

The briefs are discussed throughout the following document where relevant.

The tart cherry industry's previous Federal Marketing Order began in 1971. It covered the States of Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland. In a continuance referendum conducted March 10-20, 1986, 64 percent of all cherry producers and 83 percent of all cherry handlers voted. Of those voting, 51 percent of the producers and 56 percent of the handlers favored terminating the cherry marketing order. Producers favoring termination represented 45 percent of the production volume represented in the referendum, while handlers favoring termination represented 40 percent of the processed volume represented.

Given the lack of producer and handler support for that tart cherry order, it was determined that it no longer fulfilled the Act's objective, and was terminated April 30, 1987.

#### Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Administrator of the Agricultural Marketing Service has considered the economic impact of this action on small entities. The record indicates that there are approximately 1,600 growers of tart cherries and 75 handlers who process cherries in the production area proposed to be regulated. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those whose annual receipts are less than \$5,000,000, and small agricultural producers as those having annual receipts of \$500,000. The majority of the tart cherry handlers and producers may be classified as small entities.

For practical purposes, there is no fresh market for tart cherries. Processors dry, freeze, can, juice, or puree pitted tart cherries. Market use averages are: 56 percent of the product becomes industrial grade frozen cherries; 16 percent goes into consumer-size cans of pie filling; 8 percent is used for commercial pie filling; 10 percent becomes juice concentrate; 2 percent is dried; and 8 percent goes into water packs.

Since 1971, there has been a marked transformation in the processing industry's structure. Currently, 75 percent of the crop is processed by farmer-owned cooperatives or grower-owned processing facilities; whereas in 1971, a substantial volume was processed by independent handlers. Processors, through their sales agents, market in all U.S. markets and export to Europe and Asia. There are no discrete

regional markets where cherries from a particular district could have a particular advantage, beyond nominal differences in transportation costs, which can often be overcome by price discounting.

The record evidence shows that economic adversity has caused more than 21 percent of Michigan's growers to withdraw from tart cherry farming. There were 1,183 Michigan commercial growers in 1986, compared to 933 in 1992. In 1992, Michigan growers had an average production of 238,000 pounds with 19 percent of those growers averaging 800,000 pounds, accounting for 66 percent of the total Michigan production. In states other than Michigan, there has also been a general decline in the number of commercial growers since 1986. There are fewer growers in other States besides Michigan, but the number of bearing acres has increased from 4.5 million in 1986, to more than 5 million in 1990.

Record evidence indicates that the demand for red tart cherries is inelastic at high and low levels of production, and relatively elastic in the middle range. At the extremes, during times of very low and very high production, different factors become operational. In very short crop years, such as 1991, there is limited but sufficient exclusive demand for cherries that can cause processor prices to double and grower prices to triple. In the event of large crops, there seems to be no price low enough to expand sales beyond about 275 million pounds of raw fruit in a single year.

Since 1982, annual sales have averaged 230 million pounds. Under the proposed order, total returns to growers could be increased by restricting supplies of red tart cherries available for sale by handlers during large crop years. Also, the alternate production characteristics of the tart cherry industry provide an opportunity to increase growers' total earnings by converting the excess production of large crop years into storable products that could constitute reserve pools. These pools would be liquidated in a year when the available supplies are short.

One of the main concerns of this recommended order is the short term annual variation in supply which is attributable to climatic factors that neither growers nor processors can control, and which leads to chaotic marketing conditions. Such climatic factors can result in highly unpredictable annual crop sizes, causing gluts and shortages of tart cherries. When gluts occur, large carryin inventories can decrease processor and

grower prices, regardless of the anticipated size of the oncoming year's crop. Many sales are consummated with large buyers well before the current crop year's supply and demand situation is clear (based on what can best be described as "Anticipated Supply", i.e., the sum of the carryin inventory and the United States Department of Agriculture crop forecast, available usually late in June, weeks before the actual crop harvest.)

These large, unrestricted carryin inventories and crop estimates can play a dominant role in setting the tone of the market in a given year. The proposed order is intended to lessen the impact of these inventories and estimates by establishing an "optimum supply," thereby reducing price swings to growers and buyers, and ultimately resulting in a stabilization and enhancement of the market.

The order would impose some reporting and record keeping requirements on handlers. Handler testimony indicated that the expected burden that would be imposed with respect to these requirements would be negligible. Most of the information that would be reported to the Board is already compiled by handlers for other uses and is readily available. Reporting and recordkeeping requirements issued under comparable marketing order programs impose an average annual burden on each regulated handler of about one hour. It is reasonable to expect that a comparable burden may be imposed under this proposed marketing order on the estimated 75 handlers of tart cherries. With respect to growers, they testified at the hearing that information required to be submitted to the Board for grower diversion is already collected and available from growers.

The Act requires that, prior to the issuance of a marketing order for tart cherries, a referendum be conducted among affected producers and processors to determine if they favor issuance of the order. The ballot material that would be used in conducting the referendum would be submitted to and approved by OMB before it is used. It is estimated that it would take an average of 10 minutes for each of the approximately 1,600 tart cherry growers and 75 tart cherry processors to complete the ballots. Additionally, it has been estimated that it would take approximately ten minutes for each handler to complete the marketing agreement.

Therefore, in compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction