

(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 final rule increases 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 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.

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.

The Board discussed the alternative of continuing the existing assessment rates, but concluded that would cause the amount in the operating reserve to be reduced to an unacceptable level. It also determined that a single uniform assessment rate for assessable tart cherries was appropriate.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. Data from the National Agricultural Statistics Service (NASS) states that during the period 1995/96 through 2002/03, approximately 92 percent of the U.S. tart cherry crop, or 285.7 million pounds, was processed annually. Of the 285.7 million pounds of tart cherries processed, 58 percent was frozen, 30 percent was canned, and 12 percent was utilized for juice.

Based on NASS data, acreage in the United States devoted to tart cherry production has been trending downward. Since 1987/88 tart cherry bearing acres have decreased from 50,050 acres, to 36,900 acres in the 2002/03 crop year. In 2002/03, 93 percent of domestic tart cherry acreage was located in four States: Michigan, New York, Utah, and Wisconsin. Michigan leads the nation in tart cherry acreage with 74 percent of the total production. Michigan produces about 75 percent of the U.S. tart cherry crop each year. Tart cherry acreage in Michigan decreased from 28,500 acres in 2000–2001, to 27,400 acres in 2002–2003.

A review of historical information and preliminary information pertaining to the 2002–2003 fiscal period indicates that the grower price could range between \$0.448 and \$0.45 cents per pound of tart cherries. This is a high price due to the short crop this year. Therefore, the estimated assessment revenue for the 2002–2003 fiscal period as a percentage of total grower revenue could be less than one-half of one percent.

While this action will impose additional costs on handlers, the costs are in the form of assessments which are applied uniformly. Some of the costs may also be passed on to producers. However, these costs are offset by the benefits derived from the operation of the marketing order. The Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the January 24, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses and no comments were received.

This action will impose no additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on May 22, 2003 (68 FR 27943). Copies of the rule were mailed or sent via facsimile to all Board members and tart cherry handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 10-day comment period ending June 2, 2003, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matters presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the 2002–2003