

low value products such as juice concentrate and puree would be assessed one half of the assessed amount of the high value product.

Testimony supported exempting any handler from paying assessments on cherries diverted as provided in § 930.59. This exemption from assessment would also include cherries represented by grower diversion certificates issued pursuant to § 930.58(b)(2) and acquired by handlers, and those cherries devoted to exempt uses under § 930.62.

In addition to administrative, research, development and promotion expenses, the proponents proposed that assessments be collected from all handlers in all districts to cover the costs of storing the primary inventory reserve. The proponents recommended that all handlers, whether regulated or non-regulated, pay storage cost assessments. Alternative proposals were also received into evidence recommending that such storage cost assessments not be levied. Considerable testimony was received throughout the hearing process concerning this issue.

The proponents testified that the entire industry would benefit from increased cherry prices during periods when a volume regulation is in effect, and not just the handlers and growers in the regulated districts. The proponents emphasized that non-regulated districts would be able to market one hundred percent of their marketable crop while the regulated districts would be required to withhold a determined amount of their marketable cherries from the market. The proponents argued that to excuse the non-regulated districts from paying for a portion of the regulated district's storage expenses would burden regulated handlers not only with such tangible costs, but also with the intangible cost of withholding product from the market. Therefore, in order to thus distribute the costs associated with the potential increase in the grower price of cherries, the proponents proposed that all districts, regulated or not, be assessed for annual storage costs.

However, opponents to the establishment of a storage cost assessment noted that, while the non-regulated districts do indeed have the opportunity to market one hundred percent of their crop, they enjoy such benefit primarily because they are producing less than the amount that would trigger volume regulation in their district, are not contributing to the oversupply situation, and have demonstrated the ability to market all of their crop. Opponents to the proposed storage assessment argued that such a

proposal merely provides a subsidy for those districts responsible for the oversupply situation.

Testimony received during the hearing process indicated that the cost of storage varies with different processed cherry products. For example, the costs associated with the storage of frozen product would generally run higher than the costs associated with the storage of canned, pureed, concentrated and dried product. Testimony also indicated that the cost differential between freezer storage and dry storage is considerable, with the cost of storing frozen product approximately twice that of storing non-frozen product. However, to effectuate the proponent's provision, storage assessments would have to be levied on all handlers such that the full cost of storage would be covered. Thus, under a storage assessment as proposed, handlers putting product into the lower cost, non-frozen storage packs would, to some degree, also be subsidizing handlers packing for freezer storage.

The preponderance of testimony supports the levying of assessments for administrative, research, development and promotion purposes on all handlers, but does not adequately justify the additional burden of an assessment designed to distribute individually assumed costs of storage to the entire cherry industry. Each regulated handler utilizing storage because of an established primary reserve should be independently responsible for any costs associated with such storage. Such an arrangement should also have the effect of increasing the efficiency of storing product since each handler, responsible for carrying the entire cost associated with storing their own product, would seek the most cost-effective storage facilities, would pack the cherry product in a form, frozen or non-frozen, that best matches his or her own individual economic situation, or could choose to divert the cherries into an approved exempt channel.

The proponents did not adequately show why it would be equitable for all handlers to share the cost of storing product when only a portion of them would be utilizing storage, how each producer or handler would benefit economically or practically from such an arrangement, nor why it would be cost effective for the Board or the assessed handlers to be burdened with the costs of administering such an assessment.

Sufficient evidence was not received to indicate that handlers would not be unduly burdened with the increased costs of reporting and record keeping that are directly attributable to a storage assessment, nor that the Board should

sustain expenses associated with the administration of a storage assessment.

The marketing order should contain the authority for the Board to incur administrative expenses and such expenses related to approved research, development, and promotion activities, as well as the authority for the Board to levy assessments on all handlers to cover such expenses. The order should not, however, authorize the Board to incur expenses nor levy assessments for any costs associated with the storage of reserve cherries. The Board should be authorized to pay inspection costs for reserve cherries from assessments collected from all handlers for the administration of the order.

The rate of assessment should be established by the Secretary on the basis of the Board's recommendation and other available information. However, in the event that an assessment rate is established which does not generate sufficient income to pay for the approved expenses, the Board should be authorized to recommend to the Secretary an increase in the rate of assessment in order to secure sufficient funds. The Secretary may approve an assessment rate increase, and such increase should be applicable to all tart cherries handled during the fiscal year to which that assessment rate applies.

The Board should be authorized to accept advance payment of assessments so that it may pay expenses which become due before assessment income is normally received. This would give the Board more flexibility in paying obligated expenses, particularly in the first part of a fiscal year before assessment funds are received.

The Board should also be able to borrow money to meet administrative expenses that would be incurred before assessment income is sufficient to defray such expenses. However, the Board should not borrow money to pay obligations if sufficient funds already exist in the Board's reserve fund or in other Board accounts.

If a handler does not pay any assessment by the date it is due, the order should provide that the late assessment may be subject to a late payment charge or an interest charge, or both, at rates set by the Board with the Secretary's approval. Such charges should be set at rates established to cover additional costs that may be incurred by the Board in attempting to collect overdue assessments, and should encourage timely payments. The period in which payments would be considered late, and late payment or interest charges incurred, should be recommended by the Board and approved by the Secretary.