inventory reserve, handlers would have to divert 23 million pounds or establish a secondary reserve.

The proponents testified that the Board should be able to modify its marketing policy in the event of a national emergency, crop failure, or other major change in economic conditions. This would provide a type of ''escape hatch'' should market conditions change so drastically from what Board projections or from historical patterns on which the marketing policy outlined in this order is based. The Department agrees with this recommendation. The Board would be required to hold a meeting, and file a report with the Secretary within 5 days which shall show such modification and the basis therefor. For example, the Board could file a report with the Secretary that would request that the Board be allowed to release more or all the cherries, from any established inventory reserve, than what was established under the marketing policy formula. This could be done if a weather disaster was experienced during the harvest season in one of the production districts under the marketing order. The Board could therefore recommend that the free and restricted percentages not apply for that current crop year, lower the restricted percentage, or release more reserve cherries to the industry.

The proponents testified that the Board should recognize growers that cooperatively form a national bargaining agency in order to enhance their chances for a higher price for their cherries. In recognition of such organization, the Board should be able to release less than 100 percent of the free market tonnage for sale if a grower price had not been set. However, it would be required to release at least 65 percent of the total free market tonnage by September 1. This would allow handlers to make marketing plans, sales, and contractual agreements in order to market the new crop in a timely fashion. If no grower price is established by September 1, the Board must thereafter release all of the free market tonnage. However, after further review of this issue, the USDA has determined that such a provision should not be contained in the marketing order. Record evidence does not adequately explain how such a provision would work or what the benefits to growers would be. Also, the record does not contain adequate information relating to the composition, function, or the limits and bounds of a bargaining agency. Therefore, this provision should not be adopted in the proposed marketing order.

Inventory Reserve

The proposed order provides that if restricted percentages are established, handlers would be required to set aside a portion of cherries handled. Testimony at the hearing indicated that a handler could fulfill such restricted percentage amount by either establishing an inventory reserve or by diversion of product. There would be two types of inventory reserve—a