

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 929**

[Docket No. AO-341-A6; FV02-929-1]

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Hearing on Proposed Amendment of Marketing Agreement and Order No. 929**AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Notice of hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to consider amending Marketing Agreement and Order No. 929, hereinafter referred to as the "order." The order regulates the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The purpose of the hearing is to receive evidence on a number of amendments proposed by the Cranberry Marketing Committee (Committee), which is responsible for local administration of the order, and other interested parties. These proposals are intended to improve the administration, operation, and functioning of the order.

DATES: The hearing dates are:

1. May 20, 2002, 9 a.m. to 5 p.m., and continuing on May 21, 2002, at 9 a.m., if necessary, Plymouth, Massachusetts.

2. May 23, 2002, 9 a.m. to 5 p.m., Bangor, Maine.

3. June 3, 2002, 9 a.m. to 5 p.m., and continuing on June 4, 2002, at 9 a.m., if necessary, Wisconsin Rapids, Wisconsin.

4. June 6, 2002, 9 a.m. to 5 p.m. and continuing on June 7, 2002 at 9 a.m., if necessary, Portland, Oregon.

ADDRESSES: The hearing locations are:

1. Plymouth—Sheraton Inn, 180 Water Street, Plymouth, Massachusetts 02360.

2. Bangor—Bangor Motor Inn, Banquet and Conference Center, Hogan Road, Bangor, Maine 04401.

3. Wisconsin Rapids—Hotel Mead and Conference Center, 451 East Grand Avenue, Wisconsin Rapids, Wisconsin 54494.

4. Portland—Edith Green-Wendell Wyatt Federal Building, 1220 SW 3rd Avenue, Room 322, Portland, Oregon 97204.

FOR FURTHER INFORMATION CONTACT:

Kathleen M. Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

SUPPLEMENTARY INFORMATION: This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the proposals.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

At a Committee meeting in August 2001, the Committee recommended

proposed amendments to the cranberry marketing order. The Committee's request for hearing was submitted to USDA on November 5, 2001. A request to consider amendments to the cranberry marketing order was also received on November 5, 2001, from an attorney representing two cranberry handlers, Clement Pappas & Company, Inc. and Cliffstar Corporation.

In addition, USDA issued a press release on January 15, 2002, that invited cranberry growers, handlers and other interested persons to propose amendments to the marketing order. Two persons submitted additional proposals, the Wisconsin Cranberry Cooperative and Doanne Andresen.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

Proposals Submitted by the Cranberry Marketing Committee

The Committee proposes to revise seven areas of program operations. In addition, the Committee recommended that the amendment proceeding be expedited whereby the recommended decision would be omitted in order to have any approved amendments in place as soon as possible. This can only be done if the Secretary finds, on the basis of the record, that due and timely execution of his or her functions imperatively and unavoidably requires such omission. Participants at the hearing are therefore invited to present testimony on this recommendation. The amendments proposed by the Committee are summarized below.

Administrative Body

1. Increase Committee membership to 13 industry members, 1 public member, 9 industry alternate members and 1 public alternate member. The current Committee is composed of 7 industry members, each with an alternate and 1 public member and alternate. This proposal would also incorporate a "swing" position whereby the entity (either independent or cooperative) which sells more than 50 percent of the total volume sold is assigned an additional seat.

Related proposed changes would modify §§ 929.22 and 929.23 to incorporate nomination and selection procedures to reflect the change in Committee membership. The change to § 929.22 would also allow the Committee to request tax identification numbers for voting purposes and authorize mail nominations for independent members.

Another related change is proposed in quorum and voting requirements to reflect the increased number of Committee members. In addition, a related change is proposed to reset the clock for tenure limitations to correspond to the change in Committee members.

2. Clarify how alternates may fill positions in any member's absence.

3. Authorize the Committee to reestablish districts within the production area and reapportion grower membership among the various districts.

Volume Regulations

4. Simplify criteria considered and set forth more appropriate dates in establishing the Committee's marketing policy.

5. Revise the formula for calculating sales histories under the producer allotment program in § 929.48. The revision includes providing additional sales history to compensate growers for expected production on younger acres. This proposed change to § 929.48 would also allow for more flexibility in recommending changes to the formula; add authority for segregating fresh and processed sales; and allow compensation for catastrophic events that impact a grower's crop for more than 2 years.

6. Remove specified dates relating to when information is required to be filed by growers/handlers in order to issue annual allotments.

7. Allow growers to transfer allotment during a year of volume regulation. Currently, growers must lease their acreage in order to transfer allotment.

8. If volume regulation is recommended by the Committee, require the Committee to recommend producer allotment program by March 1 each year and to recommend a withholding program as soon as practicable after August 1.

9. Authorize the implementation of the producer allotment and withholding programs in the same year.

10. Add specific authority to exempt fresh, organic or other forms of cranberries from order provisions.

11. Allow for greater flexibility in establishing other outlets for excess cranberries.

12. Update and streamline the withholding volume control provisions.

Production Area

13. Add Maine, Delaware, and the entire State of New York to the production area.

Paid Advertising

14. Add authority for paid advertising under the research and development provision of the order.

Definition of Cranberry

15. Add the species *Vaccinium oxycoccus* to the definition of cranberry. Currently, only the species *Vaccinium macrocarpon* is included in the definition of cranberry.

Definition of Handle

16. Modify the definition of handle to clarify that transporting fresh cranberries to foreign countries is considered handling and include the temporary cold storage or freezing of withheld cranberries as an exemption from handling.

Reporting Requirements

17. Relocate some reporting provisions to a more suitable provision and streamline the language relating to verification of reports and records.

Deletion of Obsolete Provision

18. Delete an obsolete provision from the order relating to preliminary regulation.

Proposals Submitted by Stephen L. Lacey on Behalf of Clement Pappas and Company, Inc., and Cliffstar Corporation

Two handlers proposed amendments in two areas of program operations. These proposed amendments are summarized below.

Administrative Body

19. Require Committee member disclosure of non-regulated cranberry production.

20. Alter the way nominations of cooperative members on the Committee are conducted by requiring cooperative nominees to be selected through an election process administered by the Committee. Currently, the cooperative nominates its members without an election process.

Volume Regulations

21. Incorporate a handler marketing pool under the producer allotment program to allow handlers without surplus access to cranberries to meet customer needs. This proposal would allow purchases from the pool by non-surplus handlers at the same price the handlers pay their growers.

22. Modify the withholding volume regulations by allowing growers to be compensated under the buy-back provisions if any funds are returned to the handler by the Committee.

Proposals Submitted by Wisconsin Cranberry Cooperative

The Wisconsin Cranberry Cooperative, a cranberry cooperative marketing association, proposed revisions in two areas of program operations. These proposed amendments are summarized below.

Administrative Body

23. Recognize that there are more than one cooperative marketing associations in the industry and allow all cooperatives the right to be represented on the Committee.

24. Establish a nomination process for cooperative marketing associations.

Outlets for Excess Cranberries

25. Expand the noncompetitive outlets for excess cranberries by clearly defining what countries are authorized for foreign development with excess cranberries.

26. Establish a limit on foreign markets eligible for shipments of excess berries as foreign markets with a total annual consumption of less than the equivalent of 20,000 barrels of cranberries and/or cranberry products.

Proposal Submitted by Doanne Andresen

Doanne Andresen, a cranberry grower from Duxbury, Massachusetts, proposed the following amendment.

27. Authorize an exemption from order provisions for the first 1000 barrels of cranberries produced by each grower.

28. The Fruit and Vegetable Programs of the Agricultural Marketing Service (AMS) proposes to allow such conforming changes to the order which may be necessary as a result of the hearing.

None of these proposals have received the approval of USDA. The Committee and the other interested parties believe that the proposed changes would improve the administration, operation, and functioning of the order.

The public hearing is held for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order and any appropriate modifications thereof; (ii) determining whether there is a need for the proposed amendments to the order; (iii) determining the economic impact of proposed amendments on the industry in the production area and on the public affected by the amendments; and (iv) determining whether the proposed amendments or any appropriate modifications thereof will tend to effectuate the declared policy of the Act.

Testimony is invited at the hearing on all the proposals and recommendations contained in this notice, as well as any appropriate modifications or alternatives.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel, except any designated employees of the General Counsel assigned to represent the Committee in this rulemaking proceeding; and the Fruit and Vegetable Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals.

Proposals submitted by the Cranberry Marketing Committee:

Administrative Body

Proposal No. 1

Revise § 929.20 to read as follows:

§ 929.20 Establishment and membership.

(a) There is hereby established a Cranberry Marketing Committee consisting of 13 industry members, and 9 industry alternate members. Except as hereafter provided, members and alternate members shall be growers or employees, agents, or duly authorized representatives of growers.

(b) The committee shall include one public member and one public alternate member nominated by the committee and selected by the Secretary. The

public member and public alternate member shall not be a cranberry grower, processor, handler, or have a financial interest in the production, sales, marketing or distribution of cranberries or cranberry products. The committee, with the approval of the Secretary, shall prescribe qualifications and procedures for nominating the public member and public alternate member.

(c) Members shall represent each of the following subdivisions of the production areas in the number specified in Table 1. Members shall reside in the designated district of the production area from which they are nominated and selected. Provided, that there shall also be one cooperative or independent member-at-large who may be nominated from any of the marketing order districts.

District 1: The States of Massachusetts, Maine, Rhode Island, Connecticut; and New York.

District 2: The States of New Jersey and Delaware.

District 3: The States of Wisconsin, Michigan, and Minnesota.

District 4: The States of Oregon and Washington.

TABLE 1

Districts	Cooperative members	Cooperative alternates	Independent members	Independent alternates
1	2	1	2	1
2	1	1	1	1
3	2	1	2	1
4	1	1	1	1
Any	1 cooperative or independent member-at-large			

(d) The committee may establish, with the approval of the Secretary, rules and regulations for the implementation and operation of this section.

Revise § 929.21 to read as follows:

§ 929.21 Term of office.

(a) The term of office for each member and alternate member of the committee shall be for two years, beginning on August 1 of each even-numbered year and ending on the second succeeding July 31. Members and alternate members shall serve the term of office for which they are selected and have been qualified or until their respective successors are selected and have been qualified.

(b) Beginning on August 1 of the even-numbered year following the adoption of this amendment, committee members shall be limited to three consecutive terms. This limitation on tenure shall not include service on the committee prior to the adoption of this amendment and shall not apply to alternate members.

(c) Members who have served three consecutive terms must leave the committee for at least one full term before becoming eligible to serve again. The consecutive terms of office for alternate members shall not be so limited.

Revise § 929.22 to read as follows:

§ 929.22 Nomination.

(a) Beginning on June 1 of the even-numbered year following the adoption of this amendment, the committee shall hold nominations in accordance with this section.

(b) Whenever any cooperative marketing organization sells more than fifty percent of the total volume of cranberries sold during the fiscal period in which nominations for membership on the committee are made, the cooperative or growers affiliated therewith shall nominate:

(1) Six qualified persons for cooperative members and four qualified persons for cooperative alternate members of the committee. Nominee(s) for cooperative member and cooperative

alternate member shall represent growers from each of the marketing order districts designated in § 929.20.

(2) The seventh cooperative member shall be referred to as member-at-large. The member-at-large may be nominated from any of the marketing order districts.

(3) Six qualified persons for independent members and four qualified persons for independent alternate members of the committee shall be nominated by those growers who market their cranberries through other than cooperative marketing organizations. Nominees for independent member and independent alternate member shall represent growers from each of the marketing order districts as designated in § 929.20(c).

(c) Whenever any cooperative marketing organization sells less than fifty percent of the total volume of cranberries sold during the fiscal period in which nominations for membership on the committee are made, the cooperative or growers affiliated therewith, shall nominate:

(1) Six qualified persons for cooperative members and four qualified persons for cooperative alternate members of the committee. Nominees for member and alternate member shall represent growers from each of the marketing order districts as designated in § 929.20(c).

(2) Six qualified persons for independent members and four qualified persons for independent alternate members of the committee shall be nominated by those growers who market their cranberries through other than cooperative marketing organizations. Nominees for independent member and independent alternate member shall represent growers from each of the marketing order districts as designated in § 929.20(c).

(3) The seventh member nominee shall be referred to as the independent member-at-large. The member-at-large may be nominated from any of the marketing order districts.

(d) Nominations of qualified independent member nominees shall be made through a call for nominations sent to all eligible growers residing within each of the marketing order districts. The call for such nominations shall be by such means as are recommended by the committee and approved by the Secretary.

(1) The names of all eligible nominees from each district received by the committee, by such date and in such form as recommended by the committee and approved by the Secretary, will

appear on the nomination ballot for that district.

(2) Election of the independent member nominees and independent alternate member nominees shall be conducted by mail ballot.

(3) Eligible independent growers shall participate in the election of nominees from the district in which they reside.

(4) When voting for independent member nominees, each eligible grower shall be entitled to cast one vote on behalf of him/herself.

(5) The nominee receiving the highest plurality of votes cast in districts two and four shall be the independent member nominee from that district. The nominee receiving the second highest plurality of votes cast in districts two and four shall be the independent alternate member from that district.

(6) The nominees receiving the highest and second highest plurality of votes cast in districts one and three shall be the independent member nominees from that district. The nominee receiving the third highest plurality of votes cast in districts one and three shall be the independent alternate member from that district.

(e) Nominations for the independent member-at-large shall be made through a call for nominations sent to all eligible growers residing within the marketing order districts. The call for such nominations shall be by such means as recommended by the committee and approved by the Secretary.

(1) Election of the member-at-large shall be held by mail ballot sent to all eligible independent growers in the marketing order districts by such date and in such form as recommended by the committee and approved by the Secretary.

(2) Eligible growers casting ballots may vote for a member-at-large nominee from marketing order districts other than where they produce cranberries.

(3) When voting for the member-at-large nominee, each eligible grower shall be entitled to cast one vote on behalf of him/herself.

(4) The nominee receiving the highest plurality of votes cast shall be designated the independent member-at-large nominee. The nominee receiving the second highest plurality of votes cast shall be declared the independent alternate member-at-large nominee.

(f) The committee may request that growers provide their federal tax identification number(s) in order to determine voting eligibility.

(g) The names and addresses of all nominees shall be submitted to the Secretary for selection no later than July 1 of each even-numbered year.

(h) The committee, with the approval of the Secretary, may issue rules and regulations to carry out the provisions or to change the procedures of this section.

Revise § 929.23 to read as follows:

§ 929.23 Selection.

(a) From nominations made pursuant to § 929.22(a), the Secretary shall select members and alternate members to the committee on the basis of the representation provided for in § 929.20 and in paragraph (b) or (c) of this section.

(b) Whenever any cooperative marketing organization sells more than 50 percent of the total volume of cranberries sold during the fiscal year in which nominations for membership on the committee are made, the Secretary shall select:

(1) Six cooperative members and four cooperative alternate members from nominations made pursuant to § 929.22(b)(1).

(2) One cooperative member-at-large from nominations made pursuant to § 929.22(b)(2), and

(3) Six independent members and four independent alternate members from growers who market their cranberries through other than cooperative marketing organizations made pursuant to § 929.22(b)(3).

(c) Whenever any cooperative marketing organization sells less than 50 percent of the total volume of cranberries sold during the fiscal year in which nominations for membership on the committee are made, the Secretary shall select:

(1) Six cooperative members and four cooperative alternate members from nominations made pursuant to § 929.22(c)(1).

(2) Six independent members and four independent alternate members from nominations made pursuant to § 929.22(c)(2).

(3) One independent member-at-large from nominations made pursuant to § 929.22(c)(3).

Revise § 929.32 to read as follows:

§ 929.32 Procedure.

(a) Ten members of the committee, or alternates acting for members, shall constitute a quorum. All actions of the committee shall require at least ten concurring votes: Provided, if the public member or the public alternate member acting in the place and stead of the public member, is present at a meeting, then eleven members shall constitute a quorum. Any action of the committee on which the public member votes shall require eleven concurring votes. If the public member abstains from voting on

any particular matter, ten concurring votes shall be required for an action of the committee.

(b) The committee may vote by mail, telephone, fax, telegraph, or other electronic means; Provided that any votes cast by telephone shall be confirmed promptly in writing. Voting by proxy, mail, telephone, fax, telegraph, or other electronic means shall not be permitted at any assembled meeting of the committee.

(c) All assembled meetings of the committee shall be open to growers and handlers. The committee shall publish notice of all meetings in such manner as it deems appropriate.

Proposal No. 2

Revise § 929.27 to read as follows:

§ 929.27 Alternate members.

An alternate member of the committee, shall act in the place and stead of a member during the absence of such member, and may perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, an alternate shall act for him/her until a successor for such member is selected and has qualified. In the event both a member and alternate member from the same marketing order district are unable to attend a committee meeting, the committee may designate any other alternate member to serve in such member's place and stead at that meeting provided that:

(1) A cooperative alternate member shall not serve in place of an independent member or the public member.

(2) An independent alternate member shall not serve in place of a cooperative member or the public member.

(3) A public alternate member shall not serve in place of a cooperative member or independent member.

Proposal No. 3

Add a new § 929.28 to read as follows:

§ 929.28 Redistricting.

(a) The committee, with the approval of the Secretary, may reestablish districts within the production area and reapportion membership among the districts. In recommending such changes, the committee shall give consideration to:

(1) The relative volume of cranberries produced within each district.

(2) The relative number of cranberry producers within each district.

(3) Cranberry acreage within each district.

(4) Other relevant factors.

(b) The committee may establish, with the approval of the Secretary, rules and

regulations for the implementation and operation of this section.

Volume Regulations

Proposal No. 4

Revise § 929.46 to read as follows:

§ 929.46 Marketing policy.

(a) As soon as practicable before March 1 the committee shall estimate the marketable quantity for the following crop year.

(b) Prior to August 31 of each crop-year, the committee shall submit to the Secretary a report setting forth its marketing policy for the crop-year. Such marketing policy shall contain the following information for the current crop year:

(1) The estimated total production of cranberries;

(2) The expected general quality of such cranberry production;

(3) The estimated carryover, as of September 1, of frozen cranberries and other cranberry products;

(4) The expected demand conditions for cranberries in different market outlets;

(5) The recommended desirable total marketable quantity of cranberries including a recommended adequate carryover into the following crop year of frozen cranberries and other cranberry products;

(6) Other factors having a bearing on the marketing of cranberries.

Proposal No. 5

Revise § 929.48 to read as follows:

§ 929.48 Sales history.

(a) A sales history for each grower shall be computed by the committee in the following manner:

(1) For growers with acreage with 6 or more years of sales history, the sales history shall be computed using an average of the highest four of the most recent six years of sales.

(2) For growers with 5 years of sales history from acreage planted or replanted 2 years prior to the first harvest on that acreage, the sales history is computed by averaging the highest 4 of the 5 years.

(3) For growers with 5 years of sales history from acreage planted or replanted 1 year prior to the first harvest on that acreage, the sales history is computed by averaging the highest 4 of the 5 years and shall be adjusted as provided in paragraph (6).

(4) For a grower with 4 years or less of sales history, the sales history shall be computed by dividing the total sales from that acreage by 4 and shall be adjusted as provided in paragraph (6).

(5) For growers with acreage having no sales history, or for the first harvest

of replanted acres, the sales history will be the average first year yields (depending on whether first harvested 1 or 2 years after planting or replanting) as established by the committee and multiplied by the number of acres.

(6) In addition to the sales history computed in accordance with paragraphs (3) and (4) of this section, additional sales history shall be assigned to growers using the formula $x=(a-b)/c$. The letter "x" constitutes the additional number of barrels to be added to the grower's sales history. The value "a" is the expected yield for the forthcoming year harvested acreage as established by the committee. The value "b" is the total sales from that acreage as established by the committee divided by four. The value "c" is the number of acres planted or replanted in the specified year. For acreage with five years of sales history: a = the expected yield for the forthcoming sixth year harvested acreage (as established by the committee); b = an average of the most recent 4 years of expected yields (as established by the committee); and c = the number of acres with 5 years of sales history.

(b) A new sales history shall be calculated for each grower after each crop year, using the formulas established in paragraph (a) of this section, or such other formula(s) as determined by the committee, with the approval of the Secretary.

(c) The committee, with the approval of the Secretary, may adopt regulations to alter the number and identity of years to be used in computing sales histories, including the number of years to be used in computing the average. The committee may establish, with the approval of the Secretary, rules and regulations necessary for the implementation and operation of this section.

(d) Sales histories, starting with the crop year following adoption of this part, shall be calculated separately for fresh and processed cranberries. The amount of fresh fruit sales history may be calculated based on either the delivered weight of the barrels paid for by the handler (excluding trash and unusable fruit) or on the weight of the fruit paid for by the handler after cleaning and sorting for the retail market. Handlers using the former calculation shall allocate delivered fresh fruit subsequently used for processing to growers' processing sales. Fresh fruit sales history, in whole or in part, may be added to process fruit sales history with the approval of the committee in the event that the grower's fruit does not qualify as fresh fruit at delivery.

(e) The committee may recommend rules and regulations to adjust a grower's sales history to compensate for catastrophic events that impact the grower's crop for more than 2 years.

Proposal No. 6

Revise § 929.49 to read as follows:

§ 929.49 Marketable quantity, allotment percentage, and annual allotment.

(a) Marketable quantity and allotment percentage. If the Secretary finds, from the recommendation of the committee or from other available information, that limiting the quantity of cranberries purchased from or handled on behalf of growers during a crop year would tend to effectuate the declared policy of the Act, the Secretary shall determine and establish a marketable quantity for that crop year.

(b) The marketable quantity shall be apportioned among growers by applying the allotment percentage to each grower's sales history, established pursuant to § 929.48. Such allotment percentage shall be established by the Secretary and shall equal the marketable quantity divided by the total of all growers' sales histories including the estimated total sales history for new growers. Except as provided in paragraph (g) of this section, no handler shall purchase or handle on behalf of any grower cranberries not within such grower's annual allotment.

(c) In any crop year in which the production of cranberries is estimated by the committee to be equal to or less than its recommended marketable quantity, the committee may recommend that the Secretary increase or suspend the allotment percentage applicable to that year. In the event it is found that market demand is greater than the marketable quantity previously set, the committee may recommend that the Secretary increase such quantity.

(d) *Issuance of annual allotments.* The committee shall require all growers to qualify for such allotment by filing with the committee a form wherein growers include the following information:

(1) The amount of acreage which will be harvested;

(2) a copy of any lease agreement covering cranberry acreage;

(3) The name of the handler(s) to whom their annual allotment will be delivered;

(4) Such other information as may be necessary for the implementation and operation of this section.

(e) On or before such date as determined by the committee, with the approval of the Secretary, the committee shall issue to each grower an annual

allotment determined by applying the allotment percentage established pursuant to paragraph (b) of this section to the grower's sales history.

(f) On or before such date as determined by the committee, with the approval of the Secretary, in which an allotment percentage is established by the Secretary, the committee shall notify each handler of the annual allotment that can be handled for each grower whose total crop will be delivered to that handler. In cases where a grower delivers a crop to more than one handler, the grower must specify how the annual allotment will be apportioned among the handlers.

(g) Growers who do not produce cranberries equal to their computed annual allotment shall transfer their unused allotment to such growers' handlers. The handler shall equitably allocate the unused annual allotment to growers with excess cranberries who deliver to such handler. Unused annual allotment remaining after all such transfers have occurred shall be reported and transferred to the committee by such date as established by the committee with the approval of the Secretary.

(h) Handlers who receive cranberries more than the sum of their growers' annual allotments have "excess cranberries," pursuant to § 929.59, and shall so notify the committee. Handlers who have remaining unused allotment pursuant to paragraph (g) of this section are "deficient" and shall so notify the committee. The committee shall allocate unused allotment to all handlers having excess cranberries, proportional to each handler's total allotment.

(i) Growers who decide not to grow a crop, during any crop year in which a volume regulation is in effect, may choose not to assign their allotment to a handler.

(j) The committee may establish, with the approval of the Secretary, rules and regulations necessary for the implementation and operation of this section.

Proposal No. 7

Revise § 929.50 to read as follows:

§ 929.50 Transfers.

(a) Leases and sales of cranberry acreage.

(1) When total or partial lease of cranberry acreage occurs, sales history attributable to the acreage being leased shall remain with the lessor.

(2) *Total sale of cranberry acreage.* When there is a sale of a grower's total cranberry producing acreage, the committee shall transfer all owned acreage and all associated sales history

to such acreage to the buyer. The seller and buyer shall file a sales transfer form providing the committee with such information as may be requested so that the buyer will have immediate access to the sales history computation process.

(3) *Partial sale of cranberry acreage.*

When less than the total cranberry producing acreage is sold, sales history associated with that portion of the acreage being sold shall be transferred with the acreage. The seller shall provide the committee with a sales transfer form containing, but not limited to the distribution of acreage and the percentage of sales history, as defined in § 929.48(a)(1), attributable to the acreage being sold.

(4) No sale of cranberry acreage shall be recognized unless the committee is notified in writing.

(b) *Allotment Transfers.* During a year of volume regulation, a grower may transfer all or part of his/her allotment to another grower. If a lease is in effect the lessee shall receive allotment from lessor attributable to the acreage leased. Provided, That the transferred allotment shall remain assigned to the same handler and that the transfer shall take place and the committee shall be notified prior to August 1 of the year of volume regulation, or such other date as recommended by the Committee and approved by the Secretary. Transfers of allotment between growers having different handlers may occur with the consent of both handlers.

(c) The committee may establish, with the approval of the Secretary, rules and regulations, as needed, for the implementation and operation of this section.

Proposal No. 8

Revise § 929.51 to read as follows:

§ 929.51 Recommendations for regulation.

(a) If the committee deems it advisable to regulate the handling of cranberries in the manner provided in § 929.52, it shall so recommend to the Secretary by the following appropriate dates:

(i) Allotment percentage program by no later than March 1;

(ii) Withholding program as soon as practicable after August 1. Such recommendation shall include the free and restricted percentages for the crop year.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply of and demand for cranberries during the period when it is proposed that such regulation should be imposed.

With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is based and any other information the Secretary may request.

Proposal No. 9

Revise § 929.52 to read as follows:

§ 929.52 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of cranberries whenever the Secretary finds, from the recommendations and information submitted by the committee, or from other available information, that such regulation will tend to effectuate the declared policy of the Act. Such regulation shall limit the total quantity of cranberries which may be handled during any fiscal period by fixing the free and restricted percentages, applied to cranberries acquired by handlers in accordance with § 929.54, and/or by establishing an allotment percentage in accordance with § 929.49.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary, and the committee shall promptly give notice thereof to handlers.

Proposal No. 10

Revise § 929.58 to read as follows:

§ 929.58 Minimum exemption.

(a) Upon the basis of the recommendation and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements pursuant to this part the handling of cranberries in such minimum quantities as the committee, with the approval of the Secretary, may prescribe.

(b) Upon the basis of the recommendation and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements pursuant to this part the handling of such forms or types of cranberries as the committee, with the approval of the Secretary, may prescribe. Forms of cranberries could include cranberries intended for fresh sales or organically grown cranberries.

(c) The committee, with the approval of the Secretary, shall prescribe such rules, regulations, and safeguards as it may deem necessary to ensure that cranberries handled under the provisions of this section are handled only as authorized.

Proposal No. 11

Revise § 929.61 to read as follows:

§ 929.61 Outlets for excess cranberries.

(a) *Noncommercial outlets.* Excess cranberries may be disposed of in noncommercial outlets that the committee finds, with the approval of the Secretary, meet the requirements outlined in paragraph (c) of this section. Noncommercial outlets include, but are not limited to:

(1) Charitable institutions; and

(2) Research and development projects.

(b) *Noncompetitive outlets.* Excess cranberries may be sold in outlets that the committee finds, with the approval of the Secretary, are noncompetitive with established markets for regulated cranberries and meet the requirements outlined in paragraph (c) of this section. Noncompetitive outlets include but are not limited to:

(1) Any nonhuman food use; and

(2) Other outlets established by the committee with the approval of the Secretary.

(c) *Requirements.* The handler disposing of or selling excess cranberries into noncompetitive or noncommercial outlets shall meet the following requirements, as applicable:

(1) *Charitable institutions.* A statement from the charitable institution shall be submitted to the committee showing the quantity of cranberries received and certifying that the institution will consume the cranberries;

(2) *Research and development projects.* A report shall be given to the committee describing the project, quantity of cranberries contributed, and date of disposition;

(3) *Nonhuman food use.* Notification shall be given to the committee at least 48 hours prior to such disposition;

(4) *Other outlets established by the committee with the approval of the Secretary.* A report shall be given to the committee describing the project, quantity of cranberries contributed, and date of disposition.

(d) The storage and disposition of all excess cranberries withheld from handling shall be subject to the supervision and accounting control of the committee.

(e) The committee, with the approval of the Secretary, may establish rules and regulations for the implementation and operation of this section.

Proposal No. 12

Revise § 929.54 to read as follows:

§ 929.54 Withholding.

(a) Whenever the Secretary has fixed the free and restricted percentages for any fiscal period, as provided for in § 929.52(a), each handler shall withhold

from handling a portion of the cranberries he acquires during such period.

(b) Withheld cranberries may meet such standards of grade, size, quality, or condition as the committee, with the approval of the Secretary, may prescribe. The committee or representatives of the committee shall inspect all such cranberries. A certificate of such inspection shall be issued which shall include the name and address of the handler, the number and type of containers in the lot, the location where the lot is stored, identification marks (including lot stamp, if used), and the quantity of cranberries in such lot that meet the prescribed standards. Promptly after inspection and certification, each such handler shall submit to the committee a copy of the certificate of inspection issued with respect to such cranberries.

(c) Any handler who withholds from handling a quantity of cranberries in excess of that required pursuant to paragraph (a) of this section shall have such excess quantity credited toward the next fiscal year's withholding obligation, if any B provided that such credit shall be applicable only if the restricted percentage established pursuant to § 929.52 was modified pursuant to § 929.53; to the extent such excess was disposed of prior to such modification; and after such handler furnishes the committee with such information as it prescribes regarding such withholding and disposition.

Revise § 929.56 to read as follows:

§ 929.56 Special provisions relating to withheld (restricted) cranberries

(a) A handler shall make a written request to the committee for the release of all or part of the cranberries that the handler is withholding from handling pursuant to § 929.54(a). Each request shall state the quantity of cranberries for which release is requested and shall provide such additional as the committee may require. Handlers may replace the quantity of withheld cranberries requested for release as provided under either paragraph (b) or (c) of this section.

(b) The handler may contract with another handler for an amount of free cranberries to be converted to restricted cranberries that is equal to the volume of cranberries that the handler wishes to have converted from his own restricted cranberries to free cranberries.

(1) The handlers involved in such an agreement shall provide the committee with such information as may be requested prior to the release of any restricted cranberries.

(2) The committee shall establish guidelines to ensure that all necessary documentation is provided to the committee, including but not limited to, the amount of cranberries being converted and the identities of the handlers assuming the responsibility for withholding and disposing of the free cranberries being converted to restricted cranberries.

(3) Cranberries converted to replace released cranberries shall be inspected and meet such standards as are prescribed for withheld cranberries prior to disposal.

(4) Transactions and agreements negotiated between handlers shall include all costs associated with such transactions including the purchase of the free cranberries to be converted to restricted cranberries and all costs associated with inspection and disposal of such restricted cranberries. No costs shall be incurred by the committee other than for the normal activities associated with the implementation and operation of a volume regulation program.

(5) Free cranberries belonging to one handler and converted to restricted cranberries on the behalf of another handler shall be reported to the committee in such manner as prescribed by the committee.

(6) The committee may establish, with the approval of the Secretary, rules and regulations for the implementation of this section.

(c) Except as otherwise directed by the Secretary, as near as practicable to the beginning of the marketing season of each fiscal period with respect to which the marketing policy proposes regulation pursuant to § 929.52(a), the committee shall determine the amount per barrel each handler shall deposit with the committee for it to release to him, in accordance with this section, all or part of the cranberries he is withholding; and the committee shall give notice of such amount of deposit to handlers. Such notice shall state the period during which such amount of deposit shall be in effect. Whenever the committee determines that, by reason of changed conditions or other factors, a different amount should therefore be deposited for the release of withheld cranberries, it shall give notice to handlers of the new amount and the effective period thereof. Each determination as to the amount of deposit shall be on the basis of the committee's evaluation of the following factors:

(1) The prices at which growers are selling cranberries to handlers,

(2) The prices at which handlers are selling fresh market cranberries to dealers,

(3) The prices at which cranberries are being sold for processing in products,

(4) The prices at which handlers are selling cranberry concentrate, and

(5) The prices the committee has paid to purchase cranberries to replace released cranberries in accordance with this section.

(6) Each request for release of withheld cranberries shall include, in addition to all other information as may be prescribed by the committee, the quantity of cranberries the release is requested and shall be accompanied by a deposit (a cashier's or certified check made payable to the Cranberry Marketing Committee) in an amount equal to the twenty percent of the amount determined by multiplying the number of barrels stated in the request by the then effective amount per barrel as determined in paragraph (c).

(7) Subsequent deposits equal to, but not less than, the ten percent of the remaining outstanding balance shall be payable to the committee on a monthly basis commencing on January 1, and concluding by no later than August 31 of the fiscal period.

(8) If the committee determines such a release request is properly filled out, is accompanied by the required deposit, contains a certification that the handler is withholding such cranberries, and the committee is able to determine it can purchase unrestricted (free percentage) from other handlers to replace the withheld cranberries it shall release to such handler the quantity of cranberries specified in his request.

(d) Funds deposited for the release of withheld cranberries, pursuant to paragraph (c) of this section, shall be used by the committee to purchase from handlers unrestricted (free percentage) cranberries in an aggregate amount as nearly equal to, but not in excess of, the total quantity of the released cranberries as it is possible to purchase to replace the released cranberries.

(e) All handlers shall be given an equal opportunity to participate in such purchase of unrestricted (free percentage) cranberries. If a larger quantity is offered than can be purchased, the purchases shall be made at the lowest price possible. If two or more handlers offer unrestricted (free percentage) cranberries at the same price, purchases from such handlers shall be in proportion to the quantity of their respective offerings insofar as such division is practicable. The committee shall dispose of cranberries purchased as restricted cranberries in accordance with § 929.57. Any funds received by the committee for cranberries so disposed of, which are in excess of the costs incurred by the committee in

making such disposition, will accrue to the committee's general fund.

(f) In the event any portion of the funds deposited with the committee pursuant to paragraph (c) of this section cannot, for reasons beyond the committee's control, be expended to purchase unrestricted (free percentage) cranberries to replace those withheld cranberries requested to be released, such requested amount of withheld cranberries shall be reduced accordingly and such unexpended funds shall, after deducting expenses incurred by the committee, will be refunded to the handler who deposited the funds. The handler shall equitably distribute such refund account among the growers delivering to such handler.

(g) Inspection for restricted (withheld) cranberries released to a handler is not required.

Production Area

Proposal No. 13

Revise § 929.4 to read as follows:

§ 929.4 Production area.

Production area means the States of Massachusetts, Maine, Rhode Island, Connecticut, New York, New Jersey, Delaware, Wisconsin, Michigan, Minnesota, Oregon, and Washington.

Paid Advertising

Proposal No. 14

Amend § 929.45 by revising paragraph (a) to read as follows:

§ 929.45 Research and development.

(a) The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research, and market development projects, including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of cranberries. The expense of such projects shall be paid from funds collected pursuant to § 929.41, or from such other funds as approved by the Secretary.

(b) The committee may, with the approval of the Secretary, establish rules and regulations as necessary for the implementation and operation of this section.

Definition of Cranberries

Proposal No. 15

Revise § 929.5 to read as follows:

§ 929.5 Cranberries.

(a) Cranberries means all varieties of the fruit *Vaccinium Macrocarpon* and *Vaccinium oxycoccus*, known as

cranberries, grown in the production area.

(b) The Committee, with the approval of the Secretary, may modify this definition.

Definition of Handle

Proposal No. 16

Amend § 929.10 by revising paragraphs (a)(2) and (b)(4) to read as follows:

§ 929.10 Handle.

(a) * * *

(2) To sell, consign, deliver, or transport (except as a common or contract carrier of cranberries owned by another person) fresh cranberries or any other way to place fresh cranberries in the current of commerce within the production area or between the production area and any point outside thereof.

(b) * * *

(4) the cold storage or freezing of excess or restricted cranberries for the purpose of temporary storage during periods when an annual allotment percentage and/or a handler withholding program is in effect prior to their disposal, pursuant to §§ 929.54 or 929.59.

Reports

Proposal No. 17

Revise § 929.62 to read as follows:

§ 929.62 Reports.

(a) Grower report. Each grower shall file a report with the committee by January 15 of each crop year, or such other date as determined by the committee, with the approval of the Secretary, indicating the following:

(1) Total acreage harvested and whether owned or leased.

(2) Total commercial cranberry sales in barrels from such acreage.

(3) Amount of acreage either in production, but not harvested or taken out of production and the reason(s) why.

(4) Amount of new or replanted acreage coming into production.

(5) Name of the handler(s) to whom commercial cranberry sales were made.

(6) Such other information as may be needed for implementation and operation of this section.

(b) Inventory. Each person engaged in the handling of cranberries or cranberry products shall, upon request of the committee, file promptly with the committee a certified report, showing such information as the committee shall specify with respect to any cranberries and cranberry products which were held by them on such date as the committee may designate.

(c) Receipts. Each handler shall, upon request of the committee, file promptly with the committee a certified report as to each quantity of cranberries acquired during such period as may be specified, and the place of production.

(d) Handling reports. Each handler shall, upon request of the committee, file promptly with the committee a certified report as to the quantity of cranberries handled during any designated period or periods.

(e) Other reports. Upon the request of the committee, with the approval of the Secretary, each handler shall furnish to the committee such other information with respect to the cranberries and cranberry products acquired and disposed of by such person as may be necessary to enable the committee to exercise its powers and perform its duties under this part.

(f) The committee may establish, with the approval of the Secretary, rules and regulations for the implementation and operation of this section.

Revise § 929.64 to read as follows:

§ 929.64 Verification of reports and records.

The committee, through its duly authorized agents, during reasonable business hours, shall have access to any handler's premises where applicable records are maintained for the purpose of assuring compliance and checking and verifying records and reports filed by such handler.

Deletion of Obsolete Provision

Proposal No. 18

Remove § 929.47.

Proposals submitted by the Stephen L. Lacey on behalf of Clement Pappas and Company, Inc., and Cliffstar Corporation:

Administrative Body

Proposal No. 19

In addition to the Committee's recommended changes as set forth in Proposal No. 1, amend § 929.20 by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

§ 929.20 Establishment and membership

* * * * *

(d) Disclosure of unregulated production. All grower members and alternate grower members of the committee shall disclose annually any financial interest in the production of cranberries or cranberry products that are not subject to regulation by this part.

* * * * *

Proposal No. 20

Revise § 929.22 to read as follows:

§ 929.22 Nomination

(a) Beginning on June 1 of the even-numbered year following the adoption of this amendment, the Committee shall hold nominations in accordance with this section.

(b) Whenever any cooperative marketing organization sells more than fifty percent of the total volume of cranberries sold during the fiscal period in which nominations for membership on the committee are made, the growers affiliated therewith shall nominate:

(1) Six qualified persons for cooperative members and four qualified persons for cooperative alternate members of the committee. Nominee(s) for cooperative member and cooperative alternate member shall represent growers from each of the marketing order districts designated in § 929.20.

(2) The seventh cooperative member shall be referred to as member-at-large. The member-at-large may be nominated from any of the marketing order districts.

(3) Six qualified persons for independent members and four qualified persons for independent alternative members of the committee shall be nominated by those growers who market their cranberries through other than cooperative marketing organizations. Nominees for independent member and independent alternate member shall represent growers from each of the marketing order districts as designated in § 929.20(c).

(c) Whenever any cooperative marketing organization sells less than fifty percent of the total volume of cranberries sold during the fiscal period in which nominations for membership on the committee are made, the growers affiliated therewith, shall nominate:

(1) Six qualified persons for cooperative members and four qualified persons for cooperative alternate members of the committee. Nominees for member and alternate member shall represent growers from each of the marketing order districts as designated in § 929.20(c).

(2) Six qualified persons for independent members and four qualified persons for independent alternate members of the committee shall be nominated by those growers who market their cranberries through other than cooperative marketing organizations. Nominees for independent member and independent alternate member shall represent growers from each of the marketing order districts as designated in § 929.20(c).

(3) The seventh member nominee shall be referred to as the independent

member-at-large. The member-at-large may be nominated from any of the marketing order districts.

(d) Nominations of qualified cooperative and independent member nominees shall be made through a call for nominations sent to all eligible growers residing within each of the marketing order districts. The call for such nominations shall be by such means as are recommended by the committee and approved by the Secretary.

(1) The names of all eligible nominees from each district received by the committee, by such date and in such form as recommended by the committee and approved by the Secretary, will appear on the nomination ballot for that district.

(2) Election of the cooperative and independent member nominees and cooperative and independent alternate member nominees shall be conducted by mail ballot.

(3) Eligible cooperative and independent growers shall participate in the election of nominees from the district in which they reside.

(4) When voting for cooperative and independent member nominees, each eligible grower shall be entitled to cast one vote on behalf of him/herself.

(5) The cooperative and independent nominees receiving the highest plurality of votes cast in districts two and four shall be the member nominees from that district. The cooperative and independent nominees receiving the second highest plurality of votes cast in districts two and four shall be the alternate members from that district.

(6) The cooperative and independent nominees receiving the highest and second highest plurality of votes cast in district one and three shall be the member nominees from that district. The cooperative and independent nominees receiving the third highest plurality of votes cast in districts one and three shall be the alternates from that district.

(e) Nominations for the cooperative and independent members-at-large shall be made through a call for nominations sent to all eligible growers residing within the marketing order districts. The call for such nominations shall be by such means as recommended by the committee and approved by the Secretary.

(1) Election of the cooperative and independent members-at-large shall be held by mail ballot sent to all eligible growers in the marketing order districts by such date and in such form as recommended by the committee and approved by the Secretary.

(2) Eligible growers casting ballots may vote for a member-at-large nominee from marketing order districts other than where they produce cranberries.

(3) When voting for the member-at-large nominee, each eligible grower shall be entitled to cast one vote on behalf of him/herself.

(4) The cooperative and independent nominees receiving the highest plurality of votes cast shall be designated the member-at-large nominees. The cooperative and independent nominees receiving the second highest plurality of votes cast shall be declared the alternate member-at-large nominees.

(f) The committee may request that growers provide their federal tax identification number(s) in order to determine voting eligibility.

(g) The names and addresses of all nominees shall be submitted to the Secretary for selection no later than July 1 of each even-numbered year.

(h) The committee, with the approval of the Secretary, may issue rules and regulations to carry out the provisions or to change the procedures of this section.

Volume Regulations

Proposal No. 21

Replace § 929.47 to read as follows:

§ 929.47 Handler marketing pool

(a) Handler marketing pool. In any crop year in which a producer allotment is recommended, the committee shall also recommend, subject to approval by the Secretary, the establishment of a Handler Marketing Pool as part of the Marketable Quantity.

(b) The committee shall determine on or before March 1, the estimated number of barrels of cranberries necessary for a handler marketing pool, and this amount shall be included with the recommendation for the producer allotment regulation. The number of barrels of cranberries necessary for the pool may be adjusted on or before September 1 of the year in which volume regulation is established.

(c) Calculating the size of the pool. At the time of the recommendation of a producer allotment along with a handler marketing pool, the committee shall determine, based on handler reports, which handlers will have surplus inventory and which handlers will be deficient under the recommended volume regulation.

(d) From the most recent completed year of handler reports, the committee shall use the figures reported by each handler for total sales (including sales to other handlers), the carry-in inventory and the number of barrels handled to

establish a handler marketing pool by calculating the following for each handler:

(1) *Current Year's Sales Potential*—calculated as a specified percent of the prior year's sales plus an estimate for shrink. This sales potential estimate may be reviewed and adjusted by the committee based on actual sales reports or demonstrated projected sales from the handlers submitted prior to September 1 of the year of volume regulation.

(2) *Current Year's Ending Inventory*—calculated as carry-in plus the current year's handle minus the current year's sales potential. This estimate may be reviewed and adjusted by the committee based on actual sales reports from the handlers submitted prior to September 1.

(3) *Regulated Year's Projected Allotment*—calculated as the handler's sales history times the allotment percent recommended by the committee plus any adjustments for new acreage.

(4) *Regulated Year's Total Available Supply*—calculated as the handler's projected allotment plus the handler's current year's ending inventory.

(5) *Regulated Year's Projected Sales*—calculated as a specified percent of the prior year's sales plus an estimate for shrink.

(6) *Regulated Year's Desired Ending Inventory*—calculated as a percent of each handler's regulated year's projected sales.

(7) *Handler's Total Needs*—calculated as each handler's regulated year's projected sales plus the regulated year's desired ending inventory.

(8) *Deficit/Surplus*—calculated as the difference between the handler's total needs and the regulated year's total available supply.

(e) Supply and access to the pool. If a handler's total needs for cranberries are more than its total available supply in the regulated year, then the handler is considered to be in deficit and is entitled to purchase cranberries from the pool. If a handler's total available supply of cranberries exceeds its needs in the regulated year, then that handler is considered to be in surplus and shall be required to contribute cranberries to the pool.

(f) If the total needs of those handlers with deficits is less than the total of surplus cranberries available, then the handlers with surplus shall contribute to the pool up to the total of the deficits in proportion to their percentage of the total surplus.

(g) If the total deficit is greater than the total of surplus cranberries available, then the size of the pool is limited to the total of the calculated

surplus. In this case handlers with surplus cranberries shall contribute their entire volume of surplus cranberries to the pool. No handler is obligated to contribute more than the handler's surplus.

(h) Once the pool contributions by the handlers with surplus have been assigned by the committee, the handlers with surplus shall maintain such volume in inventory to be available for purchases by handlers with deficits. The committee may request an accurate accounting of the pool fruit by the handler at any time.

(i) Any pool cranberries not purchased by June 30 shall be released to the handler who contributed the cranberries.

(j) Forms of cranberries, specifications and location. Pool fruit may be made available to handlers with deficits as process fruit directly from the field during harvest where agreeable to handlers with surplus. Pool fruit shall be made available as frozen fruit and as 50-brix concentrate. The committee based on the generally accepted specifications of the industry or specifications used by USDA purchasing programs shall establish quality specifications for each form of fruit.

(k) The minimum amount of surplus Pool fruit handlers shall make available in a particular growing area shall be in direct proportion to that handler's handle in that growing area. For example, if a handler with surplus receives 50% of its crop in Massachusetts, then that handler shall source at least 50% of its pool fruit from Massachusetts.

(l) Handlers may make a request to the committee for pool cranberries. The committee shall endeavor to source the form of fruit and preferred location to meet the request of the handler based on availability of cranberries requested. If the specifications requested cannot be met, the committee shall negotiate with handlers who have surplus to meet the request to the extent possible.

(m) Pool pricing.

(1) A deficit handler may purchase cranberries from the pool at an acquisition price that is equal to the price that handler is paying its growers for the current crop.

(2) The reimbursement price received for pool cranberries by handlers contributing to the pool shall be the same as the acquisition price determined under subparagraph (1).

(n) Payment Terms. Handlers acquiring cranberries from the pool shall deposit an initial payment of \$5.00 per barrel with the committee within 30 days of receipt of product. Subsequent

payments shall be made every 60 days in the amount specified by the committee based on handler payments to growers to date. Full settlement shall be made no later than August 31. The committee shall immediately remit all partial payments received from acquiring handlers to handlers supply the pool cranberries. Final reimbursement shall be made no later than August 31.

(o) Pool expenses and proceeds. Expenses incurred by the committee in administering the marketing pool shall be paid from assessment funds.

(p) Reports. Each handler shall file with the committee grower price information necessary to establish pool prices in such a manner as the committee may prescribe. This information shall be treated as confidential and subject to the disclosure provisions of § 929.65.

(q) Regulations. The committee may establish, with the approval of the Secretary, rules and regulations, as needed, for the implementation and operation of this section.

Proposal No. 22

Amend § 929.56 by revising paragraphs (c) and (d) to read as follows:

§ 929.56 Special provisions relating to withheld (restricted) cranberries.

* * * * *

(c) Funds deposited for the release of withheld cranberries, pursuant to paragraph (a) of this section, shall be used by the committee to purchase from handlers unrestricted (free percentage) cranberries in an aggregate amount as nearly equal to, but not in excess of, the total quantity of the released cranberries as it is possible to purchase to replace the release cranberries. All handlers shall be given an opportunity to participate in such purchase. If a larger quantity is offered than can be purchased, the purchases shall be made at the lowest prices possible. If two or more handlers offer at the same price, purchases from such handlers shall be in proportion to the quantity of their respective offerings insofar as such division is practicable. The cranberries so purchased shall be disposed of by the committee as restricted cranberries in accordance with § 929.57. Any funds received by the committee for cranberries so disposed of, which are in excess of the costs incurred by the committee in making such disposition, shall be paid or credited to the handler which deposited the funds for equitable distribution to its growers.

(d) In the event any portion of the funds deposited with the committee pursuant to paragraph (a) of this section

cannot, for reasons beyond the committee's control, be expended to purchase unrestricted (free percentage) cranberries to replace those released, such unexpended funds shall, after deducting expenses incurred by the committee in connecting with the purchase and disposition of cranberries pursuant to paragraph (c) of this section, be offered and paid or credited to the handler which deposited the funds for equitable distribution to its growers. In the event that the offer is not accepted or directions given by a handler to credit the funds within 90 days, the funds will accrue to the committee's general account.

Proposals submitted by the Wisconsin Cranberry Cooperative:

Proposal No. 23

Revise § 929.22 to read as follows:

§ 928.22 Nomination.

(a) Beginning on June 1 of the even-numbered year following the adoption of this amendment, the committee shall hold nominations in accordance with this section.

(b) Whenever the combined sales of cranberries by all cooperative marketing organizations equals or exceeds fifty percent of the volume of cranberries sold during the fiscal period in which nominations for membership on the committee are made:

(1) Six qualified persons for cooperative members and four qualified persons for cooperative alternative members of the committee shall be nominated by the cooperative growers in accordance with the nomination procedure in paragraph (d) of this section. Nominee(s) for cooperative member(s) and cooperative alternative member(s) shall represent growers from each of the marketing order districts designated in § 929.20.

(2) Six qualified persons for independent members and four qualified persons for independent alternate members of the committee shall be nominated by those growers who market their cranberries through other than cooperative marketing organizations, in accordance with the nomination procedure in paragraph (e) of this section. Nominee(s) for independent member(s) and independent alternate member(s) shall represent growers from each of the marketing order districts as designated in § 929.20(c).

(3) The seventh member shall be referred to as cooperative member-at-large. The member-at-large may be nominated from any of the marketing order districts in accordance with paragraph (f) of this section.

(c) Whenever the combined sales of cranberries by all cooperative marketing organizations is less than fifty percent of the total volume of cranberries sold during the fiscal period in which nominations for membership on the committee are made:

(1) Six qualified persons for cooperative members and four qualified persons for cooperative alternative members of the committee shall be nominated by the cooperative growers in accordance with the nomination procedure in paragraph (d) of this section. Nominee(s) for member(s) and alternate member(s) shall represent growers from each of the marketing order districts as designated in § 929.20(c).

(2) Six qualified persons for independent members and four qualified persons for independent alternate members of the committee shall be nominated by those growers who market their cranberries through other than cooperative marketing organizations, in accordance with the nomination procedure in paragraph (e) of this section. Nominee(s) for independent member(s) and independent alternate member(s) shall represent growers from each of the marketing order districts as designated in § 929.20(c).

(3) The seventh member nominee shall be referred to as the independent member-at-large. The member-at-large may be nominated from any of the marketing order districts in accordance with paragraph (g) of this section.

(d) Nominations of qualified cooperative member nominees shall be made through a call for nominations sent to all eligible growers affiliated with a cooperative marketing organization residing within each of the marketing order districts. The call for such nominations shall be by such means as are recommended by the committee and approved by the Secretary.

(1) The names of all eligible nominees from each district received by the committee, by such date and in such form as recommended by the committee and approved by the Secretary, will appear on the nomination ballot for that district.

(2) Election of the cooperative member nominees and cooperative alternate member nominees shall be conducted by mail ballot.

(3) Eligible cooperative growers shall participate in the election of nominees from the district in which they reside.

(4) When voting for cooperative member nominees, each eligible grower shall be entitled to cast one vote on behalf of him/herself.

(5) The nominee receiving the highest plurality of votes cast in Districts 2 and 4 shall be the cooperative member nominee from that district. The nominee receiving the second highest plurality of votes cast in Districts 2 and 4 shall be the cooperative alternate member from that district.

(6) The nominees receiving the highest and second highest plurality of votes cast in Districts 1 and 3 shall be the cooperative member nominees from that district. The nominee receiving the third highest plurality of votes cast in Districts 1 and 3 shall be the cooperative alternate member from that district.

(e) Nominations of qualified independent member nominees shall be made through a call for nominations sent to all eligible independent growers residing within each of the marketing order districts. The call for such nominations shall be by such means as are recommended by the committee and approved by the Secretary.

(1) The names of all eligible nominees from each district received by the committee, by such date and in such form as recommended by the committee and approved by the Secretary, will appear on the nomination ballot for that district.

(2) Election of the independent member nominees and independent alternate member nominees shall be conducted by mail ballot.

(3) Eligible independent growers shall participate in the election of nominees from the district in which they reside.

(4) When voting for independent member nominees, each eligible grower shall be entitled to cast one vote on behalf of him/herself.

(5) The nominee receiving the highest plurality of votes cast in Districts 2 and 4 shall be the independent member nominee from that district. The nominee receiving the second highest plurality of votes cast in Districts 2 and 4 shall be the independent alternate member from that district.

(6) The nominees receiving the highest and second highest plurality of votes cast in Districts 1 and 3 shall be the independent member nominees from that district. The nominee receiving the third highest plurality of votes cast in Districts 1 and 3 shall be the independent alternate member from that district.

(f) Nominations for the cooperative member-at-large shall be made through a call for nominations sent to all eligible cooperative growers residing within the marketing order districts. The call for such nominations shall be by such means as recommended by the committee and approved by the Secretary.

(1) Election of the member-at-large shall be held by mail ballot sent to all eligible cooperative growers in the marketing order districts by such date and in such form as recommended by the committee and approved by the Secretary.

(2) Eligible cooperative growers casting ballots may vote for a member-at-large nominee from marketing order districts other than where they produce cranberries.

(3) When voting for the member-at-large nominee, each eligible cooperative grower shall be entitled to cast one vote on behalf of him/herself.

(4) The nominee receiving the highest plurality of votes cast shall be designated the cooperative member-at-large nominee. The nominee receiving the second highest plurality of votes cast shall be declared the cooperative alternate member-at-large nominee.

(g) Nominations for the independent member-at-large shall be made through a call for nominations sent to all eligible independent growers residing within the marketing order districts. The call for such nominations shall be by such means as recommended by the committee and approved by the Secretary.

(1) Election of the member-at-large shall be held by mail ballot sent to all eligible independent growers in the marketing order districts by such date and in such form as recommended by the committee and approved by the Secretary.

(2) Eligible independent growers casting ballots may vote for a member-at-large nominee from marketing order districts other than where they produce cranberries.

(3) When voting for the member-at-large nominee, each eligible independent grower shall be entitled to cast one vote on behalf of him/herself.

(4) The nominee receiving the highest plurality of votes cast shall be designated the independent member-at-large nominee. The nominee receiving the second highest plurality of votes cast shall be declared the independent alternate member-at-large nominee.

(h) The committee may request that growers provide their federal tax identification number(s) in order to determine voting eligibility.

(i) The names and addresses of all nominees shall be submitted to the Secretary for selection no later than July 1 of each even-numbered year.

(j) The committee, with the approval of the Secretary, may issue rules and regulations to carry out the provisions or to change the procedures of this section.

Proposal No. 24

Revise § 929.23 to read as follows:

§ 929.23 Selection.

(a) From nominations made pursuant to § 929.22, the Secretary shall select members and alternate members to the committee on the basis of the representation provided for in § 929.20(c) and in paragraphs (b) and (c) of this section.

(b) Whenever the combined sales of cranberries by all cooperative marketing organizations equals or exceeds fifty percent of the volume of cranberries sold during the fiscal period in which nominations for membership on the committee are made, the Secretary shall select:

(1) Six cooperative members and four cooperative alternate members from nominations made pursuant to § 929.22(b)(1) and (d),

(2) Six independent members and four independent alternate members from growers who market their cranberries other than through cooperative marketing organizations, pursuant to § 929.22(b)(2) and (e), and

(3) One cooperative member-at-large from nominations made pursuant to § 929.22(b)(3) and (f).

(c) Whenever the combined sale of cranberries by all cooperative marketing organizations is less than fifty percent of the total volume of cranberries sold during the fiscal period in which nominations for membership on the committee are made, the Secretary shall select:

(1) Six cooperative members and four cooperative alternate members from nominations made pursuant to § 929.22(c)(1) and (d).

(2) Six independent members and four independent alternate members from nominations made pursuant to § 929.22(c)(3) and (g).

(3) One independent member-at-large from nominations made pursuant to § 929.22(c)(2) and (e).

Proposal No. 25

Revise § 929.61 to read as follows:

§ 929.61 Outlets for excess cranberries.

(a) Noncompetitive outlets. Excess cranberries may be disposed of in noncommercial outlets that the committee finds, with the approval of the Secretary, meet the requirements outlined in paragraph (c) of this section. Noncompetitive outlets include but are not limited to:

(1) Charitable institutions; and

(2) Research and development projects approved by the U.S. Department of Agriculture.

(b) Non-Competitive Outlets. Excess cranberries may be sold in outlets that the committee finds, with the approval of the Secretary, are non-competitive with established markets for regulated cranberries and meet the requirements outlined in paragraph (c) of this section. Noncompetitive outlets include but are not limited to:

(1) Any non-human food use; and

(2) Foreign markets with a total annual consumption of less than the equivalent of 20,000 barrels of cranberries and/or cranberry products. The committee will annually publish a report which lists foreign markets which have a total consumption of more than the equivalent of 20,000 barrels of cranberries and/or cranberry products.

(c) Requirements. The handler disposing of or selling excess cranberries into noncompetitive or noncommercial outlets shall meet the following requirements, as applicable:

(1) Charitable institutions. A statement from the charitable institution shall be submitted to the committee showing the quantity of cranberries received and certifying that the institution will consume the cranberries;

(2) Research and development projects. A report shall be given to the committee describing the project, quantity of cranberries contributed, and date of disposition;

(3) Non-human food use. Notification shall be given to the committee at least 48 hours prior to such disposition;

(4) Foreign markets with a total annual consumption of less than the equivalent of 20,000 barrels of cranberries and/or cranberry products. A copy of the onboard bill of lading shall be submitted to the committee showing the amount of cranberries loaded for export; and

(5) Other outlets established by the committee with the approval of the Secretary. A report shall be given to the committee describing the project; quantity of cranberries contributed, and date of disposition.

(d) The storage and disposition of all excess cranberries withheld from handling shall be subject to the supervision and accounting control of the committee.

(e) The committee, with the approval of the Secretary, may establish rules and regulations for the implementation and operation of this section.

Proposal No. 26

Revise § 929.56 to read as follows:

§ 929.104 Outlets for excess cranberries.

(a) In accordance with § 929.61, excess cranberries may be disposed of only in the following noncommercial or noncompetitive outlets, but only if the requirements in paragraph (b) of this section are complied with:

(1) Charitable institutions;

(2) Research and development projects;

(3) Any non-human food use;

(4) Foreign markets with a total annual consumption of less than the equivalent of 20,000 barrels of cranberries or cranberry products; and

(5) Other outlets established by the committee with the approval of the Secretary.

(b) Excess cranberries may not be converted into canned, frozen, or dehydrated cranberries or other cranberry products by any commercial process. Handlers may divert excess cranberries in the outlets listed in paragraph (a) of this section only if they meet the requirements specified in § 929.61(c).

Proposal submitted by Doanne Andresen, a Massachusetts grower:

Proposal No. 27

Amend § 929.58 by revising paragraph (a) to read as follows:

§ 929.58 Minimum exemption.

(a) Upon the basis of the recommendation and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements pursuant to this part the handling of cranberries in such minimum quantities as the committee, with approval of the Secretary, may prescribe including the first one thousand barrels produced by each grower.

* * * * *

The Fruit and Vegetable Programs, Agricultural Marketing Service, submitted the following proposal:

Proposal No. 28

Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: April 23, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

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