

required. The witness stated that tentative industry committees made up of pie fill, juice and IQF processors could propose different regulations to ascertain the quality of the product in the inventory reserve without requiring inspection. The preponderance of the testimony supports inspection of cherries placed in the inventory reserve, if recommended by the Board and approved by the Secretary. Inspection of the inventory reserve would ensure good quality product is placed into the reserve and is still of good quality when released and sold from the reserve. Therefore, the witness's proposal is not included in the proposed order.

Record evidence indicates that it would be the individual handler's responsibility to rotate cherries placed in the inventory reserves by putting new cherries in and taking old cherries out. Rotating cherries in the inventory reserve is not a requirement under the order. However, it would benefit the industry if it is done. This would insure that good quality cherries are being released when inventory reserve cherries are sold. Handlers would be required to notify the Board of any changes in lot numbers, etc., when inventory is rotated and provide proof of inspection of cherries used to produce the storable product. Since rotation is voluntary by each handler, the type of storage chosen would impact on how frequently rotation is required. Generally, the cost of inspecting cherries to be rotated into reserve inventories should be borne by the Board. However, the Board should have the authority, subject to the approval of the Secretary, to limit the number of inspections of cherries to be rotated into inventory reserves for which the Board would be financially liable.

Handlers would be responsible for holding inventory reserve cherries until released by the Board. So that such release is equitably apportioned, the Board would set the quantity to be taken out of each particular handler's reserve. Handlers would not be required to market such cherries immediately upon release from the reserve. Once released, the cherries could be marketed at appropriate times depending on each handler's marketing plan. Handlers would not be allowed to forward contract or, in any other way, market reserve cherries before receiving an official release from the Board.

The proponents testified that if a secondary reserve is established, all costs of that reserve, including inspection costs, should be paid by the individual handler. The record indicates that a secondary reserve established by a handler would be an option for a

handler to consider when the reserve is above the 50 million pound cap. Therefore, the handler should assume all the responsibility of a secondary reserve since there are other options (redeeming grower diversion certificates, diverting at the handler's processing facility, etc.) handlers could use to meet their diversion requirement.

All other requirements established to operate the primary reserve should apply to a secondary reserve established by an individual handler. These could include quality standards for inventory reserve cherries and inventory reserve releases.

A witness testified by offering an alternative proposal to the proponent's proposal. That proposal would eliminate the secondary reserve. The witness testified that there are many market factors which dictate against putting up a large reserve. For example, handlers would have to consider the costs of storing a large reserve. This proposal is not included in the proposed order because a secondary reserve is an option the handler could choose. If a handler does not want to pay for storage costs of a secondary reserve, the handler could choose to divert at the plant or redeem grower diversion certificates.

#### Reserve Releases

Record evidence indicates that the volume control provisions should provide for opportunities for the primary inventory reserve to be released throughout the year to handlers that are in regulated districts. No cherries should be released from the secondary reserve until all cherries in any primary inventory reserve have been released.

A witness testified that single districts should be allowed to release inventory reserve cherries when they are needed to satisfy a specific market. If such a release occurs in one district, those cherries could be sold into that market. Other districts who have inventory reserve released could not sell their cherries into those markets. After review of this modification the USDA has determined that such a modification would not be equitable to all handlers. Also, there was no additional testimony as to how such a provision would operate in the industry. Therefore, such a modification is not included in the proposed order.

The proposed marketing order specifies four possible releases of primary inventory reserves under §§ 930.50 (g) and (j) and 930.55(a).

The first, under proposed § 930.50(g), would release up to an additional 10 percent (above the optimum supply level) of the average of the prior three

years sales if such inventory is available in the primary inventory reserve. The proponents proposed that this release would take place after all handlers had been polled and deemed it advisable to release additional cherries into the market for market expansion. The proponents testified that handlers would be polled as quickly as possible and the Board would make the final decision on the release based on the handler vote. The USDA would be informed of the outcome of the voting process. The proponents also testified that this release would be up to an additional 10 percent of the optimum supply and could take place a couple of times a year to reach the 10 percent total.

After review of this proposal, the USDA has revised this reserve release mechanism to more closely follow USDA policy guidelines. As proposed by the proponents, the polling of handlers to determine the release of up to 10 percent would be difficult to administer and inconsistent with the Secretary's Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders (Guidelines). The Guidelines state that, under volume control programs, primary markets should have available a quantity equal to 110 percent of recent years' sales in those outlets before the Secretary would approve secondary market allocation or pooling. This is to assure plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with burdensome supply situations.

The proponents' proposal is revised by requiring the additional 10 percent to be made available to handlers, without a polling mechanism. However, for this release only, individual handlers would be able to decide if they need the additional tonnage and inform the Board so that their reserve cherries may be released to them. Those handlers not desiring the additional inventory would not have it released to them. This revision would be consistent with the Guidelines, which were discussed at the hearing, since the tonnage would be required to be made available to the industry, but actual release of inventories would be based on individual handlers projected needs and situations.

The second release, under § 930.50(j), would occur in years when the expected availability from the current crop plus expected carryin inventory does not fulfill the targeted availability of 100 percent of the average annual sales in the prior three years plus the desirable carryout (optimum supply). The Board would release, not later than November