

The amended order specifically provides that under § 930.41(f)(1) and (2) the established assessment rates may be uniform, or may vary depending on the product the cherries are used to manufacture. The Board may consider the differences in the number of pounds of cherries utilized for various cherry products and the relative market values of such cherry products. The Board considered the above items and decided that one assessment rate should be recommended for all assessable tart cherries for the 2002–2003 fiscal period.

According to the Board, processors have developed a strong market for juice and concentrate products over the past few years. There is considerable belief that juice will be one of the growth outlets for tart cherries. This derives from the industry's promotional efforts being undertaken for juice and concentrate products, the segmentation of the market into retail and industrial components and the nutritional/nutraceutical profile of the product. As a result, there has been an increase in consumer recognition, acceptance, purchases, and the value of tart cherry juice and concentrate. According to the Board, prices received for tart cherry juice concentrate are now \$25.00 per gallon or more. This is derived by using the fairly common conversion ratio of 100 pounds to the gallon for mid-west production, which has a raw product value of \$0.25 per pound. Using a 50 gallon conversion for the product, as has been used on the west coast, this represents a per pound value of \$0.50. The difference in the west and mid-west conversion factors is that tart cherries produced in the western United States generally have a higher sugar content and larger fruit size, thus fewer raw product is needed. The average grower price received ranges between \$0.17 to \$0.20 per pound.

According to the Board, puree products are as valuable and comparable to juice and juice concentrate products. The Board reported that the spot price for single strength puree for 2001–02 was about \$0.60 cents per pound. The raw product equivalent (RPE) volume of pureed fruit was 539,504 pounds which is about 0.15 percent of all processed fruit. The Board also reported for 2001–02 that the price for five plus one product was \$0.67 cents per pound. Five plus one is a product of cherries and sugar which is manufactured by many processors (25 pounds of cherries and five pounds of sugar to make a 30 pound commercial container). It is the main product that handlers produce. Five plus one cherries are primarily sold and remanufactured into assorted bakery

items, canned pie fill, and dried cherries. Since juice, juice concentrate, and puree are not considered to be low value products at this time, the Board considers one assessment to be 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. 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 rate, 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 used 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 final rule will 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 rate is effective for an indefinite period, the Board will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. 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 modification of the assessment rate is 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.

A minor change is made to the provisions of § 930.200 as proposed for clarification purposes.

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 final 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