be multiplied by 150 percent to equal about 11 million pounds. If Wisconsin produced 11.5 million pounds in a specific year, Wisconsin would be regulated under the order, even though Wisconsin did not exceed the 15 million pound level.

The USDA crop estimate is not released until late June. Thus, the Board may not be able to provide adequate notice to handlers in districts that were not regulated from the initial promulgation of the order that they would be subject to volume control regulations that could be announced on July 1. The record indicated that some districts have been experiencing earlier harvesting dates than other districts and therefore, handlers and growers would not know in time that they were to become a regulated district. In addition, there could also be confusion and concern in the industry if districts can meet one of the criteria and not the other criteria and still be regulated.

Since the larger producing districts are the major concern for volume regulation purposes, the USDA is revising this provision by deleting the 150 per centum trigger mechanism for determining districts subject to volume regulation. Therefore, the criteria that a district would have to meet to become regulated under the volume control provisions of the order would be to exceed an average annual production of cherries over the prior three years of 15 million pounds. This provision would be much easier to administer and cause less confusion. It is also desirable for the district not to be subject to volume regulations until the crop year after the three year average production exceeds the 15 million pound level. This would allow adequate notice to be given to handlers that they would subsequently be subject to volume regulations. For example, if a previously unregulated district's average annual production of cherries over the prior three years was 18 million pounds at the conclusion of the 1997 crop year, that district would be subject to volume regulations during the 1998 crop year.

The USDA is also modifying the proposal for determining when regulated districts would not be subject to volume regulation. The USDA has revised this provision to provide that when a district drops below the 15 million pound three year average production figure, that district would not be regulated. It is desirable for a provision to be included in the order to discontinue regulation in a district when production capacity has decreased or actual production has suffered due to some type of hardship that has significantly affected production in that district. This determination should be made after the close of the crop year and would apply to the next year's crop. These modifications were supported by record testimony.

The proponents testified that a disaster relief clause should be included to exempt a regulated district from regulation in a year in which production in that district drops to less than onehalf of its maximum annual processed production for the previous five years. This provision is included in the proposed marketing order to help relieve such district from the burdens of the order in a year in which its processors and growers were already suffering from a severely short crop. Thus, if the central Michigan district's maximum production during the previous five year period was 80 million pounds, and in the next year only 30 million pounds were produced and supplies from other districts exceeded the optimum supply, the central Michigan district would not be regulated. The above modifications have been made to the proposed order.

A witness provided an alternative to the 15 million pound production level for determining when a district would become regulated. The witness testified that 20 million pounds should be used because it provides a cushion before regulation would occur. However, the preponderance of the testimony supported a 15 million pound production level. Therefore, the 20 million level is not adopted. In addition, the proponents proposed under § 930.63 that the Board should have the authority to recommend to the Secretary expansion of the production area if such new area's average annual production of cherries reaches at least five million pounds over a three-year period. The provision also provides for nomination, election, appointment, acceptance, and other matters concerning Board membership. After review of this proposal, the USDA is deleting this provision from the proposed order. The Board has the power under § 930.30(d) to recommend to the Secretary amendments to the marketing order dealing with any issue. During a formal rulemaking process to expand the production area, the issues dealing with Board representation, quorum, voting requirements and etc. would be addressed. Also, the proposed provision requires that the Board cannot consider expansion of the production area until such new area's average annual production of cherries reaches at least five million pounds over a three-year period. The Board may want to expand the production area even though such

new area has not reached the above level. Therefore, § 930.63 is deleted from the proposed order.

(g) The Board should have the authority, under proposed § 930.70, with the approval of the Secretary, to require that first handlers submit to the Board such reports and information as the Board may need to perform its functions and fulfill its responsibilities under the order. In the normal course of business, tart cherry handlers collect and record information that may be needed by the Board. Witnesses expressed the belief that the reporting requirements that may be imposed under the proposed order would not constitute an undue burden on handler businesses.

Reports would be needed by the Board for such purposes as collecting assessments; compiling statistical data for use in evaluating marketing research and development projects; promotional activities; making recommendations for production research; making recommendations for volume control regulations; and determining whether handlers are complying with order requirements. The record evidence indicates that, to the extent necessary for the Board to perform its functions, handlers would probably need to provide information showing weekly production data, monthly sales and inventory data, and other such information, including the volume of any cherries placed in or released from a primary or secondary inventory reserve or diverted. This should not be construed as a complete list of information the Board might require, nor should it be assumed that all of the above would be necessary for the proper conduct of its operations under the order. Therefore, the Board should have the authority, with the approval of the Secretary, to require each handler to furnish such information as it finds necessary to perform its duties under the order.

Each handler should be required to maintain such records of tart cherries acquired, handled, diverted or sold, or otherwise disposed of as may be necessary to verify the reports that the handler submits to the Board. All such records should be maintained for at least two years after the termination of the fiscal year in which the transaction occurred. The order should provide the authority for the Secretary and authorized employees of the Board to have access to handlers' premises to examine those records pertaining to matters within the purview of the order. This provision would enable verification of compliance with requirements of the order.