532.219(b) of title 5, Code of Federal Regulations.

OPM may establish NAF wage areas when a minimum of 26 NAF wage employees work in the survey area, a local activity has the capability to host annual local wage surveys, and a minimum of 1,800 private enterprise employees are within the survey area in establishments within survey specifications. Lebanon County, PA, has approximately 22 NAF FWS employees, and the wage area's host activity, Fort Indiantown Gap, has downsized its operation. This leaves the Department of Defense without an activity in the survey area with the capability to conduct annual local wage surveys in the wage area. Columbia County, PA, is not a part of an NAF wage area because NAF employees no longer have duty stations in the county. Therefore, the York, PA, NAF wage area will consist of one survey county, York County, PA, and one area of application county, Lebanon County, PA.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, has reviewed and concurred by consensus with this change. FWS employees in Lebanon County, PA, transferred to the York, PA, NAF wage area schedule on the first day of the first applicable pay period beginning on or after March 2, 2000. The interim rule had a 30-day public comment period, during which OPM did not receive any comments.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule (65 FR 10674) amending 5 CFR part 532 published on February 29, 2000, is adopted as final with no changes.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–17458 Filed 7–10–00; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket No. FV00–929–2 FR]

Cranberries Grown in 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: Final rule.

SUMMARY: This rule establishes 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 order regulates the handling of cranberries grown in 10 States and is administered locally by the Cranberry Marketing Committee (Committee). This rule establishes a marketable quantity of 5.468 million barrels, allows for some adjustment of this figure based on final calculations of sales histories, and establishes an allotment percentage of 85 percent. This action is designed to stabilize marketing conditions and improve grower returns. Fresh and organically-grown cranberries are exempt from the volume limitations to facilitate marketing of these products. This rule also revises the method in which growers' sales histories are computed and suspends certain dates in the order which are impractical.

EFFECTIVE DATE: This final rule becomes effective July 12, 2000.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, DC Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, 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, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule 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

When Will This Final Rule Be Effective?

The final rule is effective on July 12, 2000, and the volume regulation will apply to the 2000–2001 crop year which begins on September 1, 2000, and ends on August 31, 2001.

Who Will Be Affected by This Action?

Cranberry growers and handlers/processors located in the 10-State production area will 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 Implemented 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 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 marketable quantity for the 2000–2001 crop year has been established at 5.468 million barrels. This figure is subject to some change based on final calculations of sales histories. This is approximately 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 by the Committee at 6.432 million barrels. Using the formula established under the order (5.468 million barrels divided by 6.432 million barrels), the annual allotment percentage is 85 percent.

Sales of fresh and organically-grown fruit are exempt from the volume regulation. In addition, other modifications have been made 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 85% allotment percentage.

How Are Sales Histories Calculated for the 2000–2001 Season?

The Committee is responsible for calculating each grower's sales history on an annual basis. A new grower with no sales history will be issued allotment based on the State average yield per acre or total estimated commercial sales, whichever is greater. For the 2000–2001 crop, the State average yield is 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.

For growers with existing cranberry acreage, sales history for growers with six or more years of sales history is established by computing an average of the highest four of the most recent six years of sales. For growers with five years of sales history, the average of the best four out of the last five years is used. For growers with four years or less of commercial sales history, the sales history is calculated by using the best single sales year. The sales history of newly planted acreage belonging to existing growers which has no commercial sales history (including those with four years or less of sales history) is calculated the same way as the sales history of a new grower with no sales history. If growers with existing acreage also have newer acreage with four years of sales history or less, and such grower can provide the Committee with credible information which would allow the Committee to segregate the sales history of the newer acreage, then that acreage will be treated in the same way as acreage of a grower with four years or less of sales history.

Do Growers Have Recourse if They Are Not Satisfied With Their Sales History Calculation?

If growers are dissatisfied with their sales history calculation as determined by the Committee, they can appeal to the appeals subcommittee appointed by the Committee. If growers are not satisfied with the decision by the appeals subcommittee, two other levels of appeal are available—the full Committee and the Secretary. All decisions by the Secretary will be final.

The appeals subcommittee is in the process of developing specific criteria to follow in making its decisions.

Appeals should be filed with David N. Farrimond, General Manager, Cranberry Marketing Committee, 266 Main Street, Wareham, Massachusetts 02571; Telephone: (800) 253–0862; or Fax (508) 291–1511.

Executive Orders 12866 and 12998

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

This final rule 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 any crop year. This rule establishes a marketable quantity and allotment percentage for cranberries for the 2000–2001 crop year beginning September 1, 2000, through August 31, 2001. This rule 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.

Introduction

As discussed in detail later in this document, the U.S. cranberry industry is experiencing an oversupply situation. Recent increases in acreage and yields have resulted in greater supplies, while demand has remained fairly constant. The result has been building inventories and reduced grower returns.

The Committee has been considering ways to cope with this oversupply situation in recent years. On March 30, 2000, the Committee recommended using volume controls (in the form of producer allotments) for the 2000–2001 crop year. Based on the Committee's recommendation and other available information, a proposed rule was issued and published in the May 30, 2000, **Federal Register** [65 FR 34411]. That rule proposed three alternative levels of volume regulation. The Committee met again on June 6, 2000, and revised its initial recommendation in several respects.

This final rule establishes a marketable quantity and allotment percentage for the 2000–2001 crop year. This action also revises procedures for calculating growers' sales histories, exempts fresh and organically-grown cranberries from volume regulation, defines State average yield per acre, increases the barrels per acre for determining a commercial crop, revises the Committee review procedures for re-determination of sales histories, and suspends the date by which the Committee notifies growers of their annual allotment. These actions are based primarily upon the recommendations made by the Committee and comments received in response to the May 30, 2000, proposed rule. The volume regulation will be effective September 1, 2000, through August 31, 2001.

Marketable Quantity, Allotment Percentage and Sales Histories

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. The allotment percentage

would be applied to each grower's individual sales history to derive each grower's annual allotment. Handlers cannot handle cranberries unless they are covered by a grower's annual allotment.

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 has been calculated by averaging all available years of such grower's sales. A new sales history for acreage with no sales history is calculated by using the State average yield per acre or the total estimated commercial sales, whichever is greater. This is done for new growers, as well as those that also have acreage with sales history.

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).

Committee's Initial Recommendation—March 30, 2000

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, was estimated at 4.6 million barrels. Foreign production (primarily Canada) was projected at 800,000 barrels. Allowing for shrinkage of 2 percent for carryover and 4 percent for domestic and foreign production, the total adjusted available supply of cranberries was projected at 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 ESTIMATES

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

The Committee determined that the marketable quantity for the 2000–2001 crop year should be established at 5.4 million barrels. This was 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 was 85 percent.

Proposed Rule Published on May 30, 2000

The Committee has been discussing the possible use of volume regulation for over a year. In its deliberations, concerns were voiced about the potential inequities that could result from the current process used to calculate sales histories. Because sales histories are based on an average of past years' sales, newer growers could be restricted to a greater extent than more established growers. This 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 below future 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 March 30, 2000, recommendation concerning the definition of ''commercial crop'' (explained later in this document) was intended to mitigate potential inequities. Based upon information received from cranberry growers and handlers subsequent to the March 30 meeting, the Department believed a further modification might be needed to lessen the differential impact a volume regulation could have on individual cranberry growers. For this reason, the Department proposed 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 type of change is contemplated 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 did not propose a change in the way sales histories are computed for brand new acreage (acreage without any history of sales).

The Department's proposal would have changed the way most growers' sales histories were computed. If this change were adopted, each affected grower's sales history would be recalculated. The Committee staff reported that this would have resulted in a new industry total sales history of 7.6 million barrels (about 20% above the 6.35 million barrels used by the Committee). Retaining the 5.4 million barrel marketable quantity recommended by the Committee would require an allotment percentage of 71 percent. To retain the 85% allotment percentage recommended by the Committee, the marketable quantity would need to be increased to 6.46 million barrels (almost 20% above the 5.4 million barrels of expected demand for processing fruit as calculated by the Committee). In the May 30 proposed rule, the Department solicited comments on the Committee's original recommendation of marketable quantity and allotment percentage, as well as on two alternatives proposed by the Department. To summarize, the three options proposed in the May 30 rule

were 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

The proposed rule solicited comments on these three options or appropriate modifications of them. Comments were due on June 14, 2000.

Committee's Recommendation of June 6, 2000

During the comment period, the Committee met again on June 6, 2000. The primary reason the meeting was held was to consider the various options contained in the proposed rule.

The Committee discussed the two options proposed by USDA. In order to lessen the differential impact a volume regulation would have on individual growers, the sales history calculation was proposed to be modified by USDA so that each existing grower would use the best single sales year in the past six years. A grower with less than six years of sales would use the highest year of sales available. The computation for all growers with brand new acreage was not modified from the Committee's first recommendation (using the State average yield or the total estimated commercial sales, whichever is greater). Using the revised calculation, total sales histories would be increased to 7.6 million barrels. The Committee believed that this calculation artificially inflates the total sales histories. For example, the new total exceeds the record-high 1999 production of 6.39 million barrels by 19 percent, and it exceeds the projected 2000 production (5.89 million barrels) by almost 30 percent.

The Committee also believes that the revised calculation favors production regions with more variability in yield from year to year over those with more consistent production. A Committee member at the June 6, 2000, meeting stated that the standard deviation of yields in Massachusetts is less than 15 barrels per acre, compared with more than 30 barrels per acre in Oregon. Using the best year out of the last six would benefit those States with higher variation, introducing more inequities rather than diminishing them. The proposed change would also favor growers who have planted new acreage over growers who have a more consistent record of production.

Discussion at the June 6 meeting also indicated that the proposed change would favor growers who have planted new acreage in recent years over growers who have a more consistent record of production. (No concerns were expressed about the method used for computing sales histories for new acreage with no sales history.) The Committee concluded that the proposed change in the calculation of sales histories would give undue advantages to growers who have expanded acreage considerably in recent years, and would penalize growers who maintained a consistent production base. This would, again, introduce additional inequities.

Under USDA's option 1, the marketable quantity would remain at 5.4 million barrels, as recommended by the Committee on March 30, 2000. Using the higher sales history figure of 7.6 million barrels would reduce the allotment percentage to 71 percent (5.4 million barrels divided by 7.6 million barrels). This would increase the restricted percentage from 15 to 29 percent. The consensus of the Committee was that volume regulation should not be more restrictive than an 85 percent producer allotment. Although a 15 percent restriction may not have a great immediate impact on grower returns because of the expected large crop and carryover inventories, the Committee believes that an 85 percent allotment percentage would be a good place to start for the industry to address the oversupply situation. The Committee recognizes that the market cannot be stabilized (under the marketing order) in a single year.

More importantly, many growers have been anticipating an allotment percentage not less than 85 percent and have been modifying their cultural practices accordingly. Any dramatic increase in the restricted percentage would likely be met with great opposition from the grower community. The Committee therefore concluded that an allotment percentage of 71 percent was unacceptable and rejected USDA's option 1.

Under its second option, USDA again used the higher sales history figure of 7.6 million barrels. To retain the 85% allotment percentage recommended by the Committee on March 30, the marketable quantity was raised from the 5.4 million barrels recommended by the Committee to 6.46 million barrels, an increase of almost 20 percent. The Committee believed that raising the marketable quantity to 6.46 million barrels would result in adding more fruit to the oversupply, further destabilizing the industry and lowering prices. The Committee therefore did not support USDA's option 2.

Concerns were expressed at the June 6 meeting involving growers with 4 years or less of sales histories. It was expressed that these growers could be impacted more greatly by a volume regulation than other growers because of the way the sales histories would be computed. This is because, as previously discussed, yields are increasing on younger acreage. Using an average of past years' sales, as the order provides, would result in a sales history lower than that acreage's future production capacity. To mitigate this problem, the Committee recommended adopting, in part, the change in sales history calculation proposed by USDA. Specifically, it voted to recommend, for a grower with four years or less of sales history, the best year of sales available as that grower's sales history.

Concern was also expressed that the sales history for a grower with only acreage that is 4 years old or younger (who would use the highest year as his or her sales history), would be calculated differently than the sales history for a grower with a combination of both older and younger acreage. For the more established grower, all sales off all acreage is combined, regardless of the age of the acreage. Then the average of the best four years of sales out of the last six years is used as that grower's sales history. Thus, the more established grower would not get the same adjustment for new acreage that the grower with all new acreage does. It was discussed at the meeting that the Committee does not collect information that would allow such an adjustment. Growers' sales are not segregated by the age of individual bogs, so based on the information available, an adjustment for acreage with 4 years of sales or less cannot be made. Such information could be collected by the Committee in the future.

The Committee ultimately recommended a fourth option. The Committee recommended that growers with only acreage that is 4 years old or less use the best single sales year to calculate a sales history. Growers with 5 years of sales history would use an average of their highest 4 years of sales. Growers with 6 or more years would use an average of their highest 4 years of sales of the most recent six years. New acreage for both brand new and existing growers would continue to receive a sales history using the State average yield or the total estimated commercial sales from that acreage, whichever is greater.

The Committee's recommended change in the calculation of sales histories revised the total industry sales history to 6.432 million barrels. The Committee recommended a small increase in its marketable quantity (from 5.4 to 5.468 million barrels) to retain an allotment percentage of 85 percent. The vote on this recommendation was unanimous. A summary of the various options under consideration follows (again, the marketable quantity and sales history figures are in million barrel units):

	Marketable quantity	Total sales histories	Allotment percentage
Initial Committee Recommendation	5.4	6.35	85
USDA Option 1	5.4	7.6	71
USDA Option 2	6.46	7.6	85
Revised Committee Recommendation	5.468	6.432	85

This rule implements the Committee's June 6, 2000, recommendation, with a change, by adding a new § 929.149 to the order's rules and regulations pertaining to determination of sales history. This section is modified from what appeared in the May 30, 2000, proposed rule by providing that a sales history for each grower with 5 years of sales history shall be computed by using an average of the highest four years of such grower's sales history. For a grower with six 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. For a grower with four years or less of commercial sales history, the sales history will be computed using the highest year (the same as in the proposed rule). Sales histories for new acreage with no previous sales will be computed using the State average yield or estimated production, whichever is greater (again, the same as in the proposed rule). This rule clarifies the regulatory language pertaining to sales history for new acreage. As discussed in the proposal (65 FR 34414), sales histories for newly planted acreage by existing growers are computed in the same way as for newly planted acreage by new growers without any sales history. Finally, under this rule, if an established grower has newer acreage with four years of sales history or less, and such grower can provide the Committee with credible information which would allow the Committee to segregate the sales history of the newer acreage, then that acreage will be treated in the same manner as acreage of a grower with four years or less of sales history.

This change in the way sales histories are calculated was made by the Department based on the concerns and comments regarding fairness and equity which were raised during this rulemaking. This change will likely result in a slight increase in the marketable quantity recommended by the Committee to maintain the allotment percentage at 85 percent. The Department believes that this change is needed to most equitably allocate allotment among growers, consistent with the requirements of the Act. Additionally, it is apparent that the industry will not support any restricted percentage greater than 15 percent. Although the level of restriction imposed under this rule will not likely resolve the surplus situation facing the cranberry industry in a single year, we conclude that this rule is the best course of action given the economic crisis facing the industry.

This rule also adds a new § 929.250 to set a marketable quantity of 5.468 million barrels and an allotment percentage of 85 percent. The marketable quantity is within the range proposed in the May 30 rule, and the allotment percentage is equal to that under two of the three options contained in that proposed rule. The additional change to accommodate established growers with new acreage having four years of sales history or less will result in a change in marketable quantity, but not enough to undermine this regulation. This conclusion is based on the Department's belief that sales histories of growers in this category would be increased by a relatively small amount.

Definition of Commercial Crop

The Committee unanimously recommended on March 30, 2000, that the number of barrels that defines a commercial crop under the marketing order be increased from 15 to 50 barrels per acre. Calculations of sales histories are based on ''commercial'' cranberry sales. 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. This rule increases the 15 barrels per acre to 50 barrels per acre. Acreage producing less than 50 barrels per acre will not be considered to produce a commercial crop. This increase brings the order more in line with current growing conditions.

This action will assist growers who harvested cranberries for the first time in 1999. These growers will qualify for a new sales history determination if they produced less than 50 barrels per acre.

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. Under the current rule, 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 this rule change, such grower's first year of sales harvested from that acreage will not count since it is less than 50 barrels per acre. Therefore, the grower will be eligible to receive the determination for growers with no sales history on such acreage (which is the State average yield or the grower's

estimated commercial sales, whichever is greater). This should benefit growers who had very low yields per acre for their first year of production.

This rule revises § 929.107 of the order's rules and regulations, consistent with the proposed rule published on May 30, 2000.

Determination of Sales History for Growers With No History on Their Acreage

As previously discussed, 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. Existing growers who have newly planted acreage will also use this calculation for their new acreage.

The Committee recommended that for the 2000–2001 crop year, 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 for more established growers (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 will use the commercial sales estimated by the grower.

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 will be used to calculate new sales histories for new growers.

A new § 929.148 is added to the order's rules and regulations to set forth the calculation of the State average yield. This is consistent with the proposed rule published on May 30, 2000.

Fresh and Organic Fruit Exemption

The Committee also recommended on March 30, 2000, that fresh and organically-grown cranberries be exempt from volume regulation during the upcoming season. This exemption is authorized under § 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 growing and 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 (in most cases) 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 to produce fruit that is of the quality needed for fresh fruit. Only the lower quality fruit from a fresh bog goes to processing outlets. Yields of fresh fruit growers are typically reduced from those of processed growers. Productions costs are higher, although a premium price over fruit delivered for processing is anticipated.

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 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 volume regulation implemented by this rule.

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 be exempt, organic cranberries will have to be certified as such by a third party organic certifying organization that is acceptable to the Committee.

The fresh fruit exemption was further discussed at the Committee's June 6, 2000, meeting. Concerns were expressed that this exemption would give an unfair advantage to some cranberry processors (those that do not handle fresh fruit) and to their growers. It was suggested that any unused allotment earned by a fresh fruit grower be forfeited, similar to what happens to unused allotment received by growers with new acreage (based on the State average yield).

The Committee considered this suggestion, but continued to support its recommendation to exempt fresh fruit from volume regulation. It was concerned that any substantive departure from the requirements proposed in the May 30 rule would require a second proposed rule to be issued and an opportunity for additional comments to be made available. In any event, the effect of the fresh fruit exemption on the market would probably be minor. The Committee stated that the way in which fresh fruit is handled in future years will be given additional consideration.

Moreover, encouraging growth in organic and fresh markets for cranberries is consistent with the Committee's (and industry) objectives to develop additional market outlets for cranberries. Future industry growth depends on expanding market outlets for cranberries and should not be discouraged.

This rule provides an exemption from volume regulation for fresh and organically-grown cranberries by adding a new § 929.158, as included in the May 30, 2000, proposed rule.

Outlets for Excess Cranberries

The purpose of the producer allotment program implemented by this rule is to limit the amount of the total crop that can be marketed for normal commercial uses. 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 will be able to dispose of excess cranberries in certain designated outlets. That section of the order provides that noncommercial outlets may include charitable institutions and research and development projects for market development purposes. Noncompetitive outlets may include any nonhuman food use (animal feed) 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, contrary 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 verify that the excess 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.

The proposed rule published on May 30, 2000, proposed revising § 929.104 of the order's rules and regulations 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 were not proposed for revision, changes were proposed in the regulatory text to provide that these outlets are authorized for excess cranberries under a producer allotment program. The outlets listed included all those mentioned in § 929.61 of the order.

At its June 6, 2000, meeting, the Committee recommended that foreign markets be excluded as outlets for excess cranberries.

When foreign markets were listed as potential outlets for excess cranberries, cranberry exports were not as significant to the industry as they are today. Exports of fresh cranberries for 1998 were 51,615 barrels, and for processed cranberries, 516,667 barrels. This represents about 10 percent of total sales.

The Committee indicated that the industry is actively selling cranberries in at least 54 foreign countries. The Committee concluded that it would be difficult to list all the countries that are not currently receiving U.S. cranberries (and therefore would be defined as ''noncompetitive'') and to monitor the sales activity in each such country.

Moreover, the Committee intends to continue foreign promotion activities to encourage cranberry export sales. These activities are financed, in part, by funds from USDA's Foreign Agricultural Service, which are matched by industry funds for promotional activities in foreign markets. Currently, funds are being used for promotional activities in Germany and Japan.

Additionally, individual handlers are working on developing markets in many foreign countries. Encouraging disposal of excess cranberries in countries where the Committee and individual handlers are attempting to build cranberry markets could undermine these individual efforts to develop commercial markets. Therefore, the Committee unanimously recommended that foreign countries be excluded as eligible outlets for excess cranberries.

The Department has concluded that the Committee's June 6, 2000, recommendation is unnecessary. Excess cranberries cannot be ''handled,'' which means they cannot be processed. Therefore, under current requirements, excess cannot be processed and then exported. Fresh sales are exempt from volume regulation, so fresh cranberries can be exported free from regulation. We have, however, revised § 929.104 of the regulations to clarify that excess cranberries cannot be processed and sent to foreign markets.

Appeal Procedures

Section 929.125 of the order's rules and regulations establishes an appeal procedure for growers who are dissatisfied with their sales histories as determined by the Committee pursuant to § 929.48 of the order. Under procedures which have been used, 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 must 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 of the Committee's decision. The Secretary must review all pertinent information and render a decision. The Secretary's decision is final.

On March 30, 2000, the Committee recommended revising the process. The Department concurs with the Committee recommendation. Specifically, this rule provides than an appeals subcommittee be established and that the full Committee be provided with 15 days to further review appeals by growers. This process should be more efficient in handling grower appeals. The subcommittee, appointed by the Committee Chairman, will be comprised of two independent and two cooperative representatives, as well as a public member. Although an additional level of review is being established, it should be more efficient for a smaller subcommittee to consider grower appeals. The subcommittee will have 30 days to render a decision on each appeal.

If a grower is not satisfied with the appeal subcommittee's decision, that 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 of the subcommittee's determination. The Committee will have 15 days from the receipt of the grower's appeal to respond. The Committee will promptly 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 the grower is not satisfied with the Committee's decision. The Committee will forward a file with all pertinent information related to the grower's appeal. The Secretary will inform the grower and Committee staff of the Secretary's decision. All decisions by the Secretary will be final.

This rule revises § 929.125 of the order's rules and regulations to implement the Committee's recommendation, consistent with the proposed rule published on May 30, 2000.

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.

The May 30 proposed rule proposed establishing a marketable quantity and allotment percentage for the 2000 cranberry crop. To allow adequate time for interested parties to comment on the proposal and for the Department to give due consideration to the comments received, it was determined that a final decision on the proposed rule would not be reached before June 1. Therefore, the Department proposed that the June 1 deadline be suspended for the 2000–2001 crop year.

This rule suspends the June 1 date appearing in § 929.49 of the order as proposed on May 30, 2000.

Removal of Two Obsolete Regulations

At its June 6, 2000, meeting, the Committee discussed two of the order's rules and regulations that are now obsolete, and unanimously recommended that they be deleted. Those sections are *§ 929.109 Unusual*

circumstances as used in determining base quantities and *§ 929.151 Allotment transfers and disposition of the growers annual allotment certificate*.

Both of these sections pertain to the ''base quantity'' method of producer allotment, which was replaced in 1992 with the sales history method of producer allotment. These sections were inadvertently left in the regulations and do not apply to the sales history program.

Removing these sections from the order's rules and regulation will reduce confusion to the cranberry industry. Therefore, this rule removes §§ 929.109 and 929.151 from the rules and regulations in effect under the order.

Regulatory Flexibility Act & 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 and alternatives considered on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions, in order that small businesses are not 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. Accordingly, AMS has prepared this final regulatory flexibility analysis.

According to the Small Business Administration (13 CFR 121.201) small handlers are those having annual receipts of less than $5,000,000 and small agricultural producers are defined as those with annual receipts of less than $500,000. Because prices have declined significantly in the past year, and because the small farm definition is based on estimated sales, nearly all producers and some handlers are considered small under the SBA definition. Therefore, this RFA analysis is properly applicable for the entire industry. Of the 1,100 cranberry growers, between 86 and 95 percent are estimated to have sales equal to or less than $500,000. Fewer than 60 growers are estimated to have sales that would have exceeded this threshold in 1999. Thus, the consequences of this final action apply to virtually all growers.

Over two-thirds of the U.S. cranberry crop is handled by a grower-owned marketing cooperative. Five other major processors, together with the cooperative, handle over 97 percent of the crop. Using Committee data on volumes handled, AMS has determined that none of these handlers qualify as small businesses under SBA's definition. The remainder of the crop is marketed by about a dozen grower-handlers who handle their own crops. Dividing the remaining 3 percent of the crop by these grower-handlers, all would be considered small businesses.

This action makes the following amendments to the regulations under the cranberry marketing order: (1) revises the calculation of sales histories; (2) exempts fresh and organic fruit; (3) includes a definition of State average yields; (4) changes volume needed to qualify as commercial production; (5) revises Committee review procedure for determination of sales history; (6) suspends that annual allotment notification date; and (7) establishes levels of marketable quantity and allotment percentage to determine the level of volume control.

Most of the changes as a result of this final rule are expected to have little or no regulatory burden on industry, or are made expressly to acknowledge problems faced by new producers and producers with new acreage. The revisions to calculating sales histories will benefit new growers or those who want to enter cranberry production. The exemption for fresh and organic cranberry sales should help those two niche markets continue to develop. Recalculating the number of barrels needed to qualify for commercial production will enable new growers to use the revised sales history calculation to obtain a higher sales history. Before assessing the impact of volume control on the industry, an economic profile of the cranberry market conditions is provided.

Industry Profile

Cranberries are produced in 10 States, but the vast majority of farms and production is concentrated in Massachusetts, New Jersey, Oregon, Washington, and Wisconsin. Massachusetts was the number one producing State until 1990, when Wisconsin took over the lead. Since 1995, Wisconsin has been the top producing State. Both States account for over 80 percent of cranberry production. The industry has operated under a Federal marketing order since 1962.

Average farm size for cranberry production is very small. The average across all producing States is about 33 acres. Wisconsin's average is twice the U.S. average, at 66.5 acres, and New Jersey averages 83 acres. Average farm size is below the U.S. average for Massachusetts (25 acres), Oregon (17 acres) and Washington (14 acres).

Small cranberry growers dominate in all States: 84 percent of growers in Massachusetts harvest 10,000 or fewer barrels of cranberries, while another 3.8 percent harvest fewer than 25,000 barrels. In New Jersey, 62 percent of growers harvest less than 10,000 barrels, and 10 percent harvest between 10,000 and 25,000 barrels. More than half of Wisconsin growers raise less than 10,000 barrels, while another 29 percent produce between 10,000 and 25,000 barrels. Similar production patterns exist in Washington and Oregon.

Over 90 percent of the cranberry crop is processed, with the remainder sold as fresh fruit. In the 1950s and early 1960s, fresh production was considerably higher than it is today, and in many years, constituted as much as 25–50 percent of total production. Fresh production began to decline in the 1980s, while processed utilization and output soared as cranberry juice products became popular. Today, fresh fruit claims only about 5–6 percent of total production. (Typically, ''shrinkage'' absorbs the remaining 3 percent of production.) Three of the top five States produce cranberries for fresh sales. New Jersey and Oregon produce fruit for processed products only.

Historical Trends and Near Term Outlook

Production has risen steadily since the early 1950s, as more acreage was brought into production and yields increased. Cranberry output first exceeded 1.5 million barrels in 1966, 3 million barrels in 1982, 4 million in 1988, and hit a record 6.4 million barrels in 1999. Acreage rose 62 percent since 1954, from just under 23,000 acres to 37,200 acres. Output growth was also fed by soaring yields—a 288-percent increase from 44.3 barrels per acre in 1954 to almost 172 barrels in 1999.

The industry enjoyed healthy increases in demand as a result of new juice drink products, which in turn prompted expansion in acreage and output. Demand peaked in 1994 with per capita consumption of processed berries at 1.7 pounds and has since declined, to 1.6 pounds in 1998. Prices above $60 per barrel in 1996 and 1997 continued to stimulate output. As a result, inventories began building. Over the period 1954–1969, carryover averaged 222,179 barrels, about 19 percent of annual average production. During the 1970s, annual production rose nearly 90 percent from 1954–69, and carryover stocks rose to about 29 percent of annual average production during the decade. Carryover as a percent of output fell back to 19 percent during the 1980s. The 1990s have seen

both large output increases and carryover stocks. For 1990–99, beginning inventories rose to a level equal to nearly a third of annual production over the decade. In 1999 alone, carryover swelled to more than 3.1 million barrels, equivalent to 49 percent of the year's crop. Current estimates of beginning stocks are for a record 4.6 million barrels at the start of the 2000/2001 marketing year—equivalent to 78 percent of anticipated production. With no significant increases in demand or cutbacks in production, at the end of the 2000/2001 marketing year, there could be nearly a full year's production in storage (5.25 million barrels) to start the 2001 marketing season. Table 1 provides indicators of average annual carryover, production, and prices.

The value of utilized production increased steadily from 1974 to 1986, dipped 9 percent in 1987, then began a more volatile but still upward trend through 1997 before plunging 40 percent in 1998. Prices per barrel over the 1979–98 period averaged $44.375, but dropped below $40 a barrel for 1998 crop berries, and could fall below $20 for the 1999 crop. For the 2000/2001 marketing year, some handlers have indicated they may only offer $9–$10 per barrel. If prices do not exceed $20 per barrel in 1999, the value of utilized production will decline again by half—from $211 million estimated for the 1998 crop to less than $110 million in 1999. This would be the lowest crop value since 1981.

Impact of Volume Control

The volume control for cranberries imposes no restrictions on entry into production. For example, there is no quota such as used in the tobacco industry that a new entrant would have to acquire from an existing quota holder. The impact of volume control is evaluated relative to the income effect that excessive inventories would otherwise exert on growers and the likelihood that, without significant improvement in either prices or sales or both, many growers will not be able to remain in business.

Because inventories are large and cranberries may be stored for long periods without deterioration, producers may not receive full payment for cranberries delivered to storage for several years; and storage costs are deducted from their final payment. In addition, reports from various growers estimate current total costs of production at approximately $30–$35 per barrel. With expectations of prices declining well below this range in the 1999 marketing year, most producers are not expected to cover variable costs of production, thus increasing the likelihood they will either exit the industry or abandon bogs until the market situation improves.

The effect of the Committee's revised volume control recommendation (CMC2) contained in this final action may be evaluated in terms of the loss of sales that producers incur as a result of volume control, compared with the extent to which price increases due to volume control offset that sales loss.

For the 15-percent volume control to be revenue-neutral—that is, to leave producers on average no worse off with respect to revenue realized from lower production—prices would need to rise by 17.7 percent in 2000/01. An alternative allotment percentage that was considered by the Committee would have resulted in a volume control of 29 percent. A 29-percent volume control would require prices to rise by 40.8 percent to remain revenue-neutral. In both cases, a lesser price increase results in a gross revenue loss to producers. In and of itself, this would not necessarily mean that volume control should be rejected as a marketing tool. Even if prices do not rise, producers realize some savings from production costs not incurred and from higher prices that may result in subsequent marketing years as a result of lower inventories.

Economic analyses of factors affecting cranberry prices have been conducted by Sexton, Jesse, and USDA in 1999 and 2000. All of the analyses reported positive price impacts associated with a 100,000 barrel change in supply, ranging from $0.49–$1.26 per barrel for each 100,000 barrel change. Because inventories are so large, this analysis uses the lowest reported price impact, of $0.49 for each 100,000 barrel change, or $4.89 per barrel for a change of 1 million barrels. Thus, if inventories decrease (increase) by 1 million barrels, prices are estimated to increase (decrease) by $4.89 per barrel. In the aforementioned economic analysis, prices averaged $27.695 per barrel over the period analyzed from 1954 to 1998. The estimated price impact of $4.89 per barrel represents a 17.7 percent change in prices compared with the average over the 45-year period.

The 15-percent volume control is estimated to lead to a reduction in inventories by 884,000 barrels, based on a 2000/2001 domestic production forecast of 5.89 million barrels (prior to the 15-percent volume control). This reduction in inventory is estimated to increase prices by $4.32 per barrel (.884 × 4.89). Using a projected 2000/01 average price of $20 per barrel, prices are estimated to increase to $24.32 per barrel. Thus, a grower who reduced output from 1,000 to 850 barrels would realize a gain in revenue from $20,000 to $20,672 or 3.4 percent. Some additional gain would be realized from cost savings from 150 barrels that were not produced. And, the volume reduction would be expected to generate price increases in future years, providing cumulative positive effects from the volume control.

The results of econometric analyses are subject to some level of uncertainty. Results are generally reported as estimates subject to a specified error. Assuming a 5 percent error to illustrate the sensitivity of the results, the $4.89 per barrel price change estimate could range from $4.65 to $5.14 per barrel. Then, a reduction in inventory of 884,000 barrels would lead to higher prices ranging from $4.11 to $4.54 per barrel. Table 2 illustrates these estimated price increases and their effect on producer revenue, using a forecast price for 2000/01 of $20 per barrel.

We conclude that the 15 percent volume control would not unduly burden producers, particularly smaller growers. While there would be a loss of salable product, producers are likely to benefit from the price-enhancing effect of the reduced inventories in 2000/01. If producers do not benefit in 2000/01, the reduction in inventory is expected to raise prices in future years which would provide cumulative annual effects. The estimated price increases reported here would mean higher prices for consumers. However, recent prices have been significantly higher than these estimated prices; thus the consumer price effect is still well below previous years' prices.

TABLE 1.—AVERAGE ANNUAL CRANBERRY OUTPUT, CARRYOVER STOCKS, AND PRICES

Indicator	1954–59	1960–69	1970–79	1980–89	1990–99	1954–99
Production (barrels)	1,083,217	1,234,610	2,221,610	3,303,050	4,656,500	2,622,983
Carryover (barrels)	213,746	227,239	644,720	617,897	1,506,718	679,309

TABLE 1.—AVERAGE ANNUAL CRANBERRY OUTPUT, CARRYOVER STOCKS, AND PRICES—Continued

Indicator	1954–59	1960–69	1970–79	1980–89	1990–99	1954–99
Carryover/Production (%)	19.7	18.4	29.0	18.7	32.4	25.9
Price per barrel ($)	10.74	13.09	15.13	43.16	46.80	27.695

TABLE 2.—ESTIMATED IMPACTS OF PRICE CHANGES ON A REPRESENTATIVE PRODUCER

Price estimates	Average price ($/barrel)	Total output (barrels)	Gross revenue
Base Case	$20.00	1,000	$20,000
Volume Control Cases:			
—$4.32 price rise ($4.89 × .884)	$24.32	850	$20,672
—$4.11 price rise ($4.89 reduced by 5% error, × .884)	$24.11	850	$20,494
—$4.54 price rise ($4.89 increased by 5% error, × .884)	$24.54	850	$20,859

Summary of Rule

In accordance with § 929.49 of the order, this rule establishes a marketable quantity of 5.468 million barrels and an allotment percentage of 85 percent for cranberries in the 10-State production area during the 2000–2001 crop year. Because the Department is making allowances for established growers with acreage with four years of sales histories or less, this rule also provides for an increase in the marketable quantity which may be needed to maintain the 85 percent allotment percentage. This action also revises procedures for calculating growers' sales histories, defines the State average yield, increases the barrels per acre for determining a commercial crop, exempts fresh and organic cranberries from volume regulation, and revises Committee review procedures. These actions are designed to improve cranberry marketing conditions and the operation of the volume regulation program.

The marketable quantity for the 2000–2001 crop year is established at 5.468 million barrels with an allowance for an adjustment to allow for the additional sales history calculation provision. This is equal to the expected demand for processing fruit. Fresh fruit sales were not included because fresh fruit is exempt from volume regulation. Organically-grown cranberries are also exempt 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 established by the Committee at 6.432 million barrels. Using the formula established under the order (5.468 million barrels divided by 6.432 million barrels), the annual allotment percentage is 85 percent. The order provides 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. Under this rule, growers with 5 years of sales history will use an average of their highest 4 years of sales. Growers with 6 or more years will use an average of their highest 4 of the most recent 6 years of sales. For growers with four years or less of commercial sales history, the sales history is calculated by using the highest single year of all available years of such growers' sales. New acreage with no sales history for both brand new and existing growers would receive a sales history using the State average yield or the total estimated commercial sales from that acreage, whichever is greater. If these growers also have newer acreage with four years of sales history or less, and such growers can provide the Committee with credible information which would allow the Committee to segregate the sales history of the newer acreage, then that acreage shall be treated in the same manner as acreage of a grower with four years or less of sales history.

This rule changes the method of calculating sales histories for acreage with four years or less of sales. This rule should increase the amount of allotment available to growers with newer plantings. This 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) normally results in a sales history below current sales potential. A more established bog, on the other hand, would have a sales history more reflective of his or her production capacity. The Committee recommended this adjustment be allowed only for growers who have no acreage with more than four years of sales. However, the Department is accommodating more established growers by making this calculation available to them as well.

Calculations of sales histories are made on ''commercial'' cranberry acreage. This rule raises the amount of barrels that defines a commercial crop under the order from 15 to 50 barrels. This action will assist growers who harvested cranberries for the first time in 1999. Such grower's first year of sales will not count if it was less than 50 barrels per acre. Instead, the grower will receive the same sales history as is provided to a grower with no sales history on his or her acreage (which is the State average yield or the grower's estimated commercial sales, whichever is greater). This will benefit growers who had very low yields per acre for their first year of production.

Growers with no sales history on their acreage receive the State average yield. This applies to both brand new growers and growers with sales history on some of their acreage. This rule defines the State average yield for the 2000–2001 crop 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 should average out seasonal variations in yields. However, if estimated commercial sales are greater than what is computed above, the Committee will use the commercial sales estimated by the grower.

There is no need to limit the volume of cranberries that may be marketed in these noncommercial and noncompetitive outlets. Thus, this rule provides that handlers may dispose of excess cranberries in such outlets. Noncommercial outlets are charitable institutions and research and development projects for market development purposes. Noncompetitive outlets are non-human food use and foreign markets, except Canada.

This rule exempts fresh and organically-grown fruit from the volume regulation. This exemption is provided 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. Sales of organically-grown fruit are projected at only 1,000 barrels. These relatively small volumes of fruit do not contribute in any significant way to the current oversupply or inventory build-up. Therefore, there is no need to cover them under the volume regulation.

The sales history re-determination procedures are being 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 with their sales history determinations. 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.

This rule establishes an appeals subcommittee as a more efficient way to consider grower appeals. Although an additional level of review is being established, it will be more efficient for a subcommittee composed of 5 members to discuss and decide on appeals. Scheduling a meeting of the entire Committee to discuss and make determinations of grower appeals is more cumbersome and time consuming.

Finally, this rule suspends the June 1 deadline for notifying growers and handlers of their annual allotments. This will allow for adequate time to complete this rulemaking proceeding, without unduly impacting the cranberry industry.

Alternatives Considered

1. Different Methods of Volume Regulation

Eight 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 allows cultural practices to be changed at the grower level prior to harvest. This could result in less fruit being produced and will 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 simpler to administer. For these reasons, we conclude that the producer allotment program is the preferred method of volume regulation at the current time.

2. Other Alternatives Considered

One alternative to this regulation discussed at length by the Committee and the industry was not regulating at all. Economic reports of the condition of the cranberry industry indicate that if supplies are not controlled, grower prices will continue to drop. It will be difficult for small growers as well as large ones to sustain further price declines. Thus, the Committee discarded this alternative. AMS concurs.

Another alternative to regulation was to increase demand through market development activities rather than control supplies through regulation. A domestic promotion program is being considered by the Committee, in addition to the export promotion activities already underway. These efforts in market development and new product development can increase demand for cranberries and assist in addressing the oversupply situation. This, in conjunction with volume regulation, was determined to be the best course of action for the cranberry industry at this time. AMS concurs.

3. Calculation of Sales Histories and Varying Levels of Volume Regulation

In addition, the Committee considered alternative ways to calculate growers' sales histories and different levels of regulation. These are discussed in more detail in the section of this document entitled ''Analysis of Comments.''

A grower's annual allotment is established by applying the allotment percentage to that grower's sales history. Several alternative methods of calculating sales histories were considered, primarily to mitigate the situation where newer growers (those with few years of sales history) would be more dramatically impacted by volume regulation than more established growers.

One change recommended by the Committee increases the number of barrels that defines commercial acreage. This change will allow growers who had a small initial crop in 1999 to market their entire 2000 crop (since they will receive as their sales history the State average yield). This should assist growers in their second year of production, without dramatically increasing the total industry sales history.

The Committee also considered a change proposed by USDA to allow every grower to use his or her best single sales year out of the last six years as that grower's sales history. This change would have increased the industry total by a substantial amount (about 20 percent), and would have resulted in either a much higher restricted percentage or marketable quantity (see the following discussion of USDA Options 1 and 2). This alternative was rejected as not being in the best interest of most cranberry growers.

The Committee ultimately recommended that growers with four years or less of sales history receive their highest year of sales as their sales history. This rule adopts this recommendation. It will result in a higher allotment for these growers than would be obtained by averaging all their available sales years. This will mitigate

the impact of the restricted percentage on growers with relatively new acreage, without increasing the marketable quantity by a significant amount. In the case of growers with five years of sales, the Committee recommended their sales history be computed using an average of the highest four years of sales. For growers with six or more years of sales history, a sales history will be computed using an average of the highest four of the most recent six years of sales. Growers (both new and established growers) having new acreage with no sales history will get the State average yield or estimated commercial production, whichever is greater. This rule also adopts these recommendations. In addition, based on concerns expressed during the June 6 Committee meeting and in comments, the Department added a provision to this regulation which applies to established growers with newer acreage having four years of sales history or less.

The following three levels of volume regulation were also considered (in addition to that finally recommended by the Committee).

Initial Committee Recommendation (15% volume control; sales history—6.35 million barrels; marketable quantity—5.4 million barrels): This alternative was rejected because it does not take into account the additional sales histories being granted to newer cranberry growers as described above.

USDA Option 1 (29% volume control; sales history—7.6 million barrels; marketable quantity—5.4 million barrels): This option was rejected because it almost doubled the restricted percentage (from 15 to 29 percent) recommended by the Committee and anticipated by the industry. As previously stated, this would require prices to rise by 40 percent to remain revenue-neutral for growers.

USDA Option 2 (15% volume control; sales history—7.6 million barrels; marketable quantity—6.46 million barrels): This option dramatically increases the marketable quantity above anticipated market demand. Thus, it would have the same impact as no volume regulation and is therefore rejected.

Reporting and Recordkeeping Requirements

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.

Opportunity for Public Participation in the Rulemaking Process

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 30 and June 6 meetings were public meetings. Press releases were issued announcing the meetings and setting forth the agenda. Meeting announcements were also placed on a website specifically designed for the cranberry industry. All interested parties were invited to attend. All entities, both large and small, were able to express their views on these issues by attending the meetings or contacting their Committee representatives about their concerns prior to the meetings. Subsequent to the publication of the proposed rule on May 30, AMS mailed a copy of that rule to every cranberry grower and handler of record. That mailing also invited interested parties to attend the June 6 meeting and express their views. Additionally, AMS posted a summary of what transpired at that meeting (as well as a full transcript of the meeting) on its website and included it in the rulemaking record. The Committee 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 proposed rule concerning this action was published in the **Federal Register** on May 30, 2000 (65 FR 34411). Copies of the rule were mailed to all known cranberry growers in the production area. Also, the rule was made available on the Department's website. Finally, the rule was made available through the Internet by the Office of the Federal Register. A 15-day comment period ending June 14, 2000, was provided to allow interested persons to respond to the proposal.

Analysis of Comments

A total of 131 comments were filed in response to the May 30, 2000, proposed rule by 125 individuals (4 persons submitted 2 and one individual submitted 3 comments). By far, the majority of commenters were cranberry growers. The six major cranberry handlers also commented, as did the Committee, three U.S. Congressmen, the New Jersey Department of Agriculture, and an attorney representing two cranberry processors. Sixty-nine comments were opposed to a volume regulation in general or opposed to a specific portion of the proposal. Fifty-six comments favored one of the options under consideration. A number of comments addressed the fresh fruit exemption. Also, James M. Talent, Chairman of the U.S. House of Representatives' Committee on Small Business commented that AMS did not prepare a sufficient regulatory flexibility analysis in the proposed rule published on May 30, 2000.

Main Arguments Against Establishing a Volume Regulation

Sixty-nine comments opposed establishing a volume regulation for the 2000–2001 crop year. Following is a discussion of the six main arguments against volume regulation.

1. The 15 Percent Volume Control Will Have Little or No Impact on the Oversupply

Many commenters believed that a 15 percent reduction will have little or no impact on improving the market or reducing the large inventories.

The producer allotment program is a tool available to the cranberry industry to use in time of need. In their consideration of this issue, agricultural economists who have studied the program concluded that volume regulation is one avenue available to the industry that can help stabilize prices and shorten the period of oversupply. Economists have addressed the Committee and indicated that grower prices will further plummet if some type of action is not taken to decrease the

oversupply. It was also reported to the Committee that if volume regulation is implemented, a 100,000 barrel reduction in carryover inventory would result in a price increase ranging from $0.49 to $0.73 per barrel, while a 1,000,000 barrel reduction in inventories would result in a price increase of $4.89 to $7.26 per barrel.

It may be true that an 85 percent allotment percentage will not dramatically drive up grower prices. However, the Committee has communicated with a vast number of growers and determined that an allotment percentage lower than 85 percent would not be supported for the first year of volume regulation. By establishing a less restrictive percentage this year, growers will be eased into the mechanics of the program operations. Also, this volume regulation could be successful in stopping the decline of prices. The Committee and the industry are aware that the surplus situation cannot be resolved in one season or by volume regulation alone. It is possible that volume regulation may have to be instituted again in future years. However, that decision would be made on an annual basis.

The marketing order is only one tool the Committee has decided to use to assist in reducing the oversupply. The establishment of a domestic generic promotion program to increase the awareness and consumption of cranberries has also been recommended. The Committee is currently in the developmental stage of implementing such a program. The Committee is also involved in an export program using Marketing Access Program funds with USDA's Foreign Agricultural Service. Individual handlers have also taken steps to develop new products and expand foreign and domestic markets.

2. It Is Too Late in the Year To Establish Volume Regulation

Some commenters believed that the regulation is being implemented too late for the upcoming season, and growers do not have time to adjust cultural practices to reduce production and associated costs.

Many growers have been aware for months that a volume regulation has been under consideration by the Committee and USDA. The Committee has been discussing the implementation of volume regulations for this season for more than eight months. In addition, all Committee meetings, including the March 30 and June 6, 2000, meetings were public meetings, widely publicized throughout the industry. All interested parties were encouraged to attend. The Committee manager also held several meetings with growers throughout the production area to discuss the possible implementation of volume regulation for the 2000 crop.

In anticipation of a volume regulation, many growers have been taking steps to prepare for a 15 percent crop reduction. Information received by USDA indicates that there are still steps growers can take to minimize production costs. Some examples are that bogs can be flooded, and chemical applications and bee pollination can be curtailed. Also, as previously discussed, handler costs associated with the storage of excess inventories (which are ultimately passed on to growers) would be reduced.

We agree that it would have been preferable for this rule to be recommended and implemented at an earlier date to provide more time for growers to prepare for a volume regulation. However, this did not happen for several reasons. The last time volume control was imposed under the order was approximately 30 years ago. Difficulties were encountered in arriving at the most fair method of calculating grower sales histories in order to achieve (within the order's current parameters) an equitable apportionment of allotments among producers. And finally, although the Committee recommended volume control and, along with USDA, proposed regulations to implement such control, the industry is not unified in its support of the proposals. Nevertheless, there is overall agreement that volume controls need to be implemented, and USDA concludes that the implementation of volume control as set forth in this regulation is an important step to take in addressing the oversupply situation and resultant low grower returns.

3. The Proposed Calculation of Sales Histories Does Not Treat Growers Equitably

Many comments expressed concerns about the determination of sales histories, particularly that growers with four years or less of sales histories would be more dramatically impacted than others. The commenters stated that the reduction for these growers could exceed 15 percent by a substantial amount. Some suggested that these growers receive the State average yield as their sales history, similar to the method used to provide sales histories for growers with new acreage.

The Committee and the Department have been working for many months now to develop a way to calculate sales histories which would result in the most equitable allocation of allotment among growers in the cranberry industry as it exists today. The primary concern has been with growers with four years or less of sales history. In response to this concern, USDA's proposed recalculation of sales histories which modified the Committee's initial recommendation was intended to mitigate some of the perceived inequities that could arise. In its second recommendation, the Committee further recommended that the formula be changed so that growers with four years or less of sales be given their highest year of sales as their sales history. Growers with five years of sales or more would still have their sales history calculated by averaging the highest four years of sales during the most recent five or six years of sales, whichever is applicable.

This Committee recommendation is expected to help some growers with newly planted acreage. Instead of using an average of all years' sales, which could be lower on newer acreage, these growers can use their best year as their sales history. Most likely, with newer acreage, the last year of production will be the best year and will raise such growers' sales histories (over the current method of averaging all available years of sales).

Another concern was that the Committee's recommendation is not equitable for more established growers who have put in new acreage. Any grower who reports to the Committee that he or she has new acreage coming into production for the first time receives the State average yield as the sales history for that acreage. In that case, the established grower is treated in the same manner as a brand new grower. Once the new acreage starts producing cranberries, the grower reports to the Committee sales off all acres combined. Information reported to the Committee does not segregate sales by the age of the acreage. The combined sales are thus used in calculating the more established growers' sales histories (using an average of the best four years out of five or six). Since the sales are not separated, the Committee did not recommend making an adjustment for acreage belonging to an established grower that has been producing for four years or less. Nevertheless, based on concerns and comments expressed during this rulemaking proceeding, USDA has decided to allow such an adjustment if growers can produce credible records which would allow the Committee to segregate the newer acreage.

The Committee and USDA have worked diligently to ensure that all growers would receive a sales history that accurately represents each grower's

capability to produce on such acreage while still being an effective regulation. The various recommendations, although not perfect, were intended to achieve the most fair method of computing sales histories, which would result in allotments being equitably apportioned among producers.

The allotment calculation in this rule is based on prior years' histories. There are no barriers to entry into the cranberry growing or handling business under the marketing order nor should there be any. In the early 1990's, the order was amended to change the producer allotment program from the base quantity to the sales history method. The program amendments were put in place after a public hearing and grower and processor vote. However, this is the first time the sales history program has actually been implemented. The Committee and USDA have discovered some areas of the order provisions that could to be improved for future seasons. The Committee is currently considering needed order amendments, which would likely be necessary to make any substantive changes in the sales history provisions of the order.

4. Only Two Handlers Are Responsible for the Surplus

Many growers commented that their handlers are not responsible for the surplus, since two of the largest handlers maintain the largest inventories.

Review of this available information shows that the volume of inventories of these two handlers is directly proportional to the volume of cranberries handled. In addition, the increased plantings over the last few years, which have contributed to the surplus, was industry-wide. Regardless, the cranberry surplus is an industry problem, since large inventories depress overall grower prices. The marketing order's volume regulation features are designed to help all growers in the industry by stabilizing grower returns.

5. Handlers With No Inventories May Have To Purchase Cranberries From Their Competitors To Fill Orders

Some handler commenters said that with a restriction in place, they would have to purchase cranberries from their competitors to supply their customers since they do not have inventories like other handlers. Purchases among handlers is a standard practice in the cranberry business. With the surplus, there should be an abundance of fruit available for sale at a reasonable rate in the event handlers need additional product. In addition, one such commenter stated that they routinely purchase a large percentage (20–30%) of their cranberries from other handlers rather than directly from growers. The purpose of the volume regulation is to benefit the grower by stabilizing the marketplace. If handlers must purchase cranberries from other handlers, and inventories are reduced, the volume regulation is working. In addition, if a handler has excess cranberries, any unused allotment forfeited to the Committee will be equitably distributed among the remaining handlers.

6. The Regulation Will Encourage Plantings and Exports From Canada

Some commenters were concerned that Canada's cranberry industry could have a dampening effect on any volume regulation implemented in the United States. The marketing order regulates domestic cranberry handlers. Although any volume regulation implemented cannot extend to Canada, the British Columbia Cranberry Committee has voted to reduce their 2000 crop by 15 percent if volume regulations are implemented in the United States.

The Committee reported 1999 Canadian fruit production at 634,000 barrels of cranberries. A substantial portion of the Canadian fruit is grown in British Columbia. If volume regulation is instituted in Canada, growers will not be encouraged to plant new vines. Also, with the current U.S. surplus of cranberries, there are ample domestic supplies of fruit, which, along with current low grower prices, should discourage the importation of foreign fruit.

Discussion of Alternative Levels of Volume Regulation

Fifty-six of the comments supported volume regulation in general, many of those favoring one of the options under consideration over the others. Some of those who opposed volume regulation indicated which option they preferred if USDA does implement a regulation.

Initial Committee Recommendation (15% volume control; sales history—6.35 million barrels; marketable quantity—5.4 million barrels): Few comments were received in support of this option. Those in support commented that this was the most equitable option and the Committee's original recommendation should be adhered to. One commenter favored the initial Committee recommendation because he believed that the two alternatives offered by USDA favored certain growers over others. The calculation of sales histories using the average of the best four out of six years was favored by these commenters.

USDA Option 1 (29% volume control; sales history—7.6 million barrels; marketable quantity—5.4 million barrels): Some commenters who discussed this option were against volume regulation but believed this would be the best if volume regulation were implemented. This option would have established a restricted percentage of 29 percent. Those supporting this option believed that a 15 percent reduction does not go far enough and will not have an impact on the surplus. One commenter stated that the volume regulation should be restrictive enough to make a difference. Some commenters believed that a 29 percent reduction is necessary if the oversupply situation is to be seriously addressed. One commenter stated that this is the best opportunity to return market prices to a level that will allow growers to break even this year, after heavy losses in 1998. This commenter further stated that this regulation will not raise consumer prices but will allow the industry to avoid incurring costs of delivering, cleaning, freezing, and storing cranberries only to have them be sold at a loss. Others commented that allowing all growers to use the best single sales year out of the last 6 years as a sales history was preferable to using an average.

Those opposed to USDA Option 1 stated that it would cause hardships for growers. Most of those commented on the negative impact a volume reduction exceeding 15 percent would have on many growers. One commenter stated that growers will be unduly disadvantaged by a 71 percent producer allotment because many growers have already incurred production costs at levels designed to target a reduction of 15 percent of the average of the best 4 out of 6 years. This commenter further stated that growers who have produced consistent crops for six years would see their volume reduction double. According to this commenter, this option overinflates sales histories to 7.6 million barrels, which would cause a doubling of the restriction in order to maintain a reasonable marketable quantity. Using the best year of 6 will alter the sales histories of virtually all growers.

Many commenters did not support using the best year of the last 6 to calculate sales histories for all growers (except those with new acreage) because it rewards growers who have contributed most to the current oversupply. Some felt this method of calculating sales histories was too advantageous for newer growers, and those who have expanded their acreage in recent years.

USDA Option 2 (15% volume control; sales history—7.6 million barrels; marketable quantity—6.46 million barrels): Comments in support of this option believed that it was the most equitable of all options. Some commented, however, that it still did not go far enough on how newer growers will be allocated allotment. One comment in support of the option stated handlers should not be allowed to transfer unused allotments to other growers.

One supporter believed that unlike the Committee option, this was a good faith attempt to determine grower sales histories in an equitable fashion. This supporter further stated this option will have a similar impact on the entire industry, whereby most growers' actual crop reduction will be closer to 15 percent. This commenter added that because it does not result in significant differences in allotments, it better complies with the Act regarding equitable apportionment of allotments.

Those opposed to this option were generally opposed to both USDA options as they relate to the calculation of sales histories. As with USDA option 1, some commenters believed the method of calculating sales histories under this option was too advantageous for newer growers. One commenter believed that raising the marketable quantity to 6.35 million barrels (USDA Option 1) was unrealistic and, therefore, the volume regulation would have no effect on reducing supply.

Revised Committee Recommendation (CMC2) (15% volume control; sales history—6.432 million barrels; marketable quantity—5.468 million barrels): Comments submitted on CMC2 (following the June 6 public hearing) in support of this option believed that this was the best option to bring market stability and reduce costs. While it would not have an equal impact on each individual grower, it would help the industry overall. Some stated that a 15% restriction will not eliminate the surplus, but believed that it will allow handlers to begin the process of balancing supply and demand. Many commented that the marketable quantity should be near 5.4 million barrels to be effective. Some were supportive of any proposal that limits the marketable quantity to approximately 5.4 million barrels, and believed calculating sales histories for established growers using the best 4 years out of 6 was the best method. Some supported CMC2 even though USDA option 1 would have a greater impact on reducing the surplus. They believed CMC2 would be best for the long-term interests of the industry.

One commenter stated that he could deliver 3000 more barrels under USDA option 2, but still supported CMC2 as being best for the industry overall.

Those opposed to CMC2 stated that this option is grossly inequitable. One commenter stated that under both Committee recommendations, some growers would see a small reduction but others would be forced to dump up to 50 percent of this year's crop. This commenter stated that the Committee presented CMC2 as a compromise, but it is not. The commenter stated that this option does nothing to remedy the inequities of the first Committee recommendation, and only creates additional inequities. This commenter further stated that this option would reward growers growing for 4 years or less and punish established growers that have added new acreage.

Conclusions: Since the Committee's meeting on March 30, 2000, the Department received additional information from cranberry growers and handlers pertaining to the way in which sales histories are computed. Of primary concern were the potential inequities that could result from the Committee's initial recommendation. Specifically, some were concerned about growers with four years or less of sales histories on some or all of their acreage. The Department suggested two alternative levels of volume regulation in an attempt to address those concerns, with the expectation that the Committee would meet and discuss all options and recommend any needed revisions prior to finalization of the rule. The Department looked for flexibility in the marketing order that would assist this segment of the industry while still providing for an effective volume regulation.

The Department's options changed the way in which nearly all growers would calculate their sales histories. Under USDA Option 1, the sales histories would have increased to 7.6 million barrels (as opposed to the Committee's established sales histories of 6.35 million barrels). Using the Committee's recommended marketable quantity of 5.4 million barrels resulted in an allotment percentage of 71 percent. USDA Option 2 increased the marketable quantity to 6.46 million barrels (as opposed to the Committee's established marketable quantity of 5.4 million barrels) to stay within the Committee's original recommendation to establish an allotment percentage no lower than 85 percent. The Department recognized that the proposed rule provided a wide range of possible methods of implementing volume regulation for the industry to consider.

At the June 6 meeting and in written comments, it was expressed that both USDA options dramatically inflate the sales histories and USDA option 2 further provides an unrealistic marketable quantity. To demonstrate the unrealistic marketable quantity in USDA option 2, a commenter stated that the marketable quantity established in CMC2 (5.468 million barrels) represents a 10 percent increase in demand in one year. The largest increase in annual demand in recent years has been only about 5 percent. Further, the 6.46 million barrel marketable quantity in USDA option 2 exceeds anticipated production by over a half a million barrels. USDA Option 2 would, therefore, result in no reduction of available supplies. It would thus be an ineffective regulation and would provide no benefits to cranberry growers. We therefore concur with the Committee and comments received that USDA Option 2 should not be implemented.

Also, based on Committee meetings and comments received, we agree that USDA Option 1, which would establish an allotment percentage of 71 percent, would not be prudent at this time. For months, many growers have anticipated a volume regulation and believed it would not entail a reduction of more than 15 percent. Many growers altered their cultural practices accordingly. Establishing a reduction of more than 15 percent so close to the beginning of the season would cause too many hardships on too many growers. Although an 85 percent allotment percentage would have a lesser impact on supplies and prices than a 71 percent allotment percentage, we conclude that doubling the restriction from what was anticipated would be too costly to growers.

Both USDA options changed the way sales histories are calculated by allowing virtually all growers to use the best year of production. The primary concern of the Committee and industry was the method of establishing sales histories for growers with new acreage. We agree with the Committee that this method would overinflate total industry sales histories. The calculation for more established growers (using the average of the best four out of six years) has been in effect for many years and provides a reasonable and accurate sales history for these growers.

Additionally, the Committee is continuing its work on amending the order to address some of the problems it has encountered while considering volume regulation for the 2000–2001 crop year.

For these reasons, the Department has concluded that implementing CMC2, the Committee's recommendation of June 6, 2000, is the best course of action. It provides the most equitable means of allocating producer allotments available at this time, and should provide benefits to growers in excess of its costs. The only change the Department is making is allowing established growers who also have newer acreage with four years of sales history or less to receive the highest sales season on that acreage. Because this change will cause an increase in the marketable quantity if established growers can segregate production from their newer acreage, a change has also been made in § 929.250 of the regulations to reflect this adjustment.

Fresh and Organic Fruit Exemption

Fresh and organically-grown fruit are exempt from the volume regulation 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.

Many comments were received regarding the fresh and organic cranberry exemption. Twenty-seven comments were against the exemption, primarily the fresh fruit exemption. Those in opposition were generally concerned that fresh fruit handlers are being given an unfair advantage as they will be in a position to make unused allotments from fresh growers available to their processed growers and virtually market all of their cranberries. Some commented that much of the fresh fruit excess would end up in the processed markets. In addition, some commented that the fresh market would be oversupplied with fresh cranberries and the quality would suffer, as well.

Five of the 27 who oppose the exemption commented that if the fresh fruit exemption is part of the regulation, any unused allotment realized from fresh fruit acreage should be forfeited in the same manner as with new growers who use the State average yield as their sales history and forfeit unused allotment.

Twelve comments supported the exemptions. In most cases, the commenters supported a specific option or volume regulation in general, including the fresh and organic exemption. One comment was against any volume regulation, but stated that if one is implemented, the fresh exemption should be a part of it.

The supporting commenters expressed that fresh and organic cranberries are small, but important segments of the overall cranberry market, and do not contribute to the oversupply situation. Because there is adequate demand for these products, one commenter stated that it does not make sense to restrict the volume of fresh cranberries that can be sold profitably. Another commenter stated that fresh fruit production requires special cultural practices that need to be implemented over the course of several growing seasons to transition the cranberry vines from processed fruit production to fresh fruit production. For this reason, it is unlikely that growers who normally produce cranberries for the processed market will become fresh growers during the 2000–2001 crop year. In addition, this commenter expressed that it would be unlikely for growers to market their excess fruit as fresh product for logistical reasons.

The Department supports the fresh and organic exemption. As stated previously, fresh fruit accounts for about 4.7 percent of the total production. Organically-grown cranberries comprise an even smaller portion of the total crop than fresh cranberries, about 1,000 barrels.

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. Most 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. During this proceeding, it was noted that in the State of Wisconsin, cranberries for fresh market are water picked much like cranberries for processing. Additional information revealed that although cranberries intended for fresh market can be water picked, the resulting yields are more similar to the labor intensive dry picked cranberries, than to cranberries that are water picked for processing. This is partially attributable to the fact that only the highest quality fruit is earmarked for the fresh market.

Regarding the comments that many growers will become ''fresh growers'' and flood the market with fresh fruit, information received does not support that this will happen. Industry members advised that it takes many years to cultivate an acceptable ''fresh'' product. Handlers would not likely buy fresh cranberries from a first year fresh grower, as it would be expected the quality would not be acceptable. For these reasons, it would not be practical or economically feasible to convert from a processed grower to a fresh grower this season.

Regarding the comments that fresh cranberries will be diverted into processing outlets, safeguards are established under the program to protect against this. The exemption for both fresh and organic cranberries applies to cranberries packed in consumer packaging, such as cellophane bags for supermarkets. Any sorted-out cranberries converted to processing will count against that grower's allotment.

The Committee has deliberated for over eight months to arrive at a volume regulation recommendation that addresses the oversupply situation and is acceptable to most of the industry. The Committee recognizes that some improvements could be made in the way volume regulations are implemented, but it is impossible to make many more changes in time for the 2000–2001 crop year.

One idea that has been discussed, for example, is to amend the marketing order to provide that fresh and organic sales be segregated from processed sales, and allotment only be earned on the processed sales. The suggestion that fresh and organic cranberry growers forfeit any unused allotment is also an idea that could be considered in the future. The formal rulemaking process, which involves a hearing and grower referendum, usually takes 12 to 18 months to complete.

If the fresh or organic markets show significant growth in the coming years, and surplus becomes an issue, different measures can be taken at that time to include them in any volume regulation.

The Department supports the decision to exempt fresh and organically-grown cranberries from volume regulation this year. It is concluded that fresh and organic supplies do not contribute significantly to the current cranberry surplus, and that such cranberries should therefore be exempt from the allotment percentage this rule imposes.

Initial Regulatory Flexibility Analysis

James M. Talent, Chairman of the U.S. House of Representatives' Committee on Small Business commented that the proposed rule issued by AMS apparently did not comply with the Regulatory Flexibility Act. Specifically, he commented that our Initial Regulatory Flexibility Analysis did not find that the proposed rule would have a significant economic impact on small entities. Our initial analysis did conclude that cranberry growers and handlers (both large and small) would benefit from the establishment of volume regulation during the upcoming season. The Final Regulatory Flexibility

Analysis contained in this document provides further analysis to support this conclusion. Also, this document analyzes the impact of the various alternative levels of regulation offered in the proposed rule.

Congressman Talent also stated that AMS eliminated opportunity for public comment on the Committee's revised recommendation for volume regulation (CMC2) that it made on June 6, 2000. Subsequent to the publication of the proposed rule on May 30, AMS mailed a copy of that rule to every cranberry grower and handler of record. That mailing also invited interested parties to attend the June 6 meeting and express their views. Additionally, AMS posted a summary of what transpired at that meeting (as well as a full transcript of the meeting) on its website and included it in the rulemaking record. Many of those who filed comments in response to the proposed rule specifically addressed the second Committee recommendation. More importantly, CMC2 falls within the scope of options contained in the proposed rule. The marketable quantity is slightly higher than in two of those options, and lower than in a third. The 85 percent allotment percentage established by this rule is the same as that contained in two of the three published options. The change in the way sales histories are computed is also within the scope of options proposed.

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.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553). The crop year begins on September 1, 2000. This rule should be effective prior to the beginning of the crop year so that the Committee can initiate its appeals procedures well in advance of the start of the volume regulation. Also, growers need time to adjust their cultural practices in preparation for the volume regulation. Further, handlers and growers are aware of this rule, which was recommended and modified based on public meetings. Also, a 15-day comment period was provided for in the proposed rule.

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 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.

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) 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 diversion requirements specified in § 929.61(c).

5. In § 929.107, paragraphs (a) and (c) are amended by replacing the number ''15'' with the number ''50''.

§ 929.109 [Removed]

6. Section 929.109 is removed.

7. 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 §§ 929.48 and 929.149, 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.

8. 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.

9. 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 the Committee. For growers with five years of sales history, a sales history shall be computed using an average of the highest 4 years of sales. For growers with six or more years of sales history, a sales history shall be computed using an average of the highest four of the most recent six years of sales. If these growers also have newer acreage with four years of sales history or less, and such growers can provide the Committee with credible information which would allow the Committee to segregate the sales history of the newer acreage, then that acreage shall be treated in the same manner as acreage of a grower with four years or less of sales history. For a grower with four years or less of sales history, the sales history shall be computed using the highest sales season. Sales history for new acreage with no history of sales (for both new and existing growers) shall be computed according to § 929.48 of the order.

§ 929.151 [Removed]

10. Section 929.151 is removed.

11. 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.

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

§ 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 5.468 million barrels and the allotment percentage is designated at 85 percent. The marketable quantity may be adjusted to retain the 85 percent allotment percentage if the total industry sales history increases due to established growers receiving additional sales history on acreage with four years sales or less.

Dated: July 3, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–17289 Filed 7–5–00; 4:00 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1735

RIN 0572–AB53

General Policies, Types of Loans, Loan Requirements—Telecommunications Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulations to provide that applicants may seek financial assistance to provide mobile telecommunications service without regard to whether the applicant is providing basic local exchange service in the territory to be served. RUS is also clarifying its regulations with regard to the application of nonduplication provisions and state telecommunications modernization plans to mobile telecommunications services. In addition, RUS has included criteria for determining ''reasonably adequate service'' levels for mobile telecommunications service. This final rule is part of an ongoing RUS project to modernize agency policies in order to provide borrowers with the flexibility to continue providing reliable, modern telephone service at reasonable costs in rural areas, while maintaining the security and feasibility of the Government's loans.

DATES: This rule is effective July 11, 2000.

FOR FURTHER INFORMATION CONTACT: Jonathan P. Claffey, Deputy Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4056, STOP 1590, Washington, DC 20250–1590. Telephone: (202) 720–9556.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of that Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule; and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures, if any, must be exhausted prior to initiating litigation against the Department or its agencies.

Regulatory Flexibility Act Certification

RUS has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS telecommunications loan program provides borrowers with loans at interest rates and terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct cost associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

This rule contains no new reporting or recordkeeping burdens under OMB control number 0572–0079 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Send questions or comments regarding this burden or any other aspect of these collections of information, including suggestions for reducing the burden to F. Lamont Heppe, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4034, STOP 1522, Washington, DC 20250–1522.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance programs under numbers 10.851, Rural Telephone Loans and