

Board in the future, the Board would increase to 19 members. The quorum requirement, in this example, would subsequently be increased from 12 to 13. The quorum would be maintained at a level equal to two-thirds of the total Board membership.

Since the production area encompasses several states and spans the entire width of the country, it is reasonable that the Board be provided with the authority to recommend to the Secretary rules and regulations pertaining to the conduct of simultaneous meetings of groups of its members assembled at different locations. There may be times, due to inclement weather or similar situations, when the Board is unable to assemble at one location. Therefore, the proposed order should also provide for Board meetings conducted via telephone or some other means of communications. To eliminate potential confusion or misunderstanding that may arise when the Board meets at multiple locations, all such votes cast by the Board should be promptly confirmed in writing.

All meetings of the Board should be open to the public with the exception of special meetings held in executive session for consideration of personnel or certain compliance matters, or such other matters that the Secretary may approve. The Board should establish a means of providing advanced notice of meetings to tart cherry growers and handlers as well as other interested parties.

Board members and alternates will necessarily incur some expense while on Board business. Reasonable expenses, which may include those associated with travel, meals, and lodging, should be reimbursed to members while attending Board meetings or performing other duties under the order, in accordance with proposed § 930.33. It is also reasonable that the public member and alternate public member, in addition to reimbursement for incurred expenses, should receive compensation for time served at meetings and while performing other Board authorized duties. The public members and alternate members should be compensated while performing Board authorized duties because attending Board meetings may take them from their normal place of employment, one not associated with the tart cherry industry. Therefore, the order should provide that, except for the public member and alternate public member who shall receive such compensation as the Board may establish and the Secretary may approve, the members of the Board, and alternates when acting as

members, shall serve without compensation but shall be reimbursed for necessary and reasonable expenses as authorized by the Board. The Board at its discretion may request the attendance of one or more alternates at any or all meetings, notwithstanding the expected or actual presence of the respective member(s), and may pay their expenses as aforesaid. The Board may also request nonmembers to attend Board or subcommittee meetings to present an issue of interest to the Board or subcommittee. In this case, the Board should be authorized to pay such individuals' expenses for attending such meetings.

(c) As noted under § 930.31(e), the Board should be required to prepare a budget showing estimates of income and expenditures necessary for the administration of the marketing order during each fiscal year. The budget, including an analysis of its component parts, should be submitted to the Secretary sufficiently in advance of each fiscal period to provide for the Secretary's review and approval. The submitted budget should include a recommendation to the Secretary of a rate of assessment designed to secure all or part of the income required for such fiscal year.

The Board should be authorized under § 930.40 of the proposed order to incur such expenses as the Secretary finds are reasonable and likely to be incurred during each fiscal year. Such a provision is necessary to assure the maintenance and functioning of the Board, and to enable the Board to perform its duties in accordance with the provisions of the order. Necessary expenses would include, but would not be limited to, such administrative items as employee salaries and benefits; establishment of an office and equipping such office; telephone and mail services; and such business and travel related costs for the Board staff as transportation, lodging, and food. As discussed previously, expenses incurred by Board members in attending Board meetings should be a reimbursable expense as well. Other administrative expenses would include those related to inspection and marketing order compliance.

In addition, the order should authorize the Board to incur expenses related to production and processing research, market research and development, and promotional activities, including paid advertising, designed to assist, improve, or promote the efficient production, processing, marketing, distribution, and consumption of cherries.

The proponents testified it would be unlikely, in the foreseeable future, that any activity under § 930.48 would be initiated by the Board unless the current high level of research and promotion activity sponsored by the Cherry Marketing Institute and the New York Cherry Board tapers off. The proponents estimated that producers representing approximately 94 percent of tart cherry production on a national scale are currently financing various production research, development and promotional projects through assessments to these two organizations. The proponents thus testified that it would be unnecessary and redundant for the Board to finance similar activities while such a relatively high level of activity exists, but recommended including the authority for such future activity in the order.

The proposed order should state that expenses incurred due to any approved administrative costs and authorized research, development, and promotion projects could occur on an ongoing basis throughout the fiscal period.

With the Secretary's approval, the Board, under proposed § 930.41, should be authorized to levy annual assessments upon handlers to cover administrative costs and the costs of any research, development and promotion activities undertaken pursuant to § 930.48 that the Board recommends and the Secretary approves. However, as noted earlier, the proponents indicated that it would be highly unlikely that the Board would initiate recommendations for research, development, or promotion related assessments while a high percentage of tart cherry producers are financing such activities through other organizations. It would be reasonable to expect the Board to ensure that handlers in each district are well informed of the assessment rate and how such assessment rate would be allocated among the various approved expenses.

During each fiscal period, the Board would assess each handler on all cherries handled, unless subject to certain authorized exemptions, that handler's pro rata share of the administrative expenses, as well as any research, development and promotion expenses. Assessments should be calculated on the basis of pounds of cherries handled. However, the order should provide that the formula adopted by the Board and approved by the Secretary for determining the rate of assessment should compensate for differences in the number of pounds of cherries utilized for various cherry products. For example, the proponents testified that high value products such as frozen, canned or dried cherries would be assessed one amount and the