

outside the production area. Currently, all cherries are required to be graded and packed before leaving the production area. Committee members believe that this will give shippers an opportunity to choose those grading and packing facilities that will be most beneficial to their individual circumstances. The grading and packing costs that are charged to growers may be different among different handlers in the production area or packing facilities outside the production area. There may be differences in the type of packaging or other services offered by packing facilities within or outside the production area.

For example, a packing facility outside the area of production is experimenting with modified atmosphere packaging that increases the shelf life of sweet cherries. There are also Washington sweet cherry growers who are part owners of packing facilities that are located outside the area of production, and it may be advantageous for them to be able to deliver to those facilities for grading and packing. Finally, some of the facilities are closer to where the fruit is produced, and allowing these facilities to be used for grading, packing, or both could reduce producer and handler delivery costs.

The Committee believes that the minimum grade, size, maturity, container, and pack requirements established under the order are very important to the industry. The Committee believes such requirements create orderly marketing, are good for consumers, encourage repeat purchases, and ultimately improve returns to growers. Therefore, the Committee also recommended the establishment of safeguards to ensure that all sweet cherries graded and packed outside the production area are ultimately inspected and certified by the Federal or Federal-State Inspection Service as meeting the minimum grade, size, maturity, container, and pack requirements established under the order. Persons desiring to ship or receive sweet cherries for grading or packing outside the production area will apply to the Committee on a *Shippers/Receivers Application for Special Purpose Shipment Certificate*. Such applicants will submit an application each year prior to shipping or receiving sweet cherries for grading or packing outside the production area. Information collected on the application will include the date, name, address, phone number, signature of the applicant, and such other information as the Committee may require. The form includes a certification that all production are cherries graded or

packed outside the production area will be inspected by the Federal or Federal-State Inspection Service and will meet the minimum grade, size, maturity, container, and pack requirements established under § 923.322 prior to shipment.

After the Committee approves an application, the applicant within the area of production and the applicant packing facility outside the area will be required to submit a weekly *Special Purpose Shipment Report* to the Committee when Washington sweet cherries are shipped out of the production area for grading or packing, along with inspection certificates, and other information required by the Committee for verification purposes. Information collected on the reports will include the names, addresses, telephone numbers, signatures of the applicants, names of the growers and handlers of such cherries, and the total quantities of each variety of cherries shipped or received. These reports will be submitted to the Committee at the close of business every Friday during those weeks when the shipper applicant has shipped or the receiver applicant has received sweet cherries for grading and packing outside the production area. The Committee estimates that each affected applicant will submit approximately 10 of these reports annually.

#### Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Based on Committee data, there are approximately 1,500 producers (growers) of sweet cherries in the production area and approximately 62 handlers subject to regulation under the order. The Committee estimates that there are about 6 prospective applicants that may take advantage of this marketing opportunity. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having

annual receipts of less than \$750,000 and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Based on Committee data, the average production of sweet cherries in Washington State for the last three years is 64,676 tons. Based on Washington Agricultural Statistics Service data, the average producer price for sweet cherries in Washington State for the last three years is \$1,943 per ton. With a Committee estimated 1,500 sweet cherry producers of record, the average annual producer revenue is calculated to be approximately \$83,777. Using Committee data regarding each individual handler's total shipments during the 2001 marketing year and a Committee estimated average F.O.B. price of \$24.00 per 20-pound container in 2001, 79 percent of the Washington sweet cherry handlers ship under \$5,000,000 worth of sweet cherries and 21 percent ship over \$5,000,000 worth of sweet cherries. Therefore, the majority of Washington sweet cherry producers and handlers may be classified as small entities. Also, there are an estimated 6 packing facilities or receivers that would be affected by this action. Although their size is not known, it is estimated that most would be considered small entities.

Committee meetings are widely publicized in advance of the meetings and are held in a location central to the production area. The meetings are open to all industry members and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Committee recommendations can be considered to represent the interests of small business entities in the industry.

This rule will allow persons to ship Washington sweet cherries outside the area of production for grading and packing. Applicants desiring to ship or receive sweet cherries for grading or packing outside the production area will be required to submit an application to the Committee. The applicants will certify that all production area cherries graded or packed outside the production area will be inspected by the Federal-State Inspection Service and will meet the minimum grade, size, maturity, container, and pack requirements established under § 923.322 prior to shipment. Persons who are approved by the Committee to ship or receive will report all production area sweet cherries shipped or received for grading or packing outside the production area at the close of business every Friday.

Regarding the impact of the proposed action on affected entities, this rule will