

If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess should be established as a reserve or refunded pro rata to the handlers, under proposed § 956.42. The Board should be authorized to carry over excess assessment income into the following fiscal period as a reserve. If such excess income is not carried over as a reserve, handlers should be entitled to a refund proportionate to the assessments each handler paid. The proposed order should indicate that the amount held in reserve for administrative, research, development and promotion expenses should be held at or below an amount equal to approximately one year's operational expenses.

One purpose of the reserve fund would be to provide stability in the administration of the order in the case of a short crop. Also, establishing a reserve should minimize the necessity of the Board borrowing money at the beginning of a fiscal year or raising an assessment rate during a season of less than anticipated production.

Reserve funds could also be used to cover necessary liquidation expenses in the event the order is terminated. Upon such termination, any funds not needed to defray liquidation expenses should be disposed of as determined by the Secretary. To the extent possible, however, these funds should be returned pro rata to the handlers from whom they were collected.

All funds collected by the Board through assessments or any other provision of the order should be used only for the purposes set forth in the order. The Secretary should at all times have authority to require the Board, its members and alternates, and its employees and agents to account for all receipts, disbursements, and property and records of the Board. Likewise, when any of the above individuals ceases to act in his or her official position, that person should account for all receipts, disbursements, property or records of the Board for which such person has been responsible. In the event the order is terminated or becomes inoperative, the Board should appoint, with the approval of the Secretary, one or more trustees for holding records, funds or other property of the Board.

(d) Under proposed § 930.48, the order should authorize the Board to establish and provide for the establishment of production research, marketing research and development, and marketing promotion projects, including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption,

or efficient production and processing of tart cherries. Funding for these programs should come from any authorized receipts of the Board including assessment income, voluntary contributions and miscellaneous income such as interest.

The Board should have the authority to initiate new production and marketing research projects, as well as to contribute to research which may currently be taking place.

As discussed previously, marketing order proponents testified that this authority would not be used unless existing State programs for these purposes were terminated or their operations suspended. Currently, Michigan, Utah, Wisconsin, and New York have assessment programs of \$10 to \$15 per ton that are paid by growers to support the Cherry Marketing Institute (CMI) and the New York Cherry Board. The CMI represents growers in Michigan, Utah, and Wisconsin. Both the New York Cherry Board and CMI conduct substantial domestic generic promotion programs for tart cherries. At this time the tart cherry industry does not support any brand advertising. These activities are supported only by the various finished product manufacturers.

The States of Washington, Oregon, and Pennsylvania have no state programs at this time to authorize assessments for this purpose. The proponents testified that about 94 percent of the tart cherry industry is now supporting marketing and production research and development, and promotion under the various state organizations.

The record indicates that some of the primary responsibilities of the CMI are to fund projects relating to: short-term production research directed at improving current horticultural practices; long-term research directed at developing new varieties of cherries with increased market appeal and greater resistance to pests and climate factors; domestic promotion activities covering food service and consumer markets; export development in Japan, Korea, and Taiwan; new product applications; and nutritional evaluations. These are also examples of the types of programs that could be implemented under the marketing order. When this authority is utilized the assessments would be collected, pursuant to § 930.41(a).

The record does not indicate the amount of assessment funds that may be allotted for research and promotion programs. The Board should have the responsibility to determine the amount of funds spent on each program each

year. Such determination should be based on the needs of the industry each year. The amount of funds to be spent on research and promotion programs would be included in the annual budget required to be submitted to the Secretary for review and approval.

All research and promotion projects to be conducted under the order in a given fiscal period should be required to be submitted by the Board to the Secretary for approval prior to being undertaken. Further, the Board should be required to report at least annually on the progress of each project and at the conclusion of each project. Such reports should be made to the Secretary.

The proponents did not provide specific testimony on paid advertising authority. However, the record supports the proposition that such authority should be added to allow the Board to implement such a program in the future, if necessary. Therefore, the authority is proposed to be contained in the order.

(e) In accordance with proposed § 930.44, the Board should have the authority to recommend regulations to the Secretary regarding minimum quality and inspection requirements. Also, the Board should be authorized to recommend to the Secretary the amendment, modification, termination, or suspension of any regulation issued under this part, when deemed necessary.

Recent technological improvements in the industry have enabled processors to install sophisticated equipment to reduce pit counts and improve color sorting. As the technology improves further, the Board should have the authority to respond by adopting additional quality standards for cherries, especially as to pit count. The proponents testified that any regulation that could be implemented to cause a reduction of the pit counts in cherries consumed by the public would be beneficial to growers and consumers. The proponents further testified that the sale of poor quality cherries creates image and marketing problems for the entire tart cherry industry, both domestically and internationally. Therefore, the Board should have the authority to implement quality regulations so that the industry can provide a consistent, quality product to consumers.

Marketing order proponents proposed that when quality control regulations are implemented, no handler should be allowed to process cherries into manufactured products or sell manufactured products in the current of commerce unless the cherries used in such products meet the applicable requirements. The inspection and