

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 grower 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 as well as the name, address, phone number, and signature of the applicant, and such other information as the Committee may require. The form includes a certification that all production area 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, and 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.

#### Final 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 final 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 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 growers 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 grower price for sweet cherries in Washington State for the last three years is \$1,943 per ton. The Committee currently estimates that there are 1,500 sweet cherry growers. Using the Committee's 1,500 sweet cherry grower estimate, the average annual grower 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 growers and handlers may be classified as small entities. Also, it is estimated that 6 packing facilities or receivers 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 continues to 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 or 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 this action on affected entities, this rule will impose minimal additional costs. As previously mentioned, the Committee estimates that about six prospective applicants may desire to ship or receive sweet cherries for grading or packing outside the production area during the marketing year. Such applicants will be required to submit a *Shippers/Receivers Application for Special Purpose Shipment Certificate* and receive approval from the Committee prior to shipping or receiving any production area sweet cherries each year for grading or packing. After the Committee approves an application, both applicants will be required to submit a