

indicates that puree products are becoming a viable market and should be assessed at a higher assessment rate.

As a result of last season's 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 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 2003–04 fiscal period.

Budgeted expenditures for the 2003–04 fiscal period were unanimously recommended at \$532,000. The major expenditures recommended by the Board for 2003–04 include \$81,000 for meetings, \$149,000 for compliance, \$191,000 for personnel, \$106,000 for office expenses, and \$5,000 for industry educational efforts. Budgeted expenses for those items in 2002–2003 were \$85,000 for meetings, \$170,000 for compliance, \$185,000 for personnel, \$80,000 for office expenses, and \$2,500 for industry educational efforts, respectively.

Last fiscal period's budgeted expenditures were \$522,500. However last season, the tart cherry industry experienced a significant frost mainly in Michigan which severely impacted the crop. Only 60 million pounds of cherries were produced in comparison to a normal crop of about 260 million pounds. The Board staff responded to this decrease in funds by cutting its expenditures. The Board reduced its staff and Committee travel for meetings and used reserve funds to continue administrative operations in 2002–2003. The recommended assessment rate of \$0.0021 is higher than the current rate of \$0.0019 per pound. 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. Therefore, total assessment income for 2003–2004 is estimated at \$546,000. This amount plus adequate funds in the reserve and interest income would be adequate to cover budgeted expenses. Funds in the reserve (approximately \$66,000) 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 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 rate would be 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 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 2003–2004 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' 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 2003–2004 expenditures of \$532,000 and an assessment rate increase from \$0.0019 to \$0.0021 per pound. This rule would increase the assessment rate established for the Board and collected from handlers for the 2003–2004 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products. The quantity of assessable tart cherries expected to be produced during the 2003–2004 crop year is estimated at 260 million pounds. 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 2003–2004 fiscal period include \$81,000 for meetings, \$149,000 for compliance, \$191,000 for personnel, \$106,000 for office expenses, and \$5,000 for industry educational efforts. Budgeted expenses for those items in 2002–2003 were \$85,000 for meetings, \$170,000 for compliance, \$185,000 for personnel, \$80,000 for office expenses, and \$2,500 for industry educational efforts, respectively.

The Board discussed the alternative of continuing the existing assessment rate, but concluded that would cause the amount in the operating reserve to be reduced to an unacceptable level.

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,