

appropriate. It is important to understand that product is moved around between production areas and may be converted into puree or concentrate at a later date. The market drives the processing of these various products each season.

In comparing the prices of juice, juice concentrate, and puree with the 5 plus 1 product, the Board determined that current prices for these products are similar. The information received from the Board indicates that puree products are becoming a viable market and should be assessed at a higher assessment rate.

As a result of this season's 2002–2003 short crop, much of the tart cherry products released from inventory were in the form of tart cherry juice and/or juice concentrate. There is not much, if any, of this product available on the market today. The Board contends that given these factors, it is hard to suggest that juice/concentrate, or puree, are of lesser value than are the more traditional products such as pie-fill or individually quick frozen tart cherries. Thus, the Board determined that one assessment rate is appropriate for the 2002–03 fiscal period.

Last year's budgeted expenditures were \$442,500. The recommended assessment rate of \$0.0019 is higher than the current rates of \$0.00175 for cherries used in the production of other than juice, juice concentrate, or puree products, and \$0.000875 for cherries used for juice, juice concentrate or puree products.

The major expenditures recommended by the Board for the 2002–2003 fiscal period include \$85,000 for meetings, \$170,000 for compliance, \$185,000 for personnel, \$80,000 for office expenses, and \$2,500 for industry educational efforts. Budgeted expenses for those items in 2001–2002 were \$80,000 for meetings, \$100,000 for compliance, \$185,000 for personnel, \$75,000 for office expenses, and \$2,500 for industry educational efforts, respectively. As discussed below, the Board's staff has taken steps to reduce actual expenditures for 2002–03 due to the assessment revenue shortfall. In comparison, last year's budgeted expenditures were \$442,500. The recommended assessment rate of \$0.0019 is higher than the current rates of \$0.00175 and \$0.000875, respectively. The Board recommended an increased assessment rate to generate larger revenue to meet its expenses and keep its reserves at an acceptable level.

In deriving the recommended assessment rates, the Board determined assessable tart cherry production for the fiscal period at 260 million pounds.

However, the tart cherry industry experienced a severe frost, mainly in Michigan, which significantly reduced the crop. The tart cherry industry is expected to only produce 60 million pounds. The Board staff has responded to this decrease in funds by reducing staff and Committee travel for meetings and is expected to use reserve funds to continue administrative operations this season. Therefore, total assessment income for 2002–2003 is estimated at \$114,000. This amount plus adequate funds in the reserve and interest income would be adequate to cover budgeted expenses. Funds in the reserve (approximately \$233,000) would be kept within the approximately six months' operating expenses as recommended by the Board consistent with § 930.42(a).

The assessment rate established in this proposed rule would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and other information submitted by the Board or other available information.

Although the assessment rates are effective for an indefinite period, the Board would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rates. The dates and times of Board meetings are available from the Board or the USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modifications of the assessment rates are needed. Further rulemaking would be undertaken as necessary. The Board's 2002–2003 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the USDA.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this initial regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) allows AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS's Fruit and Vegetable Programs (Programs) no longer opts for such certification, but rather performs regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts

the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

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.

There are approximately 40 handlers of tart cherries who are subject to regulation under the order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than \$5,000,000, and small agricultural producers are those whose annual receipts are less than \$750,000. A majority of the tart cherry handlers and producers may be classified as small entities.

The Board unanimously recommended 2002–2003 expenditures of \$522,500 and assessment rate increases from \$0.00175 to \$0.0019 per pound for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree, and from \$0.000875 to \$0.0019 per pound for cherries utilized for juice, juice concentrate, or puree.

This proposed rule would increase the assessment rate established for the Board and collected from handlers for the 2002–2003 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products to \$0.0019 per pound. The Board unanimously recommended 2002–2003 expenditures of \$522,500. The quantity of assessable tart cherries expected to be produced during the 2002–2003 crop year was estimated at 260 million pounds. However, the tart cherry industry experienced a severe frost, mainly in Michigan, which has significantly reduced the crop. The tart cherry industry is expecting to only produce 60 million pounds during 2002–03. The Board staff has responded to this decrease in funds by reducing staff and Committee travel for meetings and is expected to use reserve funds to continue administrative operations this season. Assessment income, based on this crop, along with interest income and reserves, would be adequate to cover budgeted expenses.