to have to place 200 tons of cherries into the primary reserve. If the handler receives grower diversion certificates (which are treated as though they are actual cherries delivered), the volume of cherries required to be placed into reserve could be reduced. Thus, if the handler received 1,000 tons of cherries, with 50 tons represented by diversion certificates, and a restricted percentage of 20 percent is established, the actual tonnage required to be stored in the primary reserve would be 150 tons (200 tons minus the 50 tons of diverted cherries). Handlers would value certificates to the extent they could reduce their operating costs through the selective use of the best quality cherries available for initial delivery and/or the avoidance of processing and storage costs for reserve cherries. Handlers could also receive higher prices for processed products made from the best quality cherries. This would create opportunities for individual growers and handlers to arrive at different financial arrangements depending on the quality of the cherries available for delivery, whether contractual obligations exist for all or a portion of the grower's crop, the processing capacity of the handler, the size of the crop which exceeds market demands, individual handler's financial situations, etc.

Handlers may want to limit the volume of the primary inventory reserve that they would be responsible for and therefore, could request their growers to divert cherries in the orchard rather than at the processing plant. Nonharvest of the cherries would be considerably cheaper than incurring the costs of picking, cooling and hauling cherries to the handler's facility. A handler might also consider redeeming grower diversion certificates if they could receive and handle a larger volume of better quality cherries from other growers.

The proponents also testified that diversion certificates should be issued to growers in the event an act of nature damaged or destroyed what would otherwise have been a deliverable crop. In the event of a disaster, growers are faced with the very tough decision of whether to harvest a heavily damaged, and usually poor quality, crop, and deliver it to a handler for processing, or to leave the crop unharvested. By leaving the crop unharvested, the grower would have no income from the crop. However, harvesting the crop could result in a considerable quantity of poor quality fruit making its way into marketing channels and could add needlessly to the grower's costs. In addition, poor quality cherries in the

marketplace could depress market prices for all cherries. The proponents testified that issuing a grower diversion certificate to growers with damaged cherries could increase grower income, which is one of the purposes of the Act and the order. Record evidence supported that this should be limited solely to otherwise harvestable fruit that was damaged by acts of nature. For example, in the event of an early frost, preventing the initial setting of the cherries and resulting in no crop to harvest, this provision would not apply. Special precautions are expected to be taken by the Board to ensure that harvestable cherries were in fact not harvested, and were subsequently shaken on the ground or otherwise permanently removed from the market. The proponents testified that the Board may want to supervise some types of grower diversion. Additionally, the proponents testified that such unharvested fruit would be calculated in computing the final free and restricted percentages. Unharvested fruit for which diversion certificates are issued should also be used in the calculations in the marketing policy because such fruit would have been harvested if not diverted.

There was considerable discussion on the record concerning equity of this provision and the effect on the marketing policy. Also, one of the parties stated in his brief that the practice allowed under the proponents proposal grants a document of potential economic value in exchange for something of no value—cherries which are unmarketable because of damage of some kind. It was therefore, argued that, in no case should diversion certificates be granted for other than mature, harvestable cherries.

The Board would be required to ensure that diversion credit is not given to growers whose fruit was destroyed before it set and/or matured on the tree. Diversion credit would only be given to growers whose harvestable fruit was damaged or destroyed due to tornadic winds, floods, etc.

The proponents also testified that diversion credit could be given for fruit damaged or destroyed prior to full maturity that is not likely to enter the stream of commerce as defined under the proposed marketing order. However, counting this "destroyed, but to be diverted" cherries as though they were actually produced would result in a more restrictive inventory reserve percentage, applicable to all handlers. This would occur because the destroyed but diverted fruit would be counted in the final delivery figures used in computing the final and restricted

percentages. If the final crop figure is increased, it would result in a more restrictive percentage. This provision would create a form of crop insurance for growers which is inconsistent with these types of programs. Therefore, the proponent's proposal to grant diversion credit to growers for such unharvestable fruit is not included in the language of this recommended decision.

The USDA is including amendatory language that would recommend growers notify the Board if they are unable to redeem their diversion certificates. The Board could act as a clearinghouse and inform handlers that diversion certificates are available for redemption. The Board could recommend rules and regulations to specify the details of this provision. One such provision may be to include a date by which all growers must inform the Board that they have certificates remaining to redeem. The Board would then be able to assist growers in locating handlers willing to redeem their diversion certificates. However, the Board has no authority to require handlers to redeem certificates or establish prices or pricing guidelines for diversion certificates.

Handler Diversion

The other form of diversion would be by handlers at their processing facilities. Handlers in a regulated district could fulfill any restricted percentage requirement by voluntarily diverting cherries in an approved program rather than placing cherries in an inventory reserve. If the primary inventory reserve has reached its maximum volume limitation, handlers would either have to establish a secondary inventory reserve, divert the restricted percentage cherries, or utilize a combination of the two.

The uses eligible for diversion could take any of the following forms, if recommended by the Board and approved by the Secretary. These would be uses exempt under the order, contribution to a Board approved food bank or other approved charitable organization, acquisition of grower diversion certificates, or other uses, including diversion of the cherries at the handler's facility. Record evidence shows that handlers could choose which, and whose, cherries to divert. Those decisions would likely be made on quality considerations, but could also be impacted by prior contractual arrangements with their growers. A handler electing to divert cherries would first need to notify the Board. The notification would describe in detail the manner in which the handler proposes to divert the cherries,