1 of the current crop year, such volume from the inventory reserve. This release would be made to all handlers holding primary inventory reserve and is a required release to be made by the Board if the above conditions are met and inventory reserve cherries are available. This provision would assure that inventory reserves would be utilized to stabilize supplies available on the market. In this case, handlers would be required to accept the released inventory reserve cherries, if available, for their own use. Under these circumstances, most handlers would want more cherries because the current supply is not available to fulfill demand. Testimony at the hearing indicated that reserve inventories released to handlers could be sold into any market as free tonnage cherries. In addition, any secondary inventory reserve cherries could be released if the release of the total primary inventory reserve does not bring total available supplies up to the optimum supply level.

The third release of the reserve is proposed under § 930.54(a) which would allow the Board to recommend to the Secretary a release of a portion or all of the primary (and secondary) inventory reserve. In order to make this release, the Board would need to determine that the total available supplies for use in normal commercial outlets do not equal the amount needed to meet the demand in such outlets. This could happen if there was a tart cherry crop loss in Europe or a significant U.S. blueberry or other competing crop loss. In these instances, more tart cherries could be made available to supply the unexpected demand caused by such crop losses.

The proponents also proposed the authority under § 930.54(b), for the Board to establish, through informal rulemaking, circumstances in which an individual handler may sell any or all of their inventory reserve cherries into the following markets: Charitable uses; state government, USDA or other non-military federal agency purchases, any experimental purposes, and any nonhuman use, including animal feed. This provision would allow the Board to specify when handlers can sell inventory reserve cherries into these outlets

After review of this proposal the USDA is deleting this provision from the proposed order. The Board should not be placed in the position of deciding whether inventory reserve cherries should be released to individual handlers for specific sales. Handlers would be able to sell cherries into these outlets by using their free tonnage

cherries or cherries that are released to them from the inventory reserve. The Board could address this issue under the exempted use provision (§ 930.62). The Board is authorized to expand the list of exempted uses, therefore the Board could specify those outlets that handlers can sell reserve cherries into after notifying the Board. For the above reasons the USDA has deleted this portion of the proposal and modified § 930.62 as discussed above.

Diversion—General

Handlers would be allowed to choose to meet their restricted percentage obligation by placing cherries in the primary inventory reserve or diverting the cherries, or a combination of both. Record evidence shows that cherries could be diverted either by the grower at the orchard or by the handler at the processing plant. Handlers and growers choosing to divert would save production, cultural, processing, storing and inspection costs.

A grower could choose to divert if such grower's crop is of poor quality due to hail damage or some other climatic condition. By choosing to divert the poor quality crop, the grower could be provided income from redeemed diversion certificates. In addition, poor quality fruit would be kept off the market.

Handlers choosing to divert would save processing, storage and secondary reserve inspection costs if they divert cherries at the plant. The handler could choose the best cherries to process, and divert the less desirable cherries or contribute them to a Board approved food bank. The specifics of both proposed diversion programs are discussed below.

Grower Diversion

There are no order provisions which would require a grower to divert tart cherries. Grower diversion would be completely voluntary. Growers could choose to divert because they have an abundance of low value, poor quality cherries or they are unable to find a processor willing to process some or all of their cherries because of a large crop. Before choosing to divert, the grower would most likely evaluate the harvesting and other cultural costs that could be saved by diverting and locate a handler that would be willing to redeem such grower's diversion certificate. Record evidence indicated that a portion of the production of growers choosing to divert would be left unharvested until the cherries are too ripe to be of commercial use. Growers who elect to divert their cherries and who wish to obtain diversion

certificates (explained below) would have to file an application with the Board for such diversion to be approved. The proponents stated that rules and regulations would need to be promulgated to implement provisions for diverting cherries by growers. These regulations could include: (1) The form and content of applications and agreements including provisions for supervision and compensation for such supervision by the Board; and (2) provisions for mapping procedures to identify growers' production and acreage locations. The proponents testified that diversion certificates should only be valid for one crop year. This would allow the Board to account for all cherries produced in the crop year and, since diverted cherries count as delivered cherries for marketing policy calculations, would allow the Board to calculate accurate preliminary and final percentages. The proponents also testified that the diversion program would be easier to administer if the diversion certificates were redeemed in the same crop year in which they were issued. However, the proponents testified that the Board should be able, through informal rulemaking, to develop rules that would apply to possible circumstances in which diversion certificates might be able to be carried forward into the next crop year.

Growers wishing to divert all or a portion of their crop could be required to submit maps to the Board that specify the area(s) where cherries would be left unharvested. Several growers testified at the hearing that most growers have maps of their orchards and that it would not be an undue burden to submit that information to the Board. Once the Board approves a grower's application for diversion and verifies diversion of the cherries, the Board would issue a diversion certificate to the diverting grower. The diversion certificate would specify the amount of cherries that were diverted. The grower could then take the diversion certificate to a handler to be redeemed. A handler could redeem the certificate for cash, by paying higher prices for nondiverted cherries, or through other financial arrangements between the two parties. Any such arrangements between growers and handlers concerning diversion certificates would not be part of the marketing order. Such decisions could vary among individual growers and handlers and among growers and handlers in different regions of the regulated area.

As an example, if a handler normally receives 1,000 tons of cherries and a restricted percentage of 20 percent is established, that handler would expect