

Proposed Rules

Federal Register

Vol. 66, No. 9

Friday, January 12, 2001

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket No. FV00-929-7 PR]

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington and Long Island in the State of New York; Reformulation of Sales History Calculations for the 2001-2002 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on revisions to the sales history calculations currently prescribed under the producer allotment provisions under the cranberry marketing order (order). The order regulates the handling of cranberries produced in 10 States, and is administered locally by the Cranberry Marketing Committee (Committee). This rule would modify the current sales history formula in order to apportion in the most equitable manner among producers cranberries made available for disposition by handlers in the event volume regulations are recommended for the 2001-2002 season. This rule would also clarify the exemption provisions under the volume regulation provisions for fresh cranberries, modify the outlets for excess cranberries and reinstate the dates for the Committee to notify growers and handlers of their allotments.

DATES: Comments must be received by February 12, 2001.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698, or E-mail:

moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

FOR FURTHER INFORMATION CONTACT:

Kathleen M. Finn or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

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

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

Question and Answer Overview

What Is the Intent of This Proposal?

Concerns were raised during the 2000-2001 producer allotment volume regulation period that growers with newer acreage (acreage planted within the last 5 years) could experience a larger crop reduction than the average allotment restricted percentage. Existing allotment percentage calculations are based on averaging growers' sales histories. Calculation of the sales histories does not factor in variables and does not provide any adjustment for new acres as they rapidly increase production during the first several harvests. Therefore, growers can be impacted differently depending on their particular situation.

The proposed method in this rule would provide additional sales history for growers with newer acreage to account for increasing yields for each year up to the fifth year. A Committee meeting is scheduled for February 5, 2001, to discuss volume regulation for the 2001-2002 season.

Who Would Be Impacted by This Proposed Rule?

All cranberry growers in the production area who planted acreage in 1995 or later would be impacted by this proposal. In addition to their actual sales histories, these growers would receive additional sales history for the newer acreage to account for increasing yields of that acreage.

For example, a grower with one acre planted in 1998 would have an actual sales history assigned to that acreage based on average sales off that acreage. In addition to the actual sales history, the acreage would be assigned an additional 183 barrels to account for increased production. A table appears in this document which shows additional sales history assigned to acreage planted in 1995 or later.

How Were the Additional Sales History Numbers Developed?

The additional sales histories were assigned by using a formula based on average yields per acre for acreage planted and harvested over the past 5 years. USDA conducted a survey to determine what average yields per acre have been.

Using these average yields, an average sales history was calculated for acreage planted in a specific year. Subtracting the average sales history from the expected yield from that acreage results in the additional barrels assigned to that acreage.

What Would Change With the Fresh Fruit Exemption?

The intent of the fresh fruit exemption in the 2000-2001 volume regulation was to only exempt cranberries going to retail outlets as fresh cranberries. Questions arose as to what constitutes "fresh" cranberries under the regulations.

The Committee developed and recommended a more specific definition of fresh cranberries so that the intent would be clear for future volume regulations if fresh cranberries are again recommended for exemption. This

proposed rule clarifies that sales of packed-out cranberries intended for sale to consumers in fresh form would be exempt from volume regulations. The proposal further clarifies the definition by stating that fresh cranberries are also sold dry (either dry picked or dried after water picking) in bulk boxes, generally weighing 30 pounds. If fresh cranberries are diverted into processing outlets, the exemption does not apply.

The proposal also recommends that sales histories be calculated separately for fresh and processed cranberries. Under this proposal, if fresh fruit is exempt from volume regulation, fresh sales would be subtracted from a grower's sales history. Whether to exempt fresh cranberries from a 2001–2002 volume regulation would be discussed and recommended at the February 5, 2001, Committee meeting if volume regulations are recommended.

Executive Orders 12866 and 12998

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

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

Introduction

This proposal invites comments on revisions to the formula for calculating sales histories under the producer allotment program currently prescribed under the order. This rule would modify the current sales history formula to be more equitable to growers in the event

volume regulations are recommended for the 2001–2002 season. This rule would also clarify the exemption provisions under the volume regulation provisions for fresh cranberries, modify the outlets for excess cranberries by broadening the scope of research and development projects that could be classified as exempt outlets and reinstate the dates for the Committee to notify growers and handlers of the allotments. The rule was unanimously recommended by the Committee at a meeting on August 28, 2000.

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 increasing inventories and reduced grower returns.

In considering ways to cope with the oversupply, the Committee recommended using volume controls (in the form of producer allotments) for the 2000–2001 crop year. A final rule establishing a marketable quantity and allotment percentage was issued on July 3, 2000, and published in the July 11, 2000, issue of the **Federal Register** (65 FR 42598) to apply to the 2000–2001 crop year. The final rule also revised procedures for calculating growers' sales histories, exempted fresh and organically-grown cranberries from the volume regulation, defined State average yield per acre, increased the barrels per acre for determining a commercial crop, revised the Committee review procedures for re-determination of sales histories, and suspended the date by which the Committee notifies growers of their annual allotment. These actions were based primarily upon the recommendations of the Committee and comments received in response to the proposed rule.

This was the first time the sales history method of the producer allotment provisions of the order have been used since these provisions were added to the order in 1992. Many growers, particularly those with acreage 4 years old or less, have indicated that the current method of sales history calculation resulted in a much larger crop reduction from their acreage than the 15 percent reduction established by the July 11, 2000, final rule because of more production on their acreage than their sales histories indicated.

The order provides that after a year of volume regulation, a new sales history shall be calculated for each grower using a formula determined by the Committee (and approved by the Secretary). The Committee recommendation to revise the formula discussed in this proposal specifically

addresses growers' concerns regarding the most equitable manner of apportioning among producers the quantities of cranberries made available for disposition by handlers. This method would provide additional sales history for growers with newer acreage to account for increasing yields for each growing year up to the fifth year.

History of the Marketing Order

The cranberry industry has operated under a Federal marketing order since 1962. The order's primary regulatory authority is volume regulation. At that time, production was trending sharply upward, due primarily to improving yields, and demand was not keeping pace. The intent of the program was to limit the volume of cranberries available for marketing in fresh market outlets in the United States and Canada, and in all processing outlets, to a quantity reasonably in balance with the demand in such outlets. This method of controlling volume was the "withholding" provisions whereby "free" and "restricted" percentages would be established. Growers deliver all contracted cranberries to their respective handlers. Free cranberries could be marketed by handlers in any outlet, while restricted berries would have to be withheld from handling and, if possible, diverted by handlers to noncompetitive markets. The withholding program has not been used since 1971.

The order was amended in 1968 to authorize another form of volume regulation—producer allotments. The intent was to discourage new plantings and allow growers to remove surplus berries in a more economical manner, by reducing their production to approximate the marketable quantity or by leaving excess berries unharvested. Production had continued to increase, and the industry was reluctant to recommend a sufficient restricted percentage under the withholding regulations. Under the producer allotment program, growers were issued base quantities. Base quantity was the quantity of cranberries equal to a grower's established cranberry acreage multiplied by such grower's average per acre sales made from the acreage during a representative period. If the allotment base program were activated, each handler would be allowed to acquire for normal marketing only a certain percentage of each grower's base quantity. This authority was used to establish a regulation for the 1977–78 season, but that regulation was subsequently rescinded.

In 1992, the producer allotment provisions were amended to change the

method of calculating growers' annual allotments from the base quantity method to a sales history method. Under this amendment, a grower's sales history is calculated based on a grower's actual sales, expressed as an average of the best 4 of the previous 6 years of sales. There were concerns that base quantities did not accurately reflect actual levels of sales because as growers' acreage increased or decreased, the base quantity did not change. It was concluded that basing allotments on actual sales off acreage would be a more realistic and practical way to determine annual allotments. These provisions were never used until the 2000–2001 season.

Producer Allotment Order Provisions

Section 929.49 of the order currently provides that if the Secretary finds from the recommendation of the Committee or from other available information, that limiting the quantity of cranberries purchased from or handled on behalf of growers during a crop year would tend to effectuate the declared policy of the Act, the Secretary shall determine and establish a marketable quantity for that year. In addition, the Secretary would establish an allotment percentage, which shall equal the marketable quantity divided by the total of all growers' sales histories. Handlers cannot handle cranberries unless they are covered by a grower's annual allotment.

Section 929.48 of the order provides for computing growers' sales histories to be used in calculating allotment percentages under § 929.49. Sales history is defined in § 929.13 as the number of barrels of cranberries established for a grower by the Committee. The Committee updates 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 4 years' sales out of the last 6 years' sales for those growers with existing acreage. For growers with 4 years or less of commercial sales history, the sales history would be calculated (prior to the 2000–01 volume regulation) by averaging all available years of such grower's sales. A new sales history for a grower with no sales history is calculated by using the State average yield per acre or the total estimated commercial sales, whichever is greater. This section also provides the authority for calculating new sales histories for growers after each crop year where a volume regulation was

established using a formula established by the Committee (and approved by the Secretary).

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).

Section 929.59 defines excess cranberries as cranberries withheld by handlers after all unused allotment has been allocated. This provision also provides for handlers to notify the Committee by January 1 of a written plan to dispose of excess cranberries and to dispose of them by March 1. Section 929.61 of the order provides the authority for establishing outlets for excess cranberries.

Section 929.58 of the order provides for relieving from any or all requirements of the order the handling of cranberries in such minimum quantities as the Committee, with the approval of the Secretary, may prescribe. The exemption for fresh and organically-grown cranberries was implemented in 2000 under the authority in this section.

2000–2001 Volume Regulation

To address the serious oversupply situation being experienced by the industry, the Committee recommended volume control for the 2000–2001 season (September 1, 2000 to August 31, 2001). The Committee determined that the best method of volume control would be the producer allotment program, which provides for an annual marketable quantity and allotment percentage. The final rule establishing the volume regulation was issued on July 3, 2000, and published in the July 11, 2000, issue of the **Federal Register** (65 FR 42598). The marketable quantity for the 2000–2001 crop year was established at 5.468 million barrels.

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 was set at 85 percent. Section 929.250 of the regulations set forth the above mentioned marketable quantity and allotment percentage.

Section 929.104 of the regulations sets forth the noncommercial and noncompetitive outlets for excess cranberries during a year of volume regulation. For the 2000–2001 season, the outlets for excess cranberries are: (1) Foreign countries, except Canada; (2) charitable institutions; (3) any nonhuman food use; and (4) research and development projects dealing with dehydration, radiation, freeze drying, or freezing of cranberries, for the development of foreign markets.

Section 929.148 defines State average yield. Section 929.48(a)(5) sets forth that a sales history for a grower who has no history of sales associated with such grower's acreage be computed by the Committee using the total estimated commercial sales from the cranberry acreage or the State average yield per acre multiplied by the grower's cranberry producing acreage, whichever is greater. For the 2000–2001 crop year volume regulation, the State average yield was defined as the yield per State for the year 1997 or the average of the best 4 years average yield per State out of the last 6 years, whichever is greater.

Section 929.149 sets forth the methods for sales history determinations for the 2000–2001 year of volume regulation. This regulation specified that for growers with 5 years of sales history, a sales history is computed using an average of the highest 4 years of sales. For growers with 6 or more years of sales history, a sales history is computed using an average of the highest 4 of the most recent 6 years of sales. If these growers also have newer acreage with 4 years of sales history or less, and these growers provided the Committee with credible information which allowed the Committee to segregate the sales history of the newer acreage, then that acreage is treated in the same manner as acreage of a grower with 4 years or less of sales history. For a grower with 4 years or less of sales history, the sales history is computed using the highest sales season. Sales history for new acreage with no history of sales (for both new and existing growers) is computed using the estimated commercial sales or State average yield, whichever is greater.

Section 929.158 exempts sales of fresh and organically-grown fruit from the volume regulation. Handlers were required to qualify for the exemption by filing with the Committee the amount of fresh or organic cranberry sales on a grower acquisition listing form. In addition, to receive an exemption for organic cranberry sales, the cranberries must have been certified by a third party organic certifying organization acceptable to the Committee.

Section 929.107 defines "commercial crop." For the 2000–2001 volume regulation, the number of barrels constituting a commercial crop was increased from 15 to 50 barrels per acre. This change assisted growers who harvested cranberries for the first time in 1999. These growers qualified for a new sales history determination if they produced less than 50 barrels per acre.

Section 929.125 sets forth appeal procedures for growers to request a redetermination of their sales histories. Growers, dissatisfied with their sales history determinations, requested a review of the determinations by following a specified procedure. The grower first filed the appeal with the appeals subcommittee within 30 days after receipt of the Committee's determination of sales history. The grower, if dissatisfied with the subcommittee's decision could further appeal to the Secretary, whose decision was final.

The way sales histories were calculated for the 2000–2001 crop year were based on the concerns and comments regarding fairness and equity, which were raised during the rulemaking proceeding. The revised procedures for calculating sales histories were expected to result in an increase in the marketable quantity recommended by the Committee. It was determined that they were necessary in order to allocate allotment among growers in the most equitable manner.

Reformulation of Sales History Calculations for the 2001–2002 Crop Year

The Committee had been discussing the possible use of volume regulation during the 2000–2001 season for over a year. In its deliberations, concerns were voiced about the potential inequities that could result when calculating 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) can result in sales histories 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 and the Department gave much thought to the most equitable method of determining sales histories within the scope of the order. The final rule on volume regulation for the 2000 crop year was as flexible as the order would allow in alleviating the

differential impact of the volume regulation on growers.

The marketing order provides for recalculating the method for determining sales histories, should volume regulation be recommended for the 2001–2002 season. Specifically, § 929.48(a)(3) states that a new sales history shall be calculated for each grower after each crop year during which a volume regulation has been established using a formula determined by the Committee with the approval of the Secretary.

The amendment subcommittee met several times to develop a better method of assigning sales histories for newer acreage for future volume regulations. One method discussed was the British Columbia Marketing Committee's method of determining sales histories in years of volume regulation that would add sales history to reflect future production on newer acres. Conceptually, this method specifically addresses the situations encountered with newer acres that were experienced this year domestically. It was suggested by the Committee that this method could be adopted for future years of volume regulation.

The new method of calculating sales histories is intended to address problems associated with using a grower's actual sales history without taking into account anticipated production when calculating allotment percentages. Ideally, in a year of volume regulation, all growers' actual crops would be reduced by the same percentage. Because of uncertainties in making crop predictions, allotment percentage calculations are based on averaging growers' sales histories. Calculation of these sales histories does not factor in variables and does not provide any adjustment for new acres as they rapidly increase production during the first several harvests. Therefore, growers can be impacted differently depending on their particular situation. The result is that sales histories for growers with a significant number of acres being harvested for the first, second, third, and fourth time can be well below what the average crop for these growers is expected to be during the next harvest. The restriction percentages for these growers in a year of volume regulation could therefore exceed the average allotment restriction percentage. The method proposed in this rule addresses that issue by minimizing the differential impact among growers with newer acreage.

One of the primary concerns associated with the 2000 crop year volume regulation was that many growers with a combination of both

older and newer acreage were not in a position to take advantage of the regulation which provides that growers with acreage 4 years old or younger could use the highest year as his or her sales history. For the more established grower, all sales from all acreage were combined, regardless of the age of the acreage. The average of the best 4 years of sales out of the last 6 years was used as that grower's sales history. Although the regulations allowed these growers to provide credible evidence to support yields from newer acres, not all growers were in a position to do this. The method of calculating sales histories proposed in this rule would specifically resolve this issue because the grower would not have to segregate his or her acreage to receive additional sales history. The grower would merely have to know the year the acreage was planted and report such information to the Committee annually. The revised formula in this proposal would provide a specified amount of additional sales history based on USDA and industry analysis of cranberry production. The amount of such additional sales history would depend on the year of planting. This would provide a direct solution to this issue.

The British Columbia method of calculating sales history is based on acreage up to 4 years old. Once the acreage reaches its fifth harvest, the calculation of sales history shifts into a method of determining sales history using the best 4 out of the most recent 5 or 6 years. Once cranberry acreage reaches full maturity, it is expected that the average of the best 4 out of 6 years would provide a realistic history of sales. In discussing these proposed amendments, the subcommittee was concerned that shifting from the formula for newer acreage to the mature acreage formula after only 4 years could cause a dramatic change in calculation of sales histories. Specifically, growers' sales histories could drop significantly. The subcommittee determined it would be more equitable to use the newer acreage method up to 5 years so that the transition into the method of calculating sales histories based on the best of 4 years for mature acreage would not cause growers' sales histories to fluctuate significantly.

The first step in developing the method proposed in this rule is to determine industry wide average yields for acreage based on the year of planting. These figures would be used in determining additional sales histories under the new formula. An industry survey conducted several years ago for crop forecasting estimated average yields for new acreage to be 80, 130,

180, and 230 barrels per acre in the first, second, third and fourth harvests, respectively. The subcommittee was concerned that this data could be outdated because cultural practices in the industry have changed and new varieties have been planted which have increased yields per acre. In addition, there were concerns about differing first year production between growers who choose to harvest the first year after planting and those that choose to harvest the second year after planting. A grower who waits an additional year is doing so in anticipation of a greater yield. For example, a grower who harvests the first year after planting may only yield about 50–75 barrels an acre in the first harvest, where a grower who waits an additional year could yield about 100–175 barrels per acre in the first harvest. Because there could be a wide variance in these yields, the subcommittee believed that developing a single set of averages to simultaneously accommodate the two scenarios would produce a wide variance and too much of a differential impact among these growers. The subcommittee believed these situations should be considered separately to minimize the differential impact. Therefore, the subcommittee recommended that the method developed should take into account different harvesting times by basing the averages on the year planted.

Although there was agreement that this methodology would be the best course of action for future producer allotment volume regulations, the subcommittee was still concerned that the actual yield averages may not be true today. The subcommittee enlisted the help of the Department in conducting a survey to determine what average yields per acre would be today.

The Department worked with cranberry handlers in assembling data. Handlers were asked to provide information on growers' yield per acre for yearly harvests made 1, 2, 3, 4 and 5 years after planting, respectively, for

acres harvested over the past 5 years. The handlers were also asked to indicate which varieties were planted, specifying the proportion of total new acreage dedicated to each variety.

Two large handlers supplied detailed information relative to harvested acres. To supplement this information, data was gathered from the numerous appeals filed this year from growers who delivered cranberries to other handlers. This additional data collection was accomplished to broaden the scope of the industry data used in the analysis.

In many cases, it was not possible to determine the varieties of the cranberries reported. Review of the data indicated that the Stevens variety was the most prevalent variety, but because the varieties could not be definitively segregated, no distinction was made in the analysis regarding variety.

The data combined grower information from all cranberry producing regions, as well as data for all varieties and years of birth (original date of planting). The data was analyzed to determine what an average grower, growing in average conditions, would experience in terms of yield per acre if he/she planted new acreage and then harvested it 5 consecutive years thereafter.

The results were divided into two categories: Group A—growers harvesting for the first time 1 year after planting, and Group B—growers waiting 2 years before the first harvest. The data included the first harvest and four subsequent harvest yields for groups A and B, respectively, and was analyzed to determine the average yields and rates of increase in yields over the first 5 harvests for each grower/bog category.

The analysis of yield progression over the first 5 harvests for groups A and B revealed significant differences in first harvest yields, but supported the conclusion that yield progression rates for subsequent years were comparable for subsequent harvests. Based on this observation, yield rates and expected yield/sales histories were averaged

based on the sample size from each group. These averages are 50, 131, 197, 227 and 250 barrels per acre for acres harvested the first, second, third, fourth and fifth year after planting, respectively.

Since these numbers are based on average yields for the sample groups, it is reasonable to conclude that the yields of approximately 50 percent of the growers impacted by this proposal would be higher than the average. To accommodate as many growers as possible, it was agreed to adjust the averages upward by 25 barrels which would result in growers receiving a higher amount of additional sales history under the proposed formula. This would also assure that first harvests (acreage with no sales history) which were provided the State average yield as a sales history in the 2000 crop year would receive a comparable sales history under this proposal. The average expected yields for each year, increased by 25 barrels would be 75, 156, 222, 252 and 275 barrels per acre for acres harvested the first, second, third, fourth and fifth year after planting, respectively.

These yield figures recommended by the subcommittee were incorporated into the proposed formula for determining the additional sales history per acre that growers would be provided. This would apply to acreage planted in 1995 or later. Sales histories for established acreage would continue to be based on an average of the highest 4 years.

For growers whose acreage has 5 years or less of sales history and was planted in 1995 or later, the sales history would be computed using the average of all available years to get actual sales history. In addition to the actual sales history, such growers would be provided additional sales history to account for increased production in a year of volume regulation. The additional sales history would be calculated using the figures in Table 1.

TABLE 1.—ADDITIONAL SALES HISTORY ASSIGNED TO ACREAGE

| Date planted | Expected 2001 yield (bbl/acre) | Average sales history (bbl/acre) | Additional 2001 sales history per acre (bbl/acre) |
|--------------|--------------------------------|----------------------------------|---|
| 1995 | 275 | 226 | 49 |
| 1996 | 275 | 158 | 117 |
| 1997 | 252 | 95 | 157 |
| 1998 | 222 | 39 | 183 |
| 1999 | 156 | 0 | 156 |
| 2000 | 75 | 0 | 75 |

The manner in which the additional sales history numbers were arrived at are as follows. The expected yields per acre in 2001 would be assigned for each year of planting from 1995 to 2000 (see second column in Table 1). The average yields per acre established by the Committee are totaled (depending upon the number of years of production) and the sum is divided by 4 to obtain an average (see third column in Table 1—average sales history). Using the years 1995 through 1999, the average yields per acre are 75, 156, 222, 252 and 275. This average is then subtracted from the expected yield of the acreage in 2001. The difference is the additional sales history for acreage planted in a specified year (see fourth column in Table 1).

For example, acres planted in 1997 and harvested in 1999 would have 2 years of production (1999 and 2000—first harvest occurring 2 years after planting). Estimated yields on that acreage, as established by the Committee, would be 156 and 222 barrels, respectively. These numbers totaled and divided by 4 equal an average sales history on that acreage of 95 barrels. Expected yield in 2001 on

acreage planted in 1997 is 252 barrels. Subtracting the average from the expected yield (252 minus 95) results in 157 barrels. This would be the additional sales history per acre assigned to this acreage, *i.e.*, 157 barrels per acre would be added to the grower's actual sales history which would be computed by averaging all available years harvested.

Because yield levels are comparable after the first year of harvest regardless whether first harvest occurred 1 or 2 years after planting, the subcommittee opted to base the formula on acres first harvested 2 years after planting. Based on the industry data analyzed, approximately two-thirds of growers first harvest 2 years after planting. The formula still takes into account growers who harvest for the first time 1 or 2 years after planting.

The proposed calculation represents a realistic number of additional barrels per acre that growers would be provided to account for increased production on newer acres. The new expected yield/sales histories are believed to more accurately reflect U.S. grower yields as the data used represents actual yields

for new bogs planted in the United States over the past 5 years in all parts of the production area. It is estimated that the data pool represented roughly 60–65 percent of production area growers having newly planted acreage. Expected yield/sales histories were recalculated while maintaining the integrity of first harvest yield differences. Additional sales history would still be provided to growers based on the age of their acres.

The formula is a tool used to make an appropriate adjustment in sales histories for growers harvesting young acreage which is not yet producing at optimal capacity. The formula is based on industry data collected by USDA. It is important to note that these are only averages used to determine how much additional sales histories growers would be provided.

To illustrate how this method would work, a few examples follow:

Example 1—Grower With Only Newer Acreage all First Harvested 2 Years After Planting

A grower has a total of 20 acres with the following sales history:

ACTUAL DELIVERIES FROM 1998–2000

| # Acres | Planted | Sales (in barrels) | | | Actual sales history |
|-------------|---------|--------------------|-------|-------|----------------------|
| | | 1998 | 1999 | 2000 | |
| 10 | 1996 | 1,000 | 1,750 | 1,900 | 2,223.33 barrels. |
| 5 | 1997 | ..... | 520 | 1,000 | |
| 5 | 1998 | ..... | ..... | 500 | |
| Total ..... | ..... | 1,000 | 2,270 | 3,400 | |

The actual sales history for these 20 acres for 2001 would be 2,223.33 barrels (total annual sales divided by all available years, or 3). Because the acreage was planted in 1995 or later, this grower would receive additional sales history to reflect expected yields on newer acres in 2001.

In accordance with the formula as set forth in proposed § 929.149(b) of the regulations, this grower would receive

an additional 117 barrels per acre for acreage planted in 1996 (10 acres × 117 = 1,170), 157 barrels per acre for the 5 acres planted in 1997 (5 acres × 157 = 785) and 183 barrels per acres for the 5 acres planted in 1998 (5 acres × 183 = 915 for a total of 2,870 barrels of additional sales history. Added to the grower's actual sales history, the total sales history for the year 2001 for this grower's 20 acres would be 5,093.33

barrels. The only information needed to provide the additional sales history to this grower would be the date of planting.

Example 2—Grower With Newer Acres With Sales History and New Acres With No Sales History

A grower has a total of 15 acres with the following sales history:

ACTUAL DELIVERIES FROM 1997–2000

| # Acres | Planted | Sales (in barrels) | | | | Actual sales history |
|-------------|------------|--------------------|-------|-------|-------|----------------------|
| | | 1997 | 1998 | 1999 | 2000 | |
| 10 | 1996 | 750 | 1,000 | 1,800 | 2,400 | 1,487.5 barrels |
| 5 | 2000 ..... | ..... | ..... | ..... | 0 | |
| Total ..... | ..... | 750 | 1,000 | 1,800 | 2,400 | |

The actual sales history for these 15 acres for 2001 would be 1,487.5 barrels. Because the acreage was planted in 1995 or later, this grower would receive additional sales history to reflect expected yields on newer acres in 2001.

In accordance with the formula as set forth in proposed § 929.149(b) of the regulations, this grower would receive

an additional 117 barrels per acre for acreage planted in 1996 (10 acres × 117=1,170), 75 barrels for the 5 acres planted in 2000 (5 acres × 75=375) for a total of 1,545 barrels of additional sales history. Added to the grower's actual sales history, the total sales history for the year 2001 for this grower's 15 acres would be 3,032.5

barrels. The only information needed to provide the additional sales history to this grower would be the date of planting.

Example 3—Grower with established acres and newer acres.

A grower has a total of 60 acres with the following sales history:

ACTUAL DELIVERIES FROM 1995–2000

| #Acres | Planted | Sales (in barrels) | | | | | | Actual sales history |
|-------------------|------------|--------------------|-------|-------|-------|-------|--------|----------------------|
| | | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | |
| 50 | 1993 | 7,500 | 8,000 | 6,200 | 8,800 | 5,909 | 8,200 | |
| 10 | 1996 ..... | ..... | ..... | ..... | 500 | 1,800 | 2,400 | |
| Total ..... | ..... | 7,500 | 8,000 | 6,200 | 9,300 | 7,700 | 10,600 | |
| Best 4 of 6 ..... | ..... | ..... | 8,000 | ..... | 9,300 | 7,700 | 10,600 | |
| | | | | | | | | 8,900 barrels |

The actual sales history for these 60 acres for 2001 would be 8,900 barrels. Because 10 of the acres were planted after 1995, this grower would receive additional sales history (for these 10 acres) to reflect expected yields on newer acres in 2001.

In accordance with the formula as set forth in proposed § 929.149(b) of the order's regulations, this grower would receive an additional 117 barrels per acre for acreage planted in 1996 (10 acres × 117=1,170) for a total of 1,170 barrels of additional sales history. Added to the grower's actual sales history, the total sales history for the year 2001 for this grower's 60 acres would be 10,070 barrels. The only information needed to provide the additional sales history to this grower would be the date of planting.

The actual production from the 10 newer acres is already included in past sales history. The 1,170 additional barrels are added to sales history to account for the increased production from the newer acres expected in 2001. In this example and in Example 1, the production from the newer acres was broken out of the total production to illustrate how the method works. In actual practice, it would not be necessary to have this information. The only data needed are the dates of planting. This information would be collected annually by the Committee.

Six years of sales history was used in this example. As discussed later in this document, the Committee has recommended that growers can choose the best 4 out of the last 7 crops for 2001 sales history calculations.

State Average Yield Provisions

Section 929.48(a)(5) of the order sets forth that 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.

For the 2000–2001 crop year, the State average yield is defined as the average State yields for the year 1997 or the average of the best 4 years out of the last 6 years, whichever is greater. This calculation is similar to that used to compute sales history for more established growers (an average of the best 4 years out of the last 6 years), and would average out seasonal variations in yields. However, if estimated commercial sales are greater than what is computed above, the Committee would use the estimated commercial sales.

To take into account the differences among the States, the Committee recommended calculating the average yield for each State using the best 4 of the last 6 years, and comparing it to the average yield for that State in 1997. The higher of the two figures for each State was used to calculate new sales histories for new growers. A new § 929.148 was added to the order's rules and regulations to set forth this calculation.

The formula for recalculating sales histories set forth in this proposal provides a yield for acres with no sales history based on analysis of industry data. For acreage expected to be harvested for the first time in the year of a volume regulation, the sales history would be 75 barrels for acres harvested the first year after planting and 156 barrels for acres harvested the second

year after planting. These yields are based on averages of expected yields from acreage of that age plus an additional 25 barrels and are more in line with actual yields than the current system of providing the State average yield, which is considered high for harvests the first year after planting. Under the current system, growers forfeit any unused allotment. However, in actual practice, this forfeiture is difficult to monitor. The proposed method provides a simpler, more realistic approach to acreage with no sales history.

Therefore, since under the new formula, a definition of State average yield is unnecessary, this proposal would remove § 929.148 from the rules and regulations.

Definition of Commercial Crop

The final rule on the volume regulation changed the number of barrels that defines a commercial crop under the marketing order from 15 to 50 barrels per acre. Calculations of sales histories are based on "commercial" cranberry sales. Section 929.107 defines commercial crop as acreage that has a sufficient density of growing vines to produce at least 50 barrels per acre without replanting or renovation. Acreage producing less than 50 barrels per acre will not be considered to produce a commercial crop.

The intent of this provision was to assist growers who harvested cranberries for the first time in 1999. These growers qualified for a new sales history determination for the 2000 crop year if they produced less than 50 barrels per acre in 1999.

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. This rule change allowed growers who produced less than 50 barrels per acre in 1999, to be eligible to receive as a sales history 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 change was intended to benefit growers who had very low yields per acre for their first year of production.

The new calculation of sales histories set forth in this proposal would also make unnecessary the need addressed by § 929.107. For acreage expected to be harvested for the first time in the year of a volume regulation, under this proposal, the sales history would be 75 barrels per acre for acres planted in 2000 and 156 barrels per acre for acres planted in 1999. No determinations would be necessary as to how many barrels were produced on the acreage in previous years.

The Committee would still need to determine the acreage reported as first coming into production in the year of volume regulation is viable planted acreage. For example, if a grower reports that 50 acres of cranberries planted in 1999 are going to be harvested for the first time in 2001, the Committee would need to verify that this acreage exists and that the vines are sufficient enough to provide a crop. Since the definition of commercial crop is not necessary if this proposal is implemented, § 929.107, Basis for determining cranberry acreage, would be removed from the rules and regulations.

Change in the Number of Years Used in Computing Sales Histories

Paragraph (a)(1) of § 929.48 of the order sets forth that sales histories are computed using the best 4 out of 6 years of growers' sales. Paragraph (a)(2) of the same section states that the Committee, with the approval of the Secretary, may alter the number and identity of years to be used in computing subsequent sales histories.

At amendment subcommittee meetings and full Committee meetings, the impact of using the year of volume regulation in future calculations of sales histories was discussed. The Committee was concerned that sales off acreage in a year of volume regulation could be unusually low and if that year was used in calculating sales histories for the next year, it could lower some growers sales histories to unrealistic rates.

This proposal is intended to allow the year of volume regulation to be dropped

from future sales history calculations if that year was unusually low. Adding an additional year from which growers' highest 4 years of sales can be chosen provides a greater opportunity for growers to maintain a sales history more reflective of their actual sales.

Therefore, paragraph (a) of § 929.149 is proposed to be modified to indicate sales histories shall be computed using an average of the highest 4 of the most recent 7 years of sales.

Fresh and Organic Fruit Exemption

Fresh and organically-grown fruit are exempt from the 2000–01 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. Section 929.158 specifies the exemption for fresh and organically-grown fruit.

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. When cranberries are water picked for processing, the bog is flooded, the cranberries are "reeled off" the vines with harvesting equipment designed for water picking that beats the berries off the vines and the cranberries that rise to the top are harvested. In the State of Wisconsin, cranberries for fresh market are water picked but harvested with special equipment designed to remove the fruit gently as opposed to the reels used to knock fruit from the vines when processed fruit is harvested. In addition, water picked cranberries intended for fresh markets are subjected to a drying process to ensure quality. "Wet" cranberries (cranberries that are water picked and not dried with special drying equipment) are not used for fresh market retail sales. For these reasons, conversion from a processed grower to a fresh grower in one season is difficult.

Fresh and organic cranberries are small, but important segments of the overall cranberry market, and do not currently contribute to the oversupply situation. Because there is adequate demand for these products, restricting the volume of fresh cranberries that can be sold profitably was not recommended for the 2000–2001 volume regulation. It was discussed at

subcommittee and Committee meetings that fresh fruit production requires special cultural practices that need to be implemented to transition the cranberry vines from processed fruit production to fresh fruit production. The exemption for fresh cranberries was intended to apply to cranberries packed in consumer packaging, such as cellophane bags for supermarkets. Any cranberries sorted out from fresh and converted to processing counted against that grower's allotment.

Although the intent of the fresh fruit exemption in the 2000–01 volume regulation was to only exempt cranberries going to retail outlets as fresh cranberries, questions arose as to what constitutes "fresh" under the regulations. For example, some growers expressed the desire to sell large bulk bins of wet cranberries to supermarkets. There was at least one report in 2000 of bulk wet cranberry sales to a retail outlet. This was not contrary to the provisions of the 2000 regulation, but it is not what was intended by the Committee. The Committee was concerned that wet cranberries sold in bulk bins would experience serious quality problems for retailers and consumers and thus, have a negative impact on the fresh marketplace. Another example is that some growers wanted to sell their excess cranberries as fresh cranberries to foreign markets, and it was anticipated that foreign customers could have an economic incentive to process the berries and sell in direct competition with regulated cranberries in foreign markets. This also was not the intent of the current regulation.

The subcommittee developed a more specific definition of fresh cranberries so that the intent would be clear for future volume regulations if fresh cranberries are again recommended for exemption. The proposed § 929.158(a) clarifies that sales of packed-out cranberries intended for sale to consumers in fresh form would be exempt from volume regulations. The definition is further clarified to say that fresh cranberries are also sold dry (either dry picked or dried after water picking) in bulk boxes, generally weighing less than 30 pounds. If fresh cranberries are diverted into processing outlets, the exemption does not apply.

The Committee further recommended that growers be required to notify the Committee of their intent to sell fresh fruit in quantities over 300 barrels. It is not intended that small quantities be subject to the regulation. Also, the subcommittee indicated that "pick-your-own" operations would be covered under the fresh fruit exemption.

No modifications were recommended for organically grown cranberries. Therefore, organically grown cranberries would be exempt from future volume regulations if recommended by the Committee (and approved by the Secretary). Such cranberries would need to be certified as organic by a third party organic certifying organization acceptable to the Committee. Handlers would qualify for the exemptions by filing the amount of fresh and organic cranberry sales on the grower acquisition listing form.

It was also recommended that a new paragraph (e) be added to § 929.149 regarding the fresh fruit exemption. This paragraph proposes that sales histories be calculated separately for fresh and processed cranberries. This recommendation also would specify that in the event a grower's fruit does not qualify as fresh fruit, the fresh fruit sales history, in whole or in part, be added to the processed fruit sales history with the approval of the Committee. This was recommended by the Committee so that sales histories would be more reflective of actual sales, especially if fresh fruit sales are exempt in the future. Section 929.62(c) of the order specifies that handlers must file certified reports with the Committee as to the quantities of cranberries handled during designated periods. Handlers have been reporting this information and would continue to report this information in accordance with that provision.

The decision to exempt either fresh or organic cranberries from any volume regulation would be discussed and recommended by the Committee at the same time volume regulation is being considered. If fresh or organic cranberries were not recommended for exemption, these provisions would not apply.

Outlets for Excess Cranberries

The purpose of the producer allotment program 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 are allowed to dispose of excess cranberries in certain designated noncommercial 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 marketing 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.

In the final rule establishing and implementing the 2000–2001 volume regulation, § 929.104 specified the noncommercial and noncompetitive outlets for excess cranberries as: (1) Foreign countries, except Canada; (2) Charitable institutions; (3) Any nonhuman food use; and (4) Research and development projects dealing with dehydration, radiation, freeze drying, or freezing of cranberries, for the development of foreign markets. This regulation also specified that excess cranberries cannot be handled, i.e. converted into canned, frozen, or dehydrated cranberries or other cranberry products by any commercial process.

The amendment subcommittee discussed that the provision regarding research and development projects was too restrictive and could exclude some outlets for excess cranberries that could be deemed noncommercial and noncompetitive. At the August 28 Committee meeting, it was unanimously recommended to modify paragraph (a)(4) of § 929.104 to state that research and development projects approved by the Committee would be eligible as outlets for excess cranberries. This would provide more flexibility in determining if a specific project could be considered noncompetitive or noncommercial. The Committee would review the activity and make that determination. Research and development projects would not have to be limited to dehydration, radiation, freeze drying, or freezing of cranberries for the development of foreign markets.

Therefore, this proposal would modify § 929.104 to broaden the scope of research and development projects authorized for excess cranberries.

Reinstatement of Allotment Notification Date

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 June 1 deadline was suspended in the final rule of the volume regulation for the 2000–2001 crop year to allow adequate time for interested parties to comment on the proposed rule and for the Department to give due consideration to the comments received and issue a final rule.

This proposal would reinstate the June 1 deadline. It was discussed at the Committee meeting that it is critical to have a deadline should volume regulations again be recommended and implemented. The Committee would even prefer the deadline date to be May 1. However, any other date would need to be accomplished through formal rulemaking.

Therefore, this rule proposes reinstating the deadline date of June 1 in § 929.49 of the order. If volume regulations are recommended next year, the Committee intends to make its recommendation at an earlier date than last year so that growers have the opportunity to better prepare for the producer allotment program.

Regulatory Flexibility Act and Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action and alternatives considered on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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

There are approximately 20 handlers of cranberries who are subject to regulation under the order and approximately 1,100 producers of cranberries in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13

CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000.

Of the 1,100 cranberry growers, between 86 and 95 percent are estimated to have sales equal to or less than \$500,000. Since 1997, the industry has seen the value of production decrease by 69 percent. Fewer than 60 growers are estimated to have had sales in excess of \$500,000 in 1999. Thus, the majority of producers of cranberries may be classified as small entities. The impact of this proposal would apply to all growers harvesting cranberry acreage in the production area planted in 1995 or later.

Six major handlers 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. All of these grower-handlers would be considered small businesses.

This proposal invites comments on revisions to the formula for calculating sales histories under the producer allotment program currently prescribed under the order. This rule would modify the current sales history formula in order to achieve the most equitable manner of apportioning among producers cranberries made available for disposition by handlers in the event volume regulations are recommended for the 2001–2002 season. This rule would also clarify the exemption provisions under the volume regulation provisions for fresh cranberries, modify the outlets for excess cranberries and reinstate the date for the Committee to notify growers and handlers of the allotments. The proposal was unanimously recommended by the Committee at a meeting on August 28, 2000.

The revisions to sales history calculations would benefit a majority of growers, and would be especially beneficial to newer growers who planted acreage in 1995 or later. The modification of the exemption for fresh cranberry sales would clarify the intent of the exemption already in place. The proposed change to the outlets for excess cranberries would broaden the scope of the research and development projects authorized as outlets for excess cranberries. The reinstatement of the June 1 allotment notification date would only undo the suspension of that date that was imposed last year when it became impractical for the Committee to notify growers of their allotments by

that date. In the event volume regulations are implemented next season, these proposed changes would have a positive effect on all growers and handlers because they would provide additional allotment to newer acreage, allow for more options in research and development and simplify and clarify the present regulations.

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.

Impact of Reformulating Sales History Calculations

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 excess inventories and reduced grower returns.

In considering ways to cope with the oversupply, the Committee recommended using volume controls (in the form of producer allotments) for the 2000–2001 crop year. A final rule establishing a marketable quantity and allotment percentage was issued on July 3, 2000, and published in the July 11, 2000, issue of the **Federal Register** (65 FR 42598) to apply to the 2000–2001 crop year.

This is the first time the sales history method of a producer allotment has been used since these provisions were added to the order in 1992. Cranberry bearing acres continue to increase. Many growers, particularly those with acreage 4 years old or less, indicated that the current method of sales history calculation placed them at a disadvantage because of more production on their acreage than their sales histories indicate. It is estimated that approximately 30 percent of all cranberry acreage was planted in 1995 or later. With the volume of new acres within the industry, this would affect many growers.

The Committee had been discussing the possible use of volume regulation for over a year. In its deliberations, concerns were voiced about the most equitable way of calculating sales histories. Because sales histories are based on an average of past years' sales, newer growers would be differently situated than more established growers when it comes to calculating sales histories. 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) can 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 and the Department gave much thought to the most equitable method of determining sales histories within the scope of the order. The final rule on volume regulation for 2000–01 was as flexible as the order would allow in alleviating the differential impact of the volume regulation on growers.

After a year of volume regulation, the Committee is provided the authority to calculate new sales histories for growers. Specifically, § 929.48(a)(3) sets forth that a new sales history shall be calculated for each grower after each crop year, during which a volume regulation has been established, using a

formula determined by the Committee, with the approval of the Secretary.

The amendment subcommittee met several times to develop a better method to assign sales history for newer acreage. They recommended using a modified version of the British Columbia Marketing Committee's method of determining sales histories in years of volume regulation. This method adds sales history to reflect future production on newer acres. Conceptually, this method addresses the situations encountered with newer acres that were experienced this year domestically. It was proposed to adopt this method for future years of volume regulation.

The Committee recommendation to revise the formula would specifically address growers' concerns by providing a more equitable determination of their sales histories. The recommended method would provide additional sales history for growers with newer acreage to account for increased yields for each growing year up to the fifth year by factoring in appropriate adjustments to reflect rapidly increasing production during initial harvests. The adjustments would be in the form of additional sales histories based on the year of planting as shown in the following table.

TABLE 2.—ADDITIONAL SALES HISTORY ASSIGNED TO ACREAGE

| Date planted | Additional 2001 sales history per acre |
|--------------|--|
| 1995 | 49 |
| 1996 | 117 |
| 1997 | 157 |
| 1998 | 183 |
| 1999 | 156 |
| 2000 | 75 |

The Committee discussed other alternatives to this method. One suggestion was to allow growers with newer acreage to add a percentage of the State average yield to their sales history each year up to the fourth year. The example presented was that acreage being harvested for the second time during a year of volume regulation would receive a sales history that was 25 percent of the State average yield, a third year harvest would receive 50 percent of State average yield, a fourth year harvest would receive 75 percent of State average yield. Although this method would address some of the problems experienced this year, it was determined that the method proposed would be the simpler and more practical method for growers to obtain the most realistic sales history.

The Committee determined that something needed to be done to address the concerns associated in the 2000 crop year with growers with newer acreage. As stated previously, an appeals process was established for growers to request a redetermination of their sales histories. For the 2000–2001 volume regulation, a total of 247 appeals were received by the appeals subcommittee (the first level of review for appeals) and these appeals demonstrated the majority of issues that impacted growers during the volume regulation. Most of these issues would be addressed by this proposal. The major categories of appeals were as follows:

1. Growers who provided credible evidence to allow the Committee to segregate the sales histories of newer acreage so that the sales histories of the newer acreage could be computed using the highest sales season. The formula proposed in this rule would provide additional sales history to these acres without segregating the sales off these acres. Under this method, their sales histories would more accurately reflect actual sales.

2. Growers with acreage 4 years old or less that stated that using the highest sales season still did not provide a realistic sales history. Under this proposal, these growers would be provided additional sales history to account for the increases in production of newer acres.

3. Growers with acreage harvested in 1999 with a sales history much lower than anticipated yields on the 2000 crop. These growers requested the Committee to apply the State average yield on this acreage. Under this proposal, these growers would be provided additional sales history to account for the increases in production of newer acres. The additional sales history would be provided based on the year the acreage was planted.

4. Growers with acreage with no sales history requesting higher estimated sales than the State average yield.

Acreage with no sales history anticipating first harvest in the year of volume regulation would receive a sales history based on the year of planting. It is expected that there will be growers who anticipate higher yields than the sales history provided by this formula. However, the yield rates arrived at were based on analysis of industry data and adjusted up 25 barrels to accommodate as many growers as possible.

5. Growers with a variety of issues relating to weather related damage on acreage, miscalculations of sales histories, etc. It would be expected appeals of this nature would still be

filed and handled on a case-by-case basis.

If this proposal is finalized and volume regulation is recommended and implemented next year, the bases for most of the appeals filed in the 2000 crop year would no longer exist. The appeals subcommittee chairman estimated that over 80 percent of the appeals filed this year would not have been filed if the Committee was able to implement this formula for the 2000–01 season.

As stated previously, fewer than 60 of the approximate 1,100 growers are estimated to have sales in excess of \$500,000. Also, approximately 30 percent of all cranberry acreage was planted in 1995 or later. Since 86 to 95 percent of cranberry growers may be classified as small businesses, it can be estimated that this proposal would impact mostly small businesses.

Finally, this proposal, if finalized, would not impose any immediate regulations on growers or handlers. It only modifies the formula for calculating sales histories in the event volume regulations are implemented in the future. Implementing this proposed rule would benefit small businesses by allowing them more flexibility in receiving a more equitable sales history if volume regulations are recommended and implemented in future years. In addition, one of the primary reasons for this proposal being made at this time is to provide growers and handlers with advanced notice of the change in calculations to sales history determinations so that they can be informed and make decisions well ahead of the future season.

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

statistical data for maintenance of the program. The forms require information that is readily available from handler and grower records and which can be provided without data processing equipment or trained statistical staff.

This proposed rule would necessitate reconfiguring one form currently approved by OMB. The form is entitled CMC-AL 1, Growers Notice of Intent to Produce and Qualify for Annual Allotment. Growers are required to supply the Committee with information relative to their cranberry acreage in order to qualify for an annual allotment. The information includes how many existing and new acres would be producing cranberries in the following season and who would be handling the cranberries. The estimated time for 1,285 growers to complete this form is 20 minutes, once a year for total burden hours of 424.05. If this proposed rule is implemented, the Committee would reconfigure this form to ensure that information relative to this proposal would be included, particularly the date of planting of the acreage. The burden hours of the form would not change and the reconfigured form would be submitted to OMB to replace the current form.

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 the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the August 28, 2000, meeting as well as the amendment subcommittee meetings were public meetings and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because the Committee meets in February of 2001, to consider volume regulation. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

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

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

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

Authority: 7 U.S.C. 601–674.

§ 929.49 [Amended]

2. In paragraph (d) of § 929.49, the suspension of the phrase “On or before June 1” is removed.

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

4. Section 929.104, paragraph (a)(4), is revised to read as follows:

§ 929.104 Outlets for excess cranberries.

(a) * * *

(4) Research and development projects approved by the committee dealing with the development of foreign and domestic markets, including, but not limited to dehydration, radiation, freeze drying, or freezing of cranberries.
* * * * *

§ 929.148 [Removed]

5. Section 929.148 is removed.

6. Section 929.149 is revised to read as follows:

§ 929.149 Determination of sales history.

A sales history for each grower shall be computed by the committee in the following manner.

(a) For each grower with acreage with 7 or more years of sales history, a new sales history shall be computed using an average of the highest 4 of the most recent 7 years of sales. If the grower has acreage with 6 years sales history, a new sales history shall be computed by averaging the highest 4 of the 6 years. If the grower has acreage with 5 years of sales history and such acreage was planted prior to 1995, a new sales history shall be computed by averaging the highest 4 of the 5 years.

(b) For growers whose acreage has 5 years or less of sales history and was planted in 1995 or later, the sales history shall be computed using the average of all available years and shall

be adjusted as provided in paragraph (d).

(c) For growers with acreage with no sales history or for the first harvest of replanted acres, the sales history will be 75 barrels per acre for acres planted or re-planted in 2000 and first harvested in 2001 and 156 barrels per acre for acres planted or re-planted in 1999 and first harvested in 2001.

(d) In addition to the sales history computed in accordance with paragraphs (a) and (b) of this section, additional sales history shall be assigned to growers with acreage planted in 1995 or later. The additional sales histories depending on the date the acreage is planted are shown in Table 1.

TABLE 1.—ADDITIONAL SALES HISTORY ASSIGNED TO ACREAGE

| Date planted | Additional 2001 sales history per acre |
|--------------|--|
| 1995 | 49 |
| 1996 | 117 |
| 1997 | 157 |
| 1998 | 183 |
| 1999 | 156 |
| 2000 | 75 |

(e) Sales histories shall be calculated separately for fresh and processed cranberries. Fresh fruit sales history, in whole or in part, may be added to process fruit sales history with the approval of the committee in the event that the grower's fruit does not qualify as fresh fruit at delivery.

7. Section 929.158 is revised to read as follows:

§ 929.158 Exemptions.

If fresh and organically-grown cranberries are exempted from the volume regulation as recommended by the Committee and approved by the Secretary, the following provisions to these exemptions shall apply:

(a) Sales of packed-out cranberries intended for sales to consumers in fresh form shall be exempt from volume regulation provisions. Fresh cranberries are also sold dry in bulk boxes generally weighing less than 30 pounds. Fresh cranberries intended for retail markets are not sold wet. If any such fresh cranberries are diverted into processing outlets, the exemption no longer applies. Growers who intend to handle fresh fruit shall notify the committee of their intent to sell over 300 barrels of fresh fruit.

(b) Sales of organically-grown cranberries are exempt from volume regulation provisions. 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.

(c) Handlers shall qualify for the exemptions in paragraphs (a) and (b) of this section by filing the amount of packed-out fresh or organic cranberry sales on the grower acquisition form.

Dated: January 5, 2001.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 01-949 Filed 1-11-01; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00-AEA-03]

Proposed Amendment to Class E Airspace; Salisbury, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace at Salisbury, MD. Establishment of Class D airspace at Salisbury, MD, necessitated by the opening of a new Air Traffic Control Tower (ATCT) Controlled airspace extending upward from Above Ground Level (AGL) is needed to accommodate operations under Instrument Flight Rules (IFR) at the airport when the tower is not in operation.

DATES: Comments must be received on or before February 12, 2001.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA-520, Docket No. 00-AEA-03, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434-4809.

The official docket may be examined in the Office of the Regional Counsel, AEA-7 Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434-4809.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA-520, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11424-4809.

00-AEA-03FR] paragraph 6002 of FAA Order 7400.9G, dated September 10, 2000 and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be amended in the order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) provides controlled Class E airspace extending upward from the surface for aircraft executing an SIAP at Salisbury-Ocean City, Wicomico Regional Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6002 Class E airspace areas extending upward from the surface of the earth.

* * * * *

AEA MD E2, Salisbury, MD (Revised)

Salisbury-Ocean City, Wicomico County Regional Airport

(Lat. 38°20.43' N/long. 75°30.6' W)

That airspace extending upward from the surface within a 4.1 mile radius of the Salisbury-Wicomico County Airport and within 3.1 miles each side of the Salisbury VORTAC 209° radial extending from the 4.1 mile radius to 9.2 miles southwest of the

VORTAC and within 3.1 miles each side of the Salisbury VORTAC 052° radial extending from the 4.1 mile radius to 8.3 miles northeast of the VORTAC and within 1 mile each side of the Salisbury-Wicomico County Airport localizer northwest course extending from the 4.1 mile radius to 4.8 mile northwest of the localizer and within 3.1 miles each side of the Salisbury VORTAC 132° radial extending from the 4.1 mile radius to 9.2 miles southeast of the VORTAC. This Class E airspace area is effective during those times when the Class D airspace is not in effect.

* * * * *

Issued in Jamaica, New York on December 18, 2000.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 01-1089 Filed 1-11-01; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00-AEA-14]

Class E Airspace

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Waynesboro, VA. A helicopter Point in Space Approach has been developed for Augusta Medical Center, Waynesboro, VA. Controlled airspace extending upward from 700 feet to 1200 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach. This action proposes to establish Class E airspace to include the Point in Space approach to Augusta Medical Center Heliport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before February 12, 2001.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA-520, Docket No. 00-AEA-14, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434-4809.

The official docket may be examined in the Office of the Regional Counsel, AEA-7, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434-4809. An informal docket may also be examined during normal business hours in the Airspace Branch, AEA-520, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434-4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace