

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket No. FV00-929-2 PR]

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; Establishment of Marketable Quantity and Allotment Percentage and Other Modifications Under the Cranberry Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would establish the quantity of cranberries that handlers may purchase from, or handle for, growers during the 2000-2001 crop year, which begins on September 1, 2000, and ends on August 31, 2001. The Cranberry Marketing Committee (Committee), the agency responsible for local administration of the cranberry marketing order, recommended a marketable quantity of 5.4 million barrels and an allotment percentage of 85 percent. This rule invites comments on the Committee's recommendation as well as two alternative levels of regulation being proposed by the Department. This action is designed to stabilize marketing conditions and improve grower returns. Fresh and organically-grown cranberries would be exempt from the volume limitations to facilitate marketing of these products. Also proposed are improvements in the way producer allotments are calculated, including proposals initiated by the Department to revise the way in which growers' sales histories are computed and to suspend certain dates in the order which are impractical.

DATES: Comments must be received by June 14, 2000.

ADDRESSES: Interested persons are invited to submit written comments

concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456, Fax: (202) 720-5698 or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at the following website: www.ams.usda.gov/fv/moab.html.

FOR FURTHER INFORMATION CONTACT:

Patricia A. Petrella or Kenneth G. Johnson, DC Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, Suite 5D03, Unit 155, 4700 River Road, Riverdale, Maryland 20737, telephone: (301) 734-5243; Fax: (301) 734-5275; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 929 [7 CFR Part 929], as amended, regulating 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 order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the "Act."

Question and Answer Overview

What Are Marketing Orders?

Marketing orders are rules which are authorized under the Agricultural Marketing Agreement Act of 1937 and which are based on evidence developed at a formal hearing. Marketing orders help fruit and vegetable growers work together to solve marketing problems that cannot be solved individually.

Industries voluntarily enter into these programs and choose to have Federal oversight of certain aspects of their operations.

The cranberry industry has operated under a marketing order since 1962. The order's primary regulatory authority is volume control, utilizing either a producer allotment program, or establishing a withholding percentage where the amount of cranberries that handlers can handle is limited. The order also authorizes reporting and record keeping activities related to the gathering of statistical information and supporting volume control activities, as well as research and promotion activities. Volume control has not been used since 1971.

The Committee, which is responsible for local administration of the order, recommended this action to stabilize marketing conditions and improve grower returns. The Department is also proposing some changes in the way the volume control program would be implemented to improve the process.

Who Would Be Affected by This Action?

Growers and handlers/processors located in the 10-State production area would be affected by this action. The 10-State production area covers cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York.

Why Is Volume Control Being Recommended for This Year?

The Committee recommended volume control this year in order to address the serious oversupply situation being experienced by the industry. For the 1999 crop year, industry reports show that continued low grower prices will accompany record high production and inventories. Many cranberry growers are experiencing difficulties dealing with these extreme market conditions. The Committee recommended implementing volume regulations at its March 30, 2000, meeting in Minneapolis, Minnesota.

The Committee determined the best method of volume control would be the producer allotment program which provides for an annual marketable quantity and allotment percentage.

The use of volume control is not the only avenue that could be used to address the oversupply situation being

experienced by the industry. The industry is also looking into methods of increasing demand by developing new markets, both domestic and foreign, by developing new products and by increasing promotional efforts.

What Is Marketable Quantity and Allotment Percentage?

Marketable quantity is defined as the number of pounds of cranberries needed to meet total market demand and to provide for an adequate carryover into the next season. The Committee determined that the marketable quantity for the 2000–2001 crop year should be established at 5.4 million barrels. This is equal to the expected demand for fruit for processing.

The allotment percentage equals the marketable quantity divided by the total of all growers' sales histories. Total growers' sales histories were set at 6.35 million barrels. Using the formula established under the order (5.4 million barrels divided by 6.35 million barrels), the annual allotment percentage is 85 percent.

The Department is proposing a change in the way sales histories are calculated, which would bring the industry total to 7.6 million barrels. Using the 5.4 million barrel marketable quantity recommended by the Committee would yield an allotment percentage of 71 percent. To keep the allotment percentage at the level recommended by the Committee (85 percent), the marketable quantity would have to be increased to 6.46 million barrels. Comments are invited on the Committee's proposed recommendation for setting a volume regulation for the 2000 cranberry crop and on the two alternative methods proposed by the Department.

Sales of fresh and organically-grown fruit would be exempt from the proposed volume regulation. In addition, the Committee and the Department recommended other modifications to implement volume regulation.

How Are Growers' Annual Allotments Calculated?

A grower's annual allotment is the result of multiplying the individual grower's sales history by the allotment percentage.

How Are Sales Histories Calculated?

The Cranberry Marketing Committee (Committee) is responsible for calculating each grower's sales history on an annual basis. For growers with existing cranberry acreage, sales history is established by computing an average of the best four years' sales out of the

last six years' sales. For growers with four years or less of commercial sales history, the sales history is calculated by averaging all available years of such grower's sales. A grower with no sales history would be issued allotment based on the State average yield per acre or the total estimated commercial sales, whichever is greater. For the 2000–2001 crop, the State average yield would be defined as the average State yield for the year 1997 or the average of the best four years out of the last six years, whichever is greater.

The Department is proposing a change in this calculation. For all existing growers, sales histories would be based on the best year out of the last six. For a grower with less than six years of sales, the sales history would be the highest year of sales available. Growers with no sales history would be issued allotment as described in the previous paragraph.

How Can I Comment on This Action?

Interested persons have 15 days from the date of publication of the proposed rule to file written comments. Such comments should be sent to: Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, Fax: (202) 720–5698 or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at the following website: www.ams.usda.gov/fv/moab.html. In addition, small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

When Will This Action Be Effective?

After the 15-day comment period ends, the Department will analyze the comments and issue its decision. Depending on the results of its analysis of the rulemaking proceeding, the Department could issue a final rule similar to, or the same as, this proposal. It could also issue a rule with appropriate modifications, based on the comments and on the rulemaking record, or it could terminate this rulemaking. In rare instances, the Department has issued a second proposal. Any final rule would be

effective for the 2000–2001 crop year which begins on September 1, 2000. It would affect all current growers and handlers of cranberries in the production area.

Executive Orders 12866 and 12998

The Department of Agriculture (Department) is issuing this proposed rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, a marketable quantity and allotment percentage may be established for cranberries during the crop year. This rule would establish a marketable quantity and allotment percentage for cranberries for the 2000–2001 crop year beginning September 1, 2000, through August 31, 2001. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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. After the hearing the Secretary would rule 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 date of the entry of the ruling.

This proposal invites comments on establishing a marketable quantity and allotment percentage for the 2000–2001 crop year. This action would also exempt fresh and organically-grown cranberries from volume regulation, define State average yield per acre, increase the barrels per acre for determining a commercial crop, and revise the Committee review procedures for re-determination of sales histories. These actions were recommended by the Committee at its March 30, 2000, meeting. The volume regulation would be in effect September 1, 2000, through August 31, 2001.

This action also invites comments on two proposals being suggested by the Department. The first would change the

way in which growers' sales histories are computed, which would result in a revised marketable quantity or allotment percentage. The second would suspend the order requirement that grower allotments be issued by June 1.

Marketable Quantity and Allotment Percentage

Section 929.49 of the order currently provides that 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 year. In addition, the Secretary would establish an allotment percentage which shall equal the marketable quantity divided by the total of all growers' sales histories. Handlers cannot handle cranberries unless they are covered by a grower's annual allotment.

The cranberry industry has operated under a Federal marketing order since 1962. The last season volume regulation was recommended was in 1971.

The order covers a ten-State area. The highest producing States are Massachusetts and Wisconsin, which together account for about 80 percent of total production. Over 95 percent of the crop is processed, with the remainder being sold as fresh fruit.

For many years, the industry has enjoyed increasing demand for cranberry products, primarily due to the success of cranberry juice-based drinks. This situation encouraged additional production. From 1960 through 1999, production increased from 1.34 million barrels (one barrel equals 100 pounds of cranberries) to 6.39 million barrels. This represents a 377 percent increase. Production in 1999 was an all-time high, and was 17 percent above that of the previous year.

The growth rate in production is attributable to a 76 percent increase in harvested area (from 21,140 to 37,200 acres) and an even higher increase (171 percent) in yields (from 63.4 to 171.7 barrels per acre).

While production continues to rise, demand has leveled off. Total domestic sales peaked in 1994 at 4.7 million barrels, and declined to 4.5 million barrels in 1998.

Increased total supplies in excess of demand have resulted in large inventories. Carryover inventories have grown from 883,773 barrels in 1988 to 3,107,366 barrels in 1999. From 1988 through 1997, carryover as a percent of production ranged from 21 to 36 percent. However, in 1998, carryover as

a percent of production increased to 40 percent; in 1999 it increased to 49 percent. Carryover inventory for the 1999 season exceeded 3 million barrels for the first time in the industry's history.

When supply outpaces demand, resulting in high levels of carryover inventories, grower prices can be negatively impacted. Grower prices rose from \$8.83 per barrel in 1960 to a peak level of \$65.90 per barrel in 1996. These rising price levels provided an incentive for producers to expand planted acres and to increase yields. Over the past two seasons, prices have started to decline. In 1998, grower prices decreased to \$38.80 per barrel. The returns for the 1999 crop year are expected to fall below \$30.00 per barrel. The industry anticipates further price reductions if supplies are not brought more in line with demand.

Increasing inventories and the high costs associated with storing these inventories have resulted in the industry considering the use of volume control regulations. The goal of such regulations is to obtain a higher and more stable price than would exist in their absence.

In an industry such as the cranberry industry, where the product can be stored for long periods of time, volume control is a method that could be used to reduce unwanted inventories. Large inventories are costly to maintain and, with the outlook for continued high production levels, these inventories would be difficult to market.

Section 929.46 of the order requires the Committee to develop a marketing policy each year prior to May 1. In its marketing policy, the Committee projects expected supply and market conditions for the upcoming season, including an estimate of the marketable quantity (defined as the number of pounds of cranberries needed to meet total market demand and to provide for an adequate carryover into the next season).

At a March 30, 2000, meeting, the Committee estimated the 2000-2001 domestic production of cranberries at 5.89 million barrels. Carryover as of September 1, 2000 is estimated at 4.6 million barrels. Foreign production (primarily Canada) is projected at 800,000 barrels. Allowing for shrinkage of approximately 3 percent, the total adjusted available supply of cranberries is expected to be 10,930,000 barrels.

Based in large part on historical sales figures, the Committee estimated utilization of processing fruit at 5.4 million barrels and of fresh fruit at 280,000 barrels.

A summary of the marketing policy follows:

CRANBERRY MARKETING POLICY [2000 crop year estimate]

| | Barrels |
|-------------------------------------------|------------|
| Carryin as of 9/1/2000 | 4,600,000 |
| Domestic production | 5,890,000 |
| Foreign production | 800,000 |
| Available supply (sum of the above) | 11,290,000 |
| Minus shrinkage | 360,000 |
| Adjusted Supply | 10,930,000 |
| Fresh Fruit | 280,000 |
| Processing fruit | 5,400,000 |
| Total Sales and Usage | 5,680,000 |
| Carryover as of 8/31/2001 | 5,250,000 |

The Committee determined that the marketable quantity for the 2000-2001 crop year should be established at 5.4 million barrels. This is equal to the expected demand for processing fruit. Fresh fruit sales were not included because (as discussed later in this document) fresh fruit would not be covered by the allotment percentage. Using a marketable quantity equal to processed fruit demand should result in a more stable level of inventories. Supplies in inventory could easily cover any unexpected increases in market demand.

Section 929.49(b) of the order provides that the marketable quantity be apportioned among growers by applying the allotment percentage to each grower's sales history. The allotment percentage equals the marketable quantity divided by the total of all grower's sales histories. No handler can purchase or handle cranberries on behalf of any grower not within the grower's annual allotment.

Total growers' sales histories were set at 6.35 million barrels. Using the formula established under the order in § 929.49 (5.4 million barrels divided by 6.35 million barrels), the annual allotment percentage is 85 percent.

As described later in this document, the Department is proposing a change in the way growers' sales histories are computed. If this change is adopted, each grower's sales history would be recalculated. The Committee staff reports that this would result in a new industry total sales history of 7.6 million barrels. Using the 5.4 million barrel marketable quantity recommended by the Committee would result in an allotment percentage of 71 percent. To retain an allotment percentage of 85 percent, the marketable quantity would need to be increased to 6.46 million barrels. The Department is

soliciting comments on the Committee's original recommendation of marketable quantity and allotment percentage as

well as the two alternatives proposed by the Department. To summarize, the three options are as follows (the

marketable quantity and total sales histories figures are all in million barrel units):

| | Marketable quantity | Total sales histories | Allotment percentage |
|--------------------------------|---------------------|-----------------------|----------------------|
| Committee Recommendation | 5.4 | 6.35 | 85 |
| USDA Option 1 | 5.4 | 7.6 | 71 |
| USDA Option 2 | 6.46 | 7.6 | 85 |

A marketable quantity and allotment percentage for the 2000–2001 crop year are proposed to be established by adding a new § 929.250 to the order's rules and regulations. The Committee could at any time, by reason of changed conditions, recommend modification, suspension or termination of this section.

Determination of New Sales History

Section 929.48 of the order provides for computing growers' sales histories to be used in calculating marketable quantities and allotment percentages under § 929.49. Sales history is defined in section 929.13 as the number of barrels of cranberries established for a grower by the Committee. The Committee has been updating growers' sales histories each season. The Committee accomplishes this by using information submitted by the grower on a production and eligibility report filed with the Committee. The order sets forth that a grower's sales history is established by computing an average of the best four years' sales out of the last six years' sales for those growers with existing acreage. For growers with four years or less of commercial sales history, the sales history is calculated by averaging all available years of such grower's sales. A new sales history for a grower with no sales history is calculated by using the State average yield per acre or the total estimated commercial sales, whichever is greater.

The Committee considered for the 2000–2001 crop that the State average yield be defined as the average State yields for the year 1997 or the average of the best four years out of the last six years, whichever is greater. This calculation is similar to that used to compute sales history (an average of the best four years out of the last six years), and would average out seasonal variations in yields. However, if estimated commercial sales are greater than what is computed above, the Committee would use the commercial sales estimated by the grower.

In order to take into account the differences among the States, the Committee recommended calculating the average yield for each State using

the best four of the last six years, and comparing it to the average yield for that State in 1997. The higher of the two figures for each State would be used to calculate new sales histories for new growers. This rule proposes adding a new § 929.148 to set forth this calculation.

Some existing growers may also have newly planted acreage that has not yet established a sales history. Sales histories for such acreage would be calculated in the same way as sales histories for new growers.

Growers are required to file a form with the Committee by April 15 each year if they wish to receive an annual allotment. Growers also must notify the Committee of any new acreage that will be coming into production for the 2000–2001 crop year. The Committee would notify each grower of his or her annual allotment and notify each handler of the annual allotment that can be handled for each grower whose total crop will be delivered to such handler. In cases where a grower delivers a crop to more than one handler, such grower may determine how to apportion the annual allotment among those handlers.

A grower who does not produce cranberries equal to his or her annual allotment would transfer such unused allotment to such grower's handler(s). The handlers would then be required to equitably allocate the unused allotment to growers with excess cranberries (those not covered by allotment) who deliver to those handlers. Unused allotment remaining after all such transfers have taken place would be forfeited to the Committee.

Handlers who receive more cranberries than are covered by their growers' annual allotments have excess cranberries. The Committee would equitably distribute unused allotment to those handlers that have excess cranberries.

Outlets for Excess Cranberries

The purpose of the producer allotment program proposed to be implemented by this rule is to limit the amount of the total crop that can be marketed for normal uses. As previously indicated, a large portion of the U.S.

cranberry crop is processed. Most of it is marketed domestically.

There is no need to limit the volume of cranberries that may be marketed in noncommercial or noncompetitive outlets. Thus, in accordance with § 929.61, handlers would be able to dispose of excess cranberries in certain designated outlets. Noncommercial outlets include charitable institutions and research and development projects for market development purposes. Noncompetitive outlets are any nonhuman food use and foreign markets, except Canada. Canada is excluded because significant sales of cranberries to Canada could result in transshipment back to the United States of the cranberries exported there. This could disrupt the U.S. market, counter to the intent of the volume regulation.

To ensure that excess cranberries diverted to the specified outlets do not enter normal market channels, certain safeguard provisions are established under § 929.61. These provisions require handlers to provide documentation to the Committee to prove that the diverted cranberries were actually used in a noncommercial or noncompetitive outlet. In the case of nonhuman food use, a handler would be required to notify the Committee at least 48 hours prior to disposition so that the Committee staff would have sufficient time to be available to observe the disposition of the cranberries.

Section 929.104 of the rules and regulations is proposed to be revised to list the outlets in which handlers can divert excess cranberries. That section currently lists outlets for "restricted cranberries." "Restricted cranberries" is a term used in connection with withholding requirements—another type of volume regulation authorized under the order. While the specific outlets listed are not being proposed for revision, changes are proposed in the regulatory text to provide that these outlets are authorized for excess cranberries under a producer allotment program.

Fresh and Organic Fruit Exemption

The Committee also recommended that fresh fruit and organically-grown

cranberries be exempted from regulation this season. Fresh and organically-grown fruit would be exempt pursuant to § 929.58 of the order which provides that the Committee may relieve from any or all requirements cranberries in such minimum quantities as the Committee, with the approval of the Secretary, may prescribe.

Fresh fruit accounts for about 4.7 percent of the total production. The Committee estimated that about 280,000 barrels will be sold fresh this year, compared to 260,000 barrels sold last season.

Under current marketing practices, there is a distinction between cranberries for fresh market and those for processing markets. Cranberries intended for fresh fruit outlets are grown and harvested differently. Fresh cranberries are dry picked while cranberries used for processing are water picked. When cranberries are water picked, the bog is flooded and the cranberries that rise to the top are harvested. Dry picking is a more labor intensive and expensive form of harvesting. Cranberry bogs are designated as "fresh fruit" bogs and are grown and harvested accordingly. Only the lower quality fruit from a fresh bog goes to processing outlets.

In addition, fresh cranberry sales constitute less than 5 percent of the cranberry market. All fresh cranberries can be marketed and do not compete with processing cranberries. Fresh cranberries are seasonal (due to their limited shelf life) and are not a part of the growing industry inventories. The Committee concluded that fresh supplies do not contribute significantly to the current cranberry surplus. Thus, the Committee recommended that such cranberries be exempt from the allotment percentage this rule proposes.

Organically-grown cranberries comprise an even smaller portion of the total crop than fresh cranberries. The Committee estimated that about 1,000 barrels of organic fruit will be sold this season, compared to 450 barrels last season. Organic cranberries are a growing niche market and regulating them could have an adverse effect on the production and marketing of this product. Like fresh cranberries, demand for organic cranberries is in line with the current limited production. Thus, organic cranberries do not contribute in any meaningful way to the current oversupply experienced with processing fruit. The Committee therefore recommended that organically-grown cranberries be exempt from volume regulation during the upcoming season.

In order to be exempt, organic cranberries would have to be certified as

such by a third party organic certifying organization that is acceptable to the Committee.

Exemptions for fresh and organically-grown cranberries would be provided in a proposed new § 929.158.

Definition of Commercial Crop

The Committee also recommended that the amount of barrels that defines a commercial crop under the marketing order be increased. Calculations of sales histories are based on "commercial" cranberry acreage. Currently, section 929.107 defines a commercial crop as acreage that has a sufficient density of growing vines to produce at least 15 barrels per acre without replanting or renovation. The Committee has recommended that the 15 barrels per acre be increased to 50 barrels per acre. Acreage producing less than 50 barrels per acre would not be considered to produce a commercial crop. This increase would bring the order more in line with current growing conditions.

This action would assist growers who harvested cranberries for the first time in 1999. These growers would qualify for a new sales history determination. As previously discussed, sales history on new acreage would be the State average yield or the grower's estimated commercial sales, whichever is greater.

A full commercial cranberry crop is usually not harvested until 3 or 4 years after being planted. Production is usually limited during the first year, with increases in subsequent years until full capacity is reached. If a grower harvested a bog for the first time in 1999, and achieved a yield of 25 barrels per acre, such grower's sales history would be calculated by using the determination for a grower with four years or less of production. This would be the actual production for that year. Therefore, in this example, for the 2000–2001 crop year the grower's sales history would be 25 barrels multiplied by the number of acres such grower harvested. The 25 barrels would be used in the calculation since it is greater than the 15 barrels per acre used to define commercial cranberry acreage.

Under the proposed revision, such grower's first year of sales harvested from that acreage would not count since it is less than 50 barrels per acre. Therefore, the grower would be eligible to receive the determination for growers with no sales history on such acreage (which would be the State average yield or the grower's estimated commercial sales, whichever is greater). This would benefit growers who had very low yields per acre for their first year of production.

Appeal Procedures

Finally, the Committee recommended that the current review procedures for appeals be revised. Currently, section 929.125 provides an appeal procedure for growers who are dissatisfied with their sales histories, as determined pursuant to § 929.48(a) and (b) of the order. Under the current procedures, a grower may submit to the Committee a written argument within 30 days after receiving the Committee's determination of that grower's sales history, if such grower disagrees with the determination. The Committee shall review its determination within a reasonable time, reviewing all the material submitted by the grower, and notify the grower of its decision. If the grower is not satisfied with the Committee's decision, that grower may appeal to the Secretary, through the Committee, within 30 days after being notified about the Committee's decision. The Secretary shall review all pertinent information and render a decision. The Secretary's decision shall be final.

The Committee recommended revising the current process. Specifically, it proposed that an appeals subcommittee be established and that the full Committee be provided with 15 days to further review appeals by growers. The Committee believes that this process would be more efficient in considering grower appeals. The subcommittee, appointed by the Chairman, would be composed of two independent and two cooperative representatives, as well as a public member. Although an additional level of review is being established, the Committee believes that it would be more efficient for a subcommittee composed of 5 members to meet and discuss the appeals. The subcommittee would have 30 days to render a decision on the request.

If the grower is not satisfied with the appeal subcommittee's decision, the grower could further appeal to the full Committee. The grower would submit his or her written argument to the Committee along with any pertinent information for the Committee's review within 15 days after being notified about the determination by the subcommittee. The Committee would have 15 days from the receipt of the grower's appeal to respond. The Committee would inform the grower of its decision, including the reasons for its decision.

The grower may further appeal to the Secretary within 15 days after notification of the Committee's findings, if such grower is not satisfied with the Committee's decision. The Committee would forward a file with all pertinent

information related to the grower's appeal. The Secretary would inform the grower and Committee staff of the Secretary's decision. All decisions by the Secretary are final.

USDA Proposal—Recalculation of Sales Histories

As previously discussed, the order sets forth that a grower's sales history is established by computing an average of the best four years' sales out of the last six years' sales for those growers with existing acreage. For growers with four years or less of commercial sales history, the sales history is calculated by averaging all available years of such grower's sales. A new sales history for a grower with no sales history is calculated by using the State average yield per acre or the total estimated commercial sales, whichever is greater.

Since the Committee met on March 30, 2000, the Department has received additional information from cranberry growers and handlers pertaining to the way in which sales histories are computed. Of primary concern is the potential inequities that could result from the current process. Specifically, newer growers would be restricted to a greater extent than more established growers. That is because a cranberry bog does not reach full capacity until several years after being planted. Using an average of early years' sales (which are low) would likely result in a sales history substantially below current sales potential. A more established grower, on the other hand, would have a sales history more reflective of his or her production capacity.

The Committee's recommendation concerning the definition of "commercial crop" (previously discussed in this document) was in response to this concern. However, the Department believes a further modification is needed to lessen the differential impact a volume regulation would have on individual cranberry growers. For this reason, The Department is proposing that a sales history for each existing grower be calculated using the best single sales year in the past six years. For a grower with less than six years of sales, the sales history would be the highest year of sales available. This proposal is authorized under § 929.48(a)(2) of the order which provides that the number and identity of the years used to compute sales histories may be altered by regulation. The Department is not proposing a change in the way sales histories are computed for brand new growers (those without any history of sales).

The Department is inviting comments on this proposed change. As previously discussed, this change in the way sales histories are computed would result in a revised industry total sales history of 7.6 million barrels. This would also result in a modification of the marketable quantity or the allotment percentage. It is expected that the Committee would meet to consider this proposal and provide the Department with its views and any recommended revisions prior to finalization of this proposed rule.

This proposal would be implemented by adding a new § 929.149 to the order's rules and regulations.

USDA Proposal—Suspension of Deadline for Notifying Growers of Their Annual Allotment

Section 929.49 of the order provides that in any year in which an allotment percentage is established by the Secretary, the Committee must notify growers of their annual allotment by June 1. That section also requires the Committee to notify each handler of the annual allotments for that handler's growers by June 1.

This rule proposes establishing an allotment percentage for the 2000 cranberry crop. To allow adequate time for interested parties to comment on this proposal and for the Department to give due consideration to the comments received, a final decision on this rule may not be reached before June 1. Therefore, the Department is proposing that the June 1 deadline be suspended for the 2000–2001 crop year.

The Regulatory Flexibility Act and Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of cranberries who are subject to regulation under the order and approximately 1,100 producers of cranberries in the regulated area. Small agricultural service firms, which

includes handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000. The majority of cranberry handlers and producers may be classified as small businesses.

This rule would establish a marketable quantity and an allotment percentage for cranberries in a 10 State production area during the crop year from September 1, 2000, through August 31, 2001. Handlers would only be allowed to handle those cranberries that are covered by annual allotment. This action would also exempt fresh and organic cranberries from volume regulation, define the State average yield, increase the barrels per acre for determining a commercial crop, and revise the Committee review procedures. These actions are designed to improve the operation of the volume regulation program.

Over the past several years, per capita consumption of cranberries has averaged 1.69 pounds. Per capita consumption peaked in 1994 at 1.80 pounds and began trending downward. In 1998, per capita consumption was 1.67 pounds. Associated with these per capita consumption figures is the fact that total domestic sales also peaked in 1994 at 4,692,507 barrels and has declined to 4,506,632 barrels in 1998. However, cranberry production reached an all-time high of 6,389,000 barrels in 1999. This is a 17 percent increase over 1998 production of approximately 5.4 million barrels. Available cranberry supplies continue to out pace demand, resulting in high levels of carryover inventories. Over the past two seasons, prices have started to decline. In 1998 grower prices decreased to \$38.80 per barrel. In 1999, prices are expected to fall to \$18–\$30 per barrel.

The cranberry industry has operated under a Federal marketing order since 1962. The last season of volume regulation was in 1971. The order covers a ten-State area. The highest producing States are Massachusetts and Wisconsin, which together account for about 80 percent of total production. Over 90 percent of the crop is processed, with the remainder being sold as fresh fruit.

For many years the industry has enjoyed increasing demand for cranberry products, primarily due to the success of cranberry juice-based drinks. This situation encouraged additional production. From 1960 through 1999, production increased from 1.34 million barrels (one barrel equals 100 pounds of cranberries) to 6.39 million barrels. This

represents a 377 percent increase. Production in 1999 was an all-time high, and was 17 percent above that of the previous year.

The growth rate in production is attributable to a 76 percent increase in harvested area (from 21,140 to 37,200 acres) and an even higher increase (171 percent) in yields (from 63.4 to 171.7 barrels per acre).

While production continues to rise, demand has leveled off. Total domestic sales peaked in 1994 at 4.7 million barrels, and declined to 4.5 million barrels in 1998.

Increased total supplies in excess of demand have resulted in large inventories. Carryover inventories have grown from 883,773 barrels in 1988 to 3,107,366 barrels in 1999. From 1988 through 1997, carryover as a percent of production ranged from 21 to 36 percent. However, in 1998, carryover as a percent of production increased to 40 percent; in 1999 it increased to 49 percent. Carryover inventory for the 1999 season exceeded 3 million barrels for the first time in the industry's history.

When supply outpaces demand, resulting in high levels of carryover inventories, grower prices could be negatively impacted. Grower prices rose from \$8.83 per barrel in 1960 to a peak level of \$65.90 per barrel in 1996. These rising price levels provided an incentive for producers to expand planted acres and to increase yields. Over the past two seasons, prices have started to decline. In 1998, grower prices decreased to \$38.80 per barrel. The returns for the 1999 crop year are expected to fall below \$30.00 per barrel. The industry anticipates further price reductions if supplies are not brought more in line with demand.

Increasing inventories and the high costs associated with storing these inventories have resulted in the industry considering the use of volume control regulations. The goal of such regulations is to obtain a higher and more stable price than would exist in their absence.

In an industry such as cranberries, where the product can be stored for long periods of time, volume control is a method that can be used to reduce unwanted inventories. Large inventories are costly to maintain and, with the outlook for continued high production levels, these inventories would be difficult to market.

Based in large part on historical sales figures, the Committee estimated utilization of processing fruit at 5.4 million barrels and of fresh fruit at 280,000 barrels.

The Committee determined that the marketable quantity for the 2000–2001 crop year should be established at 5.4 million barrels. This is equal to the expected demand for processing fruit. Fresh fruit sales were not included because fresh fruit would not be covered by the allotment percentage. Organically-grown cranberries would also be exempted because projected sales are only about 1,000 barrels. Using a marketable quantity equal to processed fruit demand should result in a more stable level of inventories. Supplies in inventory could easily cover any unexpected increases in market demand.

Section 929.49(b) provides that the marketable quantity be apportioned among growers by applying the allotment percentage to each grower's sales history. The allotment percentage equals the marketable quantity divided by the total of all grower's sales histories. No handler can purchase or handle cranberries on behalf of any grower not within the grower's annual allotment.

Total growers' sales histories were set at 6.35 million barrels. Using the formula established under the order (5.4 million barrels divided by 6.35 million barrels), the annual allotment percentage is 85 percent.

Currently, a grower's sales history is established by computing an average of the best four years' sales out of the last six years' sales for those growers with existing acreage. For growers with four years of less of commercial sales history, the sales history is calculated by averaging all available years of such growers' sales.

The Department is proposing that a sales history for each existing grower be recalculated, using the best single sales year in the past six years. For a grower with less than six years of sales, the sales history would be the highest year of sales available. This change is being proposed to take care of potential inequities that could result from the current process of computing sales histories. Specifically, newer growers are restricted to a greater extent than more established growers. That is because a cranberry bog does not reach full capacity until several years after being planted. Using an average of early years' sales (which are low) would likely result in a sales history substantially below current sales potential. A more established grower, on the other hand, would have a sales history more reflective of his or her production capacity.

If adopted, each grower's sales history would be recalculated. The Committee staff reports that this would result in a

new total industry sales history of 7.6 million barrels (compared to the current total of 6.35 million barrels). Since the allotment percentage is determined by dividing the marketable quantity by the total sales history, a change in the total sales history could impact the level of volume regulation.

If the 5.4 million barrel marketable quantity recommended by the Committee is used, the allotment percentage would change from the 85 percent recommended by the Committee to 71 percent. Increasing the restricted percentage from 15 to 29 percent could result in a higher level of restriction than recommended by the Committee.

To retain the Committee's recommended allotment percentage of 85 percent with the new sales history total, the marketable quantity would have to be increased from the current 5.4 million barrels to 6.46 million barrels. This would result in a lower restriction than recommended by the Committee.

The Department is soliciting comments on all the proposals, including the Committee's original recommendation of marketable quantity and allotment percentage, as well as two alternatives proposed by the Department. Particular attention should be given to the expected impacts of these different levels of regulation on cranberry growers and processors, and whether there would be a differential impact on small versus large entities.

The Committee could at any time, by reason of changed conditions, recommend modification, suspension or termination of the marketable quantity or allotment percentage proposed in this rule.

The impact of this rule should be beneficial to both growers and handlers. The regulation is intended to decrease the build-up of excessive inventories and help stabilize grower prices and returns.

Discussions at the meeting indicated that the establishment of a producer allotment program is the best alternative for the industry at this time. Six months ago, the Committee established a volume regulation subcommittee that researched the two methods of volume regulation available under the order. Those two methods are a producer allotment program and handler withholding program. The subcommittee's primary mission was to determine what method of volume control would be best for the industry if volume regulations were recommended. After holding several meetings, the subcommittee concluded that a producer allotment is the best

method available to the industry at this time.

The withholding program has not been used since 1971. The provisions of the producer allotment program were amended in 1992, but never used. Under the withholding program, growers deliver all their cranberries to their respective handlers. The handler is responsible for setting aside restricted cranberries and ultimately disposing of the cranberries in authorized noncommercial and noncompetitive outlets. This could result in a large volume of cranberries being disposed of and perhaps destroyed. In addition, the withholding provisions require that all withheld cranberries be inspected by the Federal or Federal-State Inspection Service, which could be costly.

The producer allotment program would allow cultural practices to be changed at the grower level prior to harvest. This could result in less fruit being produced and would not require the disposal of as many cranberries as with the withholding provisions. In addition, inspections are not required under the producer allotment method, which is more cost effective and would be simpler to administer. For these reasons, the subcommittee recommended to the full Committee that if volume regulations were recommended, that the producer allotment program be the method for regulation.

In its review of the producer allotment program, the subcommittee recommended that cranberries intended for fresh market be exempt from the volume regulation. This recommendation was unanimously approved by the full Committee. The Committee also recommended by unanimous vote that organic cranberries be exempt from volume regulations.

Fresh and organically-grown fruit would be exempt pursuant to section 929.58 of the order which provides that the Committee may relieve from any or all requirements, cranberries in such minimum quantities as the Committee, with the approval of the Secretary, may prescribe.

Fresh fruit accounts for about 4.7 percent of the total production. The Committee estimated that about 280,000 barrels will be sold fresh this year, compared to 260,000 barrels sold last season.

Under current marketing practices, there is a distinction between cranberries for fresh market and those for processing markets. Cranberries intended for fresh fruit outlets are grown and harvested differently. Fresh cranberries are dry picked while cranberries used for processing are

water picked. When cranberries are water picked, the bog is flooded and the cranberries that rise to the top are harvested. Dry picking is a more labor intensive and expensive form of harvesting. Cranberry bogs are designated as "fresh fruit" bogs and are grown and harvested accordingly. Only the lower quality fruit from a fresh bog goes to processing outlets.

In addition, fresh cranberry sales constitute approximately 5 percent of the cranberry market. All fresh cranberries can be marketed and do not compete with processing cranberries. Fresh cranberries are seasonal (due to their limited shelf life) and are not part of the growing industry inventories.

The Committee concluded that fresh supplies do not contribute significantly to the current cranberry surplus. Thus, the Committee recommended that such cranberries be exempt from the allotment percentage this rule proposes.

Organically-grown cranberries comprise an even smaller portion of the total crop than fresh cranberries do. The Committee estimated that about 1,000 barrels of organic fruit will be sold this season, compared to 450 barrels last season. Organic cranberries are a growing niche market and regulating them could have an adverse effect on marketing this product. Demand for organic cranberries is in line with the current limited production. Thus, all organic cranberries can be marketed, and they do not contribute in any meaningful way to the current oversupply experienced with processing fruit. The Committee therefore recommended that organically-grown cranberries be exempt from volume regulation during the upcoming season.

In order to receive an exemption for fresh or organic cranberries a handler would be required to report such quantities on the current grower acquisition listing form.

The Committee also recommended, by unanimous vote, that the sales history re-determination procedures be modified by appointing a subcommittee composed of two independent and two cooperative representatives and one public member to be the first level of review.

Currently, section 929.125 provides an appeal procedure for growers that are dissatisfied with a determination made pursuant to section 929.48(a) and (b) of the order which describes the computation for a grower's sales history. A grower may submit to the Committee a written argument within 30 days of receiving the Committee's determination for sales history, if such grower disagrees with the determination. The Committee shall

review its determination within a reasonable time, reviewing all the material submitted by the grower. If the grower is not satisfied with the Committee's decision such grower may appeal through the Committee, within 30 days of the Committee's decision, to the Secretary. The Secretary shall review all pertinent information and render a prompt decision. The Secretary's decision shall be final.

The Committee recommended that an appeals subcommittee be established and the full Committee have less time to further review appeals by growers. The Committee believed that this process would prove to be more efficient in considering grower appeals. Although an additional level of review is being established, the Committee believed that it would be more efficient for a subcommittee composed of 5 members to meet and discuss the appeals. Scheduling a meeting of the entire Committee to discuss and make determinations of grower appeals could be cumbersome and time consuming.

The Committee also recommended, by unanimous vote, to raise the amount of barrels that defines a commercial crop under the marketing order from 15 to 50 barrels. Calculations of sales histories are made on "commercial" cranberry acreage. This action would assist growers who harvested cranberries for the first time in 1999. These growers would qualify for a new sales history determination. As previously discussed, sales history on new acreage would be the State average yield or the grower's estimated commercial sales, whichever is greater.

Under the proposed revision, such grower's first year of sales harvested from that acreage would not count since it is less than 50 barrels per acre. Therefore, the grower would be eligible to receive the determination for growers with no sales history on such acreage (which would be the State average yield or the grower's estimated commercial sales, whichever is greater). This would benefit growers who had very low yields per acre for their first year of production.

The Committee also considered that State average yield for the 2000-2001 crop be defined as the average yields during the year 1997 or the average of the best four years out of the last six years, whichever is greater. This calculation is similar to that used to compute sales history (an average of the best four years out of the last six years), and would average out seasonal variations in yields. However, if estimated commercial sales are greater than what is computed above, the

Committee would use the commercial sales estimated by the grower.

In order to take into account the differences among the States, the Committee recommended calculating the average yield for each State using the best four of the last six years, and compare it to the average yield for that State in 1997. The higher of the two figures for each State would be used to calculate new sales histories for new growers. This rule proposes adding a new § 929.148 to set forth this calculation.

The Department's proposal to change the way in which sales histories are computed (the best out of the past six years) should result in a more equitable distribution of annual allotment among individual cranberry growers. The proposal to suspend the June 1 deadline for notifying growers and handlers would allow for adequate time to complete this rulemaking proceeding, without unduly impacting the cranberry industry.

Some handlers at the meeting indicated that they do not have large inventories and therefore, may have to purchase fruit from their competitors to meet customer needs. They in turn favored a lesser restriction, rather than 15 percent as proposed. Some growers indicated that they have not contributed to the surplus problem, and they should not be regulated. Those at the meeting further expressed that Wisconsin has expanded its production and Massachusetts has not in the past five years. Massachusetts growers and handlers believe they should not have to be regulated. However, other growers and handlers at the meeting expressed that the surplus is a industry problem and must be dealt with by the entire industry.

The Committee discussed the alternative of not regulating at all. Economic reports of the condition of the cranberry industry indicated that if supplies were not controlled, grower prices would continue to drop. The Committee does not know how small growers as well as large ones could sustain further price drops.

Some growers expressed that the Committee should consider other methods of increasing demand rather than regulating the industry at this time. They suggested implementing a domestic promotion program in addition to the export promotion activities already underway. The Committee did recommend that a subcommittee be established to research such a possibility. They also suggested that effort in market development and new product development would

increase demand for cranberries and better address the oversupply situation.

The Committee recommendation for volume regulation passed by a seven to one vote. The person voting against the recommendation felt a volume regulation would adversely affect the growers and handlers in his district, New Jersey. All of the other recommendations were passed by unanimous votes. The proposed marketable quantity and allotment percentage is not expected to cause a shortage of cranberries.

The other changes discussed in this document are designed to improve the operation of the volume regulation this season.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules which duplicate, overlap or conflict with this rule.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements imposed by this order have been previously approved by OMB and assigned OMB Number 0581-0103.

There are some reporting and recordkeeping and other compliance requirements under the marketing order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. This rule does not change those requirements.

The Committee's meetings were widely publicized throughout the cranberry industry and all interested persons were invited to attend them and participate in Committee deliberations. Like all Committee meetings, the March 2000 meeting was a public meeting and all entities, both large and small, were able to express their views on these issues. The Board itself is composed of eight members, of which seven members are growers and one represents the public. Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations. The Committee manager also held several meetings with growers throughout the production area to discuss the methods of volume

regulation and the procedures for regulation.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate so that any final rule which is issued may be applicable to 2000-2001 crop year cranberries. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 929 is proposed to be amended as follows:

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.

§ 929.49 [Amended]

2. In paragraph (d) of § 929.49, the phrase "On or before June 1" is suspended.

3. In paragraph (e) of § 929.49, the phrase "On or before June 1 of any year in which an allotment percentage is established by the Secretary" is suspended.

4. Section 929.104 is revised 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) Foreign countries, except Canada.
- (2) Charitable institutions.
- (3) Any nonhuman food use.
- (4) Research and development

projects dealing with dehydration, radiation, freeze drying, or freezing of cranberries, for the development of foreign markets.

(b) Handlers may divert excess cranberries in the outlets listed in paragraph (a) of this section only if they meet the diversion requirements specified in § 929.61(c).

§ 929.107 [Amended]

5. In § 929.107, paragraphs (a) and (c) are amended by removing the number "15" and adding in its place the number "50".

6. Section 929.125 is revised to read as follows:

§ 929.125 Committee review procedures.

Growers may request, and the Committee may grant, a review of determinations made by the Committee pursuant to section 929.48, in accordance with the following procedures:

(a) If a grower is dissatisfied with a determination made by the Committee which affects such grower, the grower may submit to the Committee within 30 days after receipt of the Committee's determination of sales history, a request for a review by an appeals subcommittee composed of two independent and two cooperative representatives, as well as a public member. Such appeals subcommittee shall be appointed by the Chairman of the Committee. Such grower may forward with the request any pertinent material for consideration of such grower's appeal.

(b) The subcommittee shall review the information submitted by the grower and render a decision within 30 days of receipt of such appeal. The subcommittee shall notify the grower of its decision, accompanied by the reasons for its conclusions and findings.

(c) If the grower is not satisfied with the subcommittee's decision, the grower may further appeal to the full Committee. The grower must submit its written argument to the Committee along with any pertinent information for the Committee's review within 15 days after notification of the subcommittee's decision. The Committee shall respond within 15 days of the receipt of the grower's appeal. The Committee shall inform the grower of its decision, accompanied by the reasons for its decision.

(d) The grower may further appeal to the Secretary, within 15 days after notification of the Committee's findings, if such grower is not satisfied with the Committee's decision. The Committee shall forward a file with all pertinent information related to the grower's appeal. The Secretary shall inform the grower and all interested parties of the Secretary's decision. All decisions by the Secretary are final.

7. A new § 929.148 is added to read as follows:

§ 929.148 State average yield.

The State average yield pursuant to section 929.48(a)(5)(ii) is defined as the yield per State for the year 1997 or the best four years out of the last six years whichever is greater. However, if the estimated commercial sales are greater than the volume computed by this method, the Committee will use the grower's estimated commercial sales.

8. A new § 929.149 is added to read as follows:

§ 929.149 Determination of sales history.

A sales history for each grower shall be computed by using the sales in the highest one of the most recent six seasons of sales. For a grower with less than six seasons of sales, the sales history shall be computed using the highest sales season. Sales history for a grower with no previous sales will be computed according to § 929.48 of the order.

9. A new § 929.158 is added to read as follows:

§ 929.158 Exemptions.

Sales of organic and fresh cranberries shall be exempt from volume regulation provisions. Handlers shall qualify for such exemption by filing the amount of fresh or organic cranberry sales on the grower acquisition listing form. In order to receive an exemption for organic cranberry sales, such cranberries must be certified as such by a third party organic certifying organization acceptable to the Committee.

10. A new § 929.250 is added to read as follows:

Option 1

§ 929.250 Marketable quantity and allotment percentage for the 2000–2001 crop year.

The marketable quantity for the 2000–2001 crop year is set at 5.4 million barrels and the allotment percentage is designated at 85 percent.

Option 2

§ 929.250 Marketable quantity and allotment percentage for the 2000–2001 crop year.

The marketable quantity for the 2000–2001 crop year is set at 5.4 million barrels and the allotment percentage is designated at 71 percent.

Option 3

§ 929.250 Marketable quantity and allotment percentage for the 2000–2001 crop year.

The marketable quantity for the 2000–2001 crop year is set at 6.46 million barrels and the allotment percentage is designated at 85 percent.

Dated: May 24, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–13467 Filed 5–25–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–260–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the superseding of an existing airworthiness directive (AD), applicable to certain Boeing Model 777–200 series airplanes, that currently requires a one-time inspection to determine the serial numbers of various switch modules on the overhead panel and control stand, and replacement of switch modules with new, improved modules. The existing AD also requires repetitive tests of the cargo fire extinguishing system, and one-time tests of the fuel crossfeed valve, pack, trim air, and alternate flap control switches; and repair or replacement of switch modules with new improved modules, if necessary.

This action would revise the applicability of the existing AD. This action also would require replacement of the existing switch modules with new switch modules; replacement of the existing module assemblies with new module assemblies; or reworked module assemblies; as applicable. This proposal is prompted by the FAA's determination that certain switches are susceptible to contamination. The actions specified by the proposed AD are intended to minimize contamination of the switch contacts and consequent failure of the switches, which, if not corrected, could result in inability of the flight crew to activate the cargo fire extinguishing, fuel, air conditioning, and alternate flap systems.

DATES: Comments must be received by July 14, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–260–AD, 1601 Lind Avenue, SW.,