DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket Nos. FV01–929–2 FR and FV00–929–7 FR]

Cranberries Grown in the States of Massachusetts, et al.; Establishment of Marketable Quantity and Allotment Percentage; Reformulation of Sales Histories and Other Modifications Under the Cranberry Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes a marketable quantity of 4.6 million barrels and an allotment percentage of 65 percent for the 2001–02 cranberry season which begins September 1. The marketable quantity is the total amount of fruit that handlers may purchase from, or handle for, growers during the season. Fresh and organically-grown cranberries are exempt from the volume limitations to facilitate marketing of these products. This final rule also modifies the way growers' sales histories are calculated (including deducting fresh sales), streamlines the sales history appeals procedure, adds a deadline for transfers of sales histories, clarifies the outlets for excess cranberries, and withdraws a proposed reinstatement of the June 1 allotment notification date. These actions are designed to stabilize cranberry market conditions, improve grower returns, provide for a more equitable allocation of the marketable quantity among growers, and improve the administration of the cranberry producer allotment program.

EFFECTIVE DATE: This final rule becomes effective June 28, 2001.

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 Kathleen M. Finn, 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) 720–8938.

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) 720–8938, 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 June 28, 2001, and the volume regulation will apply to the 2001–2002 crop year which begins on September 1, 2001, and ends on August 31, 2002.

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 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?

In recent years, cranberry production has exceeded market demand, resulting in building inventories and dramatic declines in grower prices. In 2000, the Cranberry Marketing Committee (Committee) recommended the use of volume regulation to bring supplies more in line with demand. The Committee recommended using regulation again in the upcoming season to continue the effort to restore economic health to the cranberry industry.

The use of volume control is not the only avenue that is being used to address the current oversupply situation. The industry is also looking into methods of increasing demand by developing new markets, both domestic and foreign, developing new products, and increasing promotion 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 2001–2002 crop year is being established at 4.6 million barrels. Sales of fresh and organically-grown fruit are exempt from the volume regulation.

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 7.1 million barrels. Using the formula established under the order (4.6 million barrels divided by 7.1 million barrels), the annual allotment percentage is 65 percent.

How Are Growers' Annual Allotments Calculated?

A grower's annual allotment is the result of multiplying the individual grower's sales history by the 65 percent allotment percentage.

How Will Sales Histories Be Calculated This Year?

The Committee is responsible for calculating each grower's sales history on an annual basis. The way sales histories are being calculated for the 2001–2002 season is modified so that the marketable quantity is apportioned more equitably among producers.

For growers with 7 or more years of sales history, a new sales history will be computed using an average of the highest 4 of the most recent 7 years of sales. For growers with 6 years of sales history, a new sales history shall be computed by averaging the highest 4 of the most recent 6 years.

For growers with 5 years of sales history, a new sales history will computed by averaging the highest 4 of the 5 years. Additional sales history will be added for acreage planted in 1995 or later in accordance with a formula developed by the Committee.

For growers whose acreage has 5 years of sales history and was planted in 1995 or later, the sales history will be computed by averaging the highest 4 of the 5 years and adjusting in accordance with the established formula. For growers whose acreage has 4 years of sales history, the sales history will be computed by averaging all 4 years and adjusting in accordance with the established formula. For growers whose acreage has 1 to 3 years of sales history, the sales history will be computed by dividing the total years' sales by 4 and adjusting in accordance with the established formula.

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 replanted in 2000 and first harvested in 2001, and 156 barrels per acre for acres

planted or replanted in 1999 and first harvested in 2001.

In addition, fresh sales will be deducted from each grower's sales history. This is because fresh fruit sales are exempt from volume regulation.

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

If growers are dissatisfied with their sales history as calculated 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, they may further appeal to the Secretary of Agriculture. All decisions by the Secretary will be final.

Growers may appeal if they believe the figures used in the sales history calculation are incorrect or if they believe the calculation was incorrectly performed by the Committee staff.

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 12988

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

This 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 a crop year. This rule establishes the quantity of cranberries that handlers may purchase from, or handle for, growers during the 2001–2002 crop year beginning September 1, 2001, through August 31, 2002. This rule also modifies the way growers' sales histories are calculated; streamlines the sales history appeal process; adds a deadline for transfers of sales histories; clarifies provisions pertaining to the use of excess cranberries; and withdraws a proposed reinstatement of the June 1 allotment notification date. This action 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

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.

In recent years, the Committee has been considering ways in which the marketing order could be used to address this situation. After much debate, the Committee recommended the use of volume regulation (in the form of producer allotments) during the 2000–01 season for the first time in over 30 years.

Based on industry experience during the 2000–01 season, the Committee recommended late last year to change some provisions of the order's rules and regulations pertaining to the producer allotment program. This was done to prepare for the possibility that volume regulation would be needed again in the 2001–02 season. The changes recommended were to modify the way in which growers' sales histories are calculated, clarify the fresh fruit exemption, modify the outlets for excess cranberries, and reinstate the June 1 allotment notification date. These changes were proposed in a rule published in the **Federal Register** on January 12, 2001 [66 FR 2838]. Comments on that proposed rule were due on February 12, 2001.

Subsequently, in a meeting held March 4–5, 2001, the Committee recommended establishing a marketable quantity of 4.7 million barrels and an allotment percentage of 67 percent for the 2001–02 season (with an exemption for fresh and organically-grown fruit). At that meeting, the Committee also recommended a further revision in the way sales histories are calculated, establishing a deadline for transfers of sales histories, and streamlining the sales history appeals procedure. These recommendations were included in a proposed rule published in the **Federal Register** on May 14, 2001 [66 FR 24291]. Also included in that rule were alternative proposals to establish a marketable quantity of 4 million barrels with an allotment percentage of 54 percent and no exemptions for fresh or organically-grown fruit; and to establish no volume restrictions for the upcoming season. In that rule, the Department also proposed withdrawing the reinstatement of the June 1 allotment notification date. Comments on the second proposed rule were due May 29, 2001.

This rule finalizes the actions proposed in both the January 12 and May 14 proposed rules.

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 would 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 first used in 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. 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. 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 recommended by the Committee and approved by the Secretary.

Section 929.49 provides that the Committee must notify each grower of his or her annual allotment, and must notify each handler of the annual allotment that can be handled for each grower whose total crop will be delivered to such handler. In cases where a grower delivers to more than one handler, the annual allotment will be apportioned among those handlers.

The order provides for the transfer of any unused grower allotment to the grower's handler(s). The handlers are then required to equitably allocate the unused allotment to growers with excess cranberries (those not covered by allotment) who deliver to those handlers. Unused allotment remaining after all such transfers have taken place are transferred to the Committee.

Handlers who receive more cranberries than are covered by their growers' annual allotments have excess cranberries. The Committee is required to equitably distribute any unused allotment it receives to those handlers who have excess cranberries.

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.

Marketable Quantity, Allotment Percentage and Sales Histories

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).

The Committee's Marketing Policy for the 2001 Crop

At its February 2001 meeting, the Committee estimated 2001–2002 domestic production of cranberries at 5,675,000 barrels. Carryin as of September 1, 2001, was estimated at 3,325,000 barrels. Foreign production (primarily Canada) was projected at 835,000 barrels. Allowing for shrinkage of approximately 2 percent on carryin and 4 percent on production (327,000 barrels), the total adjusted available supply of cranberries was expected to be 9,508,000 barrels. Based in large part on historical sales figures, the Committee estimated utilization of processing fruit at 5,198,000 barrels and of fresh fruit at 310,000 barrels. The carryout as of August 31, 2002, was projected to be 4 million barrels.

A summary of the marketing policy follows:

CRANBERRY MARKETING POLICY

[2001 crop year estimates]

	Barrels
Carryin as of 9/1/2001	3,325,000
Domestic production	5,675,000
Foreign production	835,000
Available supply (sum of the above)	9,835,000
Minus shrinkage	327,000
Adjusted Supply	9,508,000
Fresh Fruit	310,000
Processing fruit	5,198,000
Total Sales and Usage	5,508,000
Carryout as of 8/31/2002	4,000,000

The industry was expected to enter the 2001–2002 crop year with inventories of about 3,325,000 barrels (assuming USDA purchases of 1.0 million barrels). This level of inventory, coupled with the industry's current capacity to produce in excess of estimated demand, resulted in the industry debating two volume regulation levels for the 2001–2002 crop year. These alternatives are discussed below.

Summary of Options

The rule published on May 14, 2001, proposed three options of volume regulation. The first option was recommended by the Committee to establish a marketable quantity of 4.7 million barrels and an allotment percentage of 67 percent. This percentage would be applicable to processed sales only since fresh fruit

and organically grown cranberries would be exempt.

The second option was recommended by a volume regulation subcommittee and supported by a number of mostly independent growers. This option would establish a marketable quantity of 4.0 million barrels and an allotment percentage of 54 percent. This percentage would be applied to all sales of cranberries.

Finally, a third option proposed by USDA would establish no volume regulation for the upcoming season. Cranberry growers and handlers would voluntarily and individually decide how much fruit to market.

Volume Regulation for the 2001–2002 Season

The Committee met on February 5, 2001, to discuss implementing a volume regulation to restrict the marketing of the 2001 cranberry crop. The Committee established a subcommittee to consider volume regulation alternatives to help the industry overcome its oversupply situation. Since 1996, cranberry production has been greater than demand by increasing margins. Large carryover inventories and higher production yields have resulted in a market burdened by large supplies and low grower prices. Grower returns have fallen 73 percent from 1997 to 2000, dropping from $65.90 to $15–20 per barrel.

During the 1999 crop year, production totaled 6.34 million barrels, a 17 percent increase over 1998. Market demand has not kept up with growing production, resulting in mounting carryover inventories.

The subcommittee, comprised of independent and cooperative growers, and a representative of the public, explored various options for helping to stabilize market supply and demand conditions in 2001–02. After analyzing various alternatives, the subcommittee decided to recommend the establishment of a marketable quantity of 4.0 million barrels applicable to all sales. The public representative on the subcommittee developed an econometric model showing that a marketable quantity of 4.0 million barrels would eliminate excess inventories in a single year and bring grower prices closer to the cost of production. A marketable quantity at this level would permit growers to deliver an estimated 54 percent of their sales history to handlers, keeping approximately 46 percent of their sales history off the market.

The econometric model shows that grower prices would increase to $31 per barrel. Under this scenario, inventories would decline to 2.325 million barrels. The estimated average cost of production is $35 per barrel, although the range in individual costs is quite broad, being as low as $15 and as high as $45 per barrel.

The subcommittee presented its recommendation to the full Committee at a March 4–5, 2001, meeting. At that meeting, the full Committee discussed the 4.0 million barrel marketable quantity. The Committee indicated that it was supportive of improving grower returns and reducing excessive inventories. However, it believed that a restriction this large would be harmful to the industry in the long run. The Committee believes that a more gradual correction in inventory and grower prices is necessary to allow efforts to expand demand through the introduction of new products and foreign market development. It further believes that a substantial price increase in a single season could result in buyers substituting other commodities for cranberries in their products.

It is also the Committee's view that the more restrictive level of regulation could result in a less than desirable carryover into the 2002 season. It is preferable to freeze and store cranberries for several months after harvest in October before processing them. Sales for the first 3 months of the season are estimated at about 2.0 million barrels.

In addition, most independent handlers oppose a regulation of this magnitude. There is concern that under a 4.0 million barrel marketable quantity, there would not be enough fruit to fill their needs. If independent handlers were short of fruit, and not able to meet the needs of their customers, they could lose market share.

While acknowledging that bringing grower prices to profitable levels is necessary as soon as possible, the Committee also believes that it is very important to provide enough fruit for market growth. The Committee ultimately recommended a marketable quantity of 4.7 million barrels to be implemented through an allotment program that would permit producers to move about 67 percent of their sales history to handlers, applied to processed fruit only. This would result in about 33 percent of sales histories being held off the market as opposed to approximately 46 percent under the 4.0 million barrel proposal. Fresh and organic sales would be exempt under this recommendation and add about 300,000 barrels to the available marketable supply.

The Committee believes that a 4.7 million barrel marketable quantity is a sustainable solution to eliminating the surplus, because it would contribute to reducing supplies in the short term and provide enough fruit to increase demand in the long term. The Committee believes that supply reduction and market growth are important to the long term viability of the industry.

Based upon an initial review of these alternative levels of regulation, the Department concluded that both could tend to effectuate the goals of the Act, which are to improve grower prices and establish more orderly marketing conditions. Additionally, the Department considered the possibility of having no volume restriction for the upcoming cranberry season, and allowing growers and handlers to individually and voluntarily decide how much fruit to market. Therefore, a proposed rule was issued which solicited comments on both levels of regulation as well as on the possibility of no regulation.

During the comment period, hundreds of comments were filed by cranberry growers, handlers and other interested parties. After analyzing all available information, including that received in response to the proposed rule, USDA has concluded that a volume regulation for the 2001–02 crop would be consistent with the purposes of the Act and the order. In addition, we have concluded that the regulation likely to provide more benefits to the industry in the short and long term is that which establishes a marketable quantity of 4.6 million barrels, an allotment percentage of 65, and an exemption for fresh and organically-grown fruit. The bases for these conclusions are set forth in detail later in this document.

It should be noted that the allotment percentage of 65 percent established by this rule is two percent below the 67 percent contained in the proposed rule. There are two reasons for this. First, the Department has determined that the marketable quantity recommended by the Committee should be reduced from 4.7 to 4.6 million barrels. At the time the Committee made its recommendation, USDA purchases during the current season (2000–01) were expected to reach 1.0 million barrels. It currently appears that this level will not be attained, resulting in more inventories being carried into the 2001–02 season. Estimates of total purchases to be made have been as low as 500,000 barrels. While it is not possible to project the exact level of USDA purchases, we need to be careful not to underestimate the shortfall because it would result in a lower volume of fruit available for sale in the upcoming season, which could impede

market growth efforts. Therefore, we are estimating that USDA purchases of cranberries will be at least 100,000 barrels below what was anticipated. For this reason, we are reducing the marketable quantity for the 2001 crop by that amount.

Additionally, at the time the proposed rule was issued, total sales histories were estimated at 7.0 million barrels. The current sales history total is 7.1 million barrels. The allotment percentage equals the marketable quantity divided by the total sales history. Reducing the marketable quantity and increasing the sales history total yields a slightly lower allotment percentage of 65 percent.

Exemption for Fresh and Organically-Grown Fruit

Fresh fruit and organically-grown cranberries are exempt from regulation this season. Fresh and organically-grown fruit are exempt pursuant to § 929.58 of the order which provides that the Committee may relieve from any or all order requirements cranberries in such minimum quantities as the Committee, with the approval of the Secretary, may prescribe. The provisions of the regulations concerning the fresh fruit exemption are also clarified by this action so that fresh fruit is handled as it was intended by the Committee.

Under current production 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 while cranberries used for processing are water picked. When cranberries are water picked, the bog is flooded and the cranberries that rise to the top are harvested. Dry picking is a more labor intensive and expensive form of harvesting.

Cranberry bogs are designated as ''fresh fruit'' bogs and are grown and harvested accordingly. Only the lower quality fruit from a fresh bog goes to processing outlets.

Fresh fruit accounts for less than 6.0 percent of total production. The Committee estimated that about 310,000 barrels will be sold fresh this year, compared to 280,000 barrels sold last season. All fresh cranberries can be marketed and do not compete with processing cranberries. Fresh cranberries are seasonal (due to their limited shelf life) and are not a part of the growing industry inventories. The Committee concluded that fresh supplies do not contribute in any meaningful way to the current cranberry surplus. Therefore, the Committee recommended that such cranberries be exempt from the allotment percentage for this season.

More specific provisions concerning the fresh fruit exemption are also being adopted under this action so that the intent of the fresh exemption is clear. The exemption provision specifies that only sales of packed-out cranberries intended for sale to consumers in fresh form are exempt from volume regulations. It is further clarified to state 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.

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 constituted ''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 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 thought that foreign customers could have an economic incentive to process the berries and sell them in direct competition with regulated cranberries in foreign markets. This also was not the intent of the exemption.

This action also establishes that growers be required to notify the Committee of their intent to sell fresh fruit in quantities over 300 barrels. It is important for the Committee to collect data on sales of fresh cranberries. However, it is not intended that small quantities be subject to reporting requirements.

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

Organically grown cranberries are exempt from the 2001–2002 volume regulation. Such cranberries must be certified as organic by a third party organic certifying organization acceptable to the Committee. Handlers qualify for the exemptions by filing the amount of fresh and organic cranberry sales on the grower acquisition listing form.

In addition, fresh and processed fruit sales histories will be calculated separately by the Committee. This action is discussed in detail in the following portion of this document relating to sales history calculations.

Sales History Calculations

This rule modifies the way sales histories are calculated for the 2001–2002 season to apportion the marketable quantity more equitably among producers.

For growers with 7 or more years of sales history, a new sales history will be computed using an average of the highest 4 of the most recent 7 years of sales. For growers with 6 years of sales history, a new sales history will be computed by averaging the highest 4 of the most recent 6 years. For growers with 5 years of sales history, a sales history will computed by averaging the highest 4 of the 5 years. Additional sales history will be assigned to acreage planted in 1995 or later in accordance with the following table:

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

For growers whose acreage has 5 years of sales history and was planted in 1995 or later, the sales history will be computed by averaging the highest 4 of the 5 years and adjusting in accordance with Table 1. For growers whose acreage has 4 years of sales history, the sales history will be computed by averaging all 4 years and adjusting in accordance with Table 1. For growers whose acreage has 1 to 3 years of sales history, the sales history will be computed by dividing the total years' sales by 4 and adjusting in accordance with Table 1.

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 replanted in 2000 and first harvested in 2001, and 156 barrels per acre for acres planted or replanted in 1999 and first harvested in 2001.

The Committee discussed equity concerns that resulted when calculating sales histories during the 2000 volume regulation. 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.

Section 929.48(a)(3) of the order provides for recalculating the method for determining sales histories for growers after a crop year during which a volume regulation has been established using a formula determined by the Committee with the approval of the Secretary. In light of this authority, the amendment subcommittee met several times and developed an improved method of assigning sales histories for newer acreage in the event volume regulations were implemented for the 2001–2002 season.

The modified method of calculating sales histories is expected to address concerns associated with using a grower's actual sales history without taking into account anticipated production when calculating annual allotments. 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, annual allotment calculations based on averaging growers' sales histories alone 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 upon their particular situation. The result is that sales histories for growers with a significant number of acres being harvested for the first, second, third, or fourth time can be 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 being implemented by this rule addresses that issue by minimizing the differential impact among growers with newer acreage.

The revised formula provides a specified amount of additional sales history for newer acreage based on USDA and industry analysis of cranberry production. The amount of such additional sales history depends on the year of planting. Also, the formula takes into account different harvesting times for first year harvests by basing first year averages on the year planted.

The subcommittee recommended the new method of calculating sales histories to the full Committee. The Committee recommended this method at its August 28, 2000, Committee meeting. This recommendation was set forth in a proposed rule published in the **Federal Register** on January 12, 2001, (66 FR 2838) with a comment period ending February 12, 2001.

At a Committee meeting on February 5, 2001, concerns were raised that the proposed formula would give an unfair advantage to growers who only had acres with 1 to 3 years of sales history (as opposed to growers with mature acres combined with new or replanted acres). The Committee believed that these growers would be provided an adjusted sales history in excess of average yields. The Committee recommended that the proposal be modified to be more equitable to all growers by providing that growers with acreage with 1 to 3 years of sales histories divide their total sales by 4 instead of all available years and then be provided additional sales history in accordance with the formula for adjusting sales history.

The Committee's February 5 recommended modification to the sales history calculations was incorporated into the proposed rule for volume regulation published in the **Federal Register** on May 14, 2001 (66 FR 24291).

The revised method of calculating sales histories addresses the concerns of equity with the way sales histories were assigned under the 2000 volume regulation. The revised formula provides a specified amount of additional sales history based on USDA and industry analysis of cranberry production depending upon the year of planting. This formula provides additional sales histories for acreage planted in 1995 or later to reflect expected future production on newer or replanted acreage.

The modification recommended by the Committee in February does not change the formula that provides the additional sales history. The additional sales history will still be calculated using the figures in Table 1. Actual sales

histories for growers with only 1 to 3 years of sales history (and no mature acres) will be computed by dividing the total years' sales by 4 before the new acreage adjustment is added, just as every other grower's sales history is calculated. The formula already compensates these growers by providing additional sales history as if the grower also had mature acres and divided the sales history by 4.

Therefore, § 929.149 is modified as follows: For growers whose acreage has 5 years of sales history and was planted in 1995 or later, the sales history is computed by averaging the highest 4 of the 5 years and adjusting in accordance with Table 1; For growers whose acreage has 4 years of sales history, the sales history is computed by averaging all 4 years and adjusting in accordance with Table 1; For growers whose acreage has 1 to 3 years of sales history, the sales history is computed by dividing the total years sales by 4 and adjusting in accordance with Table 1.

Segregation of Fresh Fruit From Sales History Calculations

Fresh fruit sales will be deducted from sales histories and each grower's sales history will represent processed sales only. Fresh fruit was exempt from the 2000–2001 volume regulation and concerns were raised that sales histories were not reflective of actual sales. The Committee recommended that if fresh fruit was exempt from volume regulation, this action be implemented to ensure that sales histories reflect actual sales. As stated previously in this document, fresh fruit is again exempted from the 2001–2002 volume regulation.

The Committee recommendation intended that there be separate sales histories for fresh and processed fruit. The recommendation also specified that fresh fruit sales may be added to processed 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. The Committee staff indicated that since fresh fruit was exempt from volume regulation, it would be administratively easier to simply deduct fresh sales from each grower's sales history rather than to provide two sales histories. With the fresh fruit exemption, there is no need for a sales history for fresh fruit. Also, since there will be no fresh fruit sales history, there is no need to specify that fresh fruit sales may be added to processed fruit sales histories. Also, a provision is being implemented covering growers whose fresh fruit is rejected upon delivery. The regulatory text has been modified to reflect this change. Therefore, a new paragraph (e) will be added to § 929.149 specifying that fresh fruit will be deducted from sales history calculations.

The Committee addressed the impacts of having a sales history that includes only processed fruit, and how the allotment percentage will be applied. In the fresh fruit industry, there are instances when growers deliver fresh fruit that fails the handler's fresh fruit specifications and therefore is converted to processing fruit. In this case, if a grower has an inadequate processing fruit allotment to cover the rejected fruit, the handler can allocate unused allotment from other growers to cover the excess. Each handler should give priority to these growers when allocating unused allotment to cover excess cranberries. This will allow the grower to deliver the rejected fruit for processing. This action is being implemented by adding a new paragraph (f) to § 929.149 of the order's rules and regulations.

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.

Change in Number of Years Used in Computing Sales Histories

Sales histories will be computed using an average of the highest 4 of the most recent 7 years of sales. 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 levels.

This change allows the year of volume regulation (2000–01) to be dropped from sales history calculations. 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.

Paragraph (a) of § 929.149 is modified to indicate that sales histories will be computed using an average of the highest 4 of the most recent 7 years of sales.

State Average Yield Provisions

The definition of State average yield is being removed from the rules and regulations. 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 was 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 was greater. This calculation was 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 averaged out seasonal variations in yields. However, if estimated commercial sales were greater than what was computed above, the Committee used the estimated commercial sales.

The formula for recalculating sales histories being implemented with this action 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 will 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 providing the State average yield, which is considered high for first harvests. Under the State average yield provisions for the 2000 volume regulation, growers forfeited any unused allotment. The modified method provides a simpler, more realistic approach to acreage with no sales history.

Since, under the new formula, a definition of State average yield is unnecessary, § 929.148 is removed from the rules and regulations.

Definition of Commercial Crop

The definition of commercial crop is being removed from the rules and regulations. The final rule on volume regulation for the 2000 crop changed the number of barrels that defined a commercial crop under the marketing order from 15 to 50 barrels per acre. Calculations of sales histories were based on ''commercial'' cranberry sales. Section 929.107 defined 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 that produced less than 50 barrels per acre was not 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 was the State average yield or the grower's estimated commercial sales, whichever was greater) for the 2000 volume regulation. 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 being implemented in this action makes this provision unnecessary. For acreage expected to be harvested for the first time in 2001, the sales history will be 75 barrels per acre for acres planted in 2000 and 156 barrels per acre for acres planted in 1999. No determinations are necessary as to how many barrels were produced on the acreage in previous years.

The Committee will still need to determine that 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 needs to verify that this acreage exists and that the vines are sufficient enough to provide a crop. Since the definition of commercial crop is no longer necessary, § 929.107, Basis for determining cranberry acreage, is removed from the rules and regulations.

Appeal Procedures

The Committee unanimously recommended that the Committee review step be removed from the sales history appeals process. Currently, § 929.125 provides that a grower may appeal to an appeals subcommittee within 30 days of receipt of the Committee's determination of his/her sales history. If the grower is not satisfied with the subcommittee's decision, the grower may further appeal to the full Committee. Such grower must notify the full Committee of his or her appeal within 15 days after notification of the subcommittee's decision. The Committee has 15 days to review the appeal. The grower may further appeal to the Secretary, within 15 days after notification of the full Committee's findings, if the grower is not satisfied with the Committee's decision. All decisions by the Secretary are final.

The appeals procedure as described above could take 60 or more days to complete. Last season, the Committee recommended and the Department approved, removing the Committee's review from the procedures to shorten the process. Growers were able to take their appeals directly to the Secretary for a final decision if they were not satisfied with the appeals subcommittee's determinations. The Committee recommended for this season and future seasons that the full Committee review step of the appeals process described in the rules and regulations be removed to expedite the process. The appeals subcommittee reviewed over 250 appeals for the 2000–2001 crop year. This required many hours of meetings and recalculations of appealed sales histories, when warranted. The Committee determined that the appeal process, absent Committee review, was efficient and provided the grower with a quicker response than would have otherwise occurred.

Therefore, the Department concludes that the Committee review of sales history appeals is not needed and is therefore, being removed from the appeal procedures.

Transfers of Sales Histories on Leased Acreage

The Committee also unanimously recommended that, during a year of volume regulation, transfers of sales histories through partial or total leases of acreage only be recognized by the Committee during the period January 1 through July 31 of each crop year. The appropriate paperwork would have to be received in the Committee's office by close of business on July 31.

Currently, § 929.50 provides that, during a year of regulation, no transfer or lease of cranberry producing acreage, without accompanying sales history, shall be recognized until the Committee is in receipt of a completed transfer or lease form. The Committee has found through experience last season that many growers were delaying these adjustments until the busy harvest season. The review and approval of such transfers required a great deal of time and this placed an added burden on the Committee's staff, especially during the busy harvest season. Therefore, the Committee recommended that all transfers must be received by close of business on July 31 during a year of volume regulation.

This change is being implemented for the 2001–2002 season, which begins September 1, 2001. All paperwork for transfers must be received by the Committee staff by July 31, 2001. This will allow sales histories to be distributed in a more timely manner and also allow the Committee to complete the transfers prior to the busy harvest season. This change is being implemented by adding a new paragraph (d) to § 929.110 of the order's rules and regulations.

Outlets for Excess Cranberries

This action modifies the provisions on outlets for excess cranberries to broaden the scope of research and development projects authorized as 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 is required to notify the Committee at least 48 hours prior to disposition so that the Committee staff will have sufficient time to be available to observe the disposition of the cranberries.

In the final rule establishing 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 concluded 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. The Committee unanimously recommended to modify paragraph (a)(4) of § 929.104 to state that any research and development projects approved by the Committee will be eligible as outlets for excess cranberries. This will provide more flexibility in determining if a specific project could be considered noncompetitive or noncommercial. The Committee will review the activity and make that determination. Research and development projects will not be limited to dehydration, radiation, freeze drying, or freezing of cranberries for the development of foreign markets.

Therefore, § 929.104 is modified to broaden the scope of research and development projects authorized for excess cranberries.

Allotment Notification Date

This action withdraws the proposed reinstatement of the June 1 deadline for the Committee to notify growers and handlers of their annual allotments.

The rule of January 12, 2001, proposed reinstating the June 1 deadline for the Committee to notify growers and handlers of their annual allotments. 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 date was indefinitely suspended in the final rule establishing a volume regulation for the 2000–2001 crop year (65 FR 42598) to allow adequate time for interested parties to comment on the volume regulation proposal for that season and for the Department to give due consideration to the comments received and issue a final rule.

The Department has determined that this time is needed again for this year's volume regulation. Therefore, the proposal to reinstate the June 1 deadline date is withdrawn.

The Regulatory Flexibility Act and Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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. Based on recent years' price and sales levels, AMS finds that nearly all of the cranberry producers and some of the handlers are considered small under the SBA definition. 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 2000. Thus, the consequences of this final rule will apply almost exclusively to small entities.

Six handlers handle over 97 percent of the cranberry 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) Establishes a marketable quantity and an allotment percentage for cranberries in a 10-State production area for the crop year from September 1, 2001, through August 31, 2002; (2) exempts fresh and organically grown cranberries from the volume regulation; (3) changes the way in which sales histories are calculated; (4) deletes the Committee review step in the sales history appeal process; (5) adds a deadline date by which requests for transfers of sales histories on leased acreage must be filed with the Committee; (6) broadens the scope of research and development projects authorized as outlets for excess cranberries; and (7) withdraws a proposal to reinstate a June 1 allotment notification date. These actions are designed to establish more orderly marketing conditions for cranberries, improve grower returns, provide for a more equitable allocation of the marketable quantity among growers, and improve the administration of the volume regulation program.

Industry Profile

Cranberries are produced in 10 States, but the vast majority of farms and production are 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. Together, both States account for over 80 percent of cranberry production. 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.

About 94 percent of the cranberry crop is processed, with the remainder sold as fresh fruit. In the 1950's and early 1960's, fresh production was considerably higher than it is today, and in many years, constituted as much as 25 to 50 percent of total production. Fresh production began to decline in the 1980's, while processed utilization and output soared as cranberry juice products became popular. Today, fresh fruit claims only about 5 to 6 percent of total 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

The cranberry industry has operated under a Federal marketing order since 1962. For many years, the industry enjoyed increasing demand for cranberry products, primarily due to the success of cranberry juice-based drinks. This situation encouraged additional production. Between 1960 and 1999, production increased from 1.34 million barrels (one barrel equals 100 pounds of cranberries) to a record 6.3 million barrels. This represents a 370 percent increase from 1960 and a 17-percent gain from the 1998 crop year. Production in the 2000 crop year declined to 5.5 million barrels, due to the use of volume control by the industry and a decrease in yields in some production areas due to adverse weather conditions during the growing season.

While production capacity continues to rise, demand has leveled off. Over the past several years, per capita consumption of cranberries in the United States has averaged 1.69 pounds. Per capita consumption peaked in 1994 at 1.80 pounds and began trending downward. In 1999, per capita consumption was 1.68 pounds. Associated with these per capita consumption figures is the fact that total domestic sales also peaked in 1994 at 4,692,507 barrels but declined to 4,506,632 barrels in 1999.

In 1998, sales totaled 5.1 million barrels, slightly above the prior 5-year average. In 1999, sales were 5.5 million barrels, and sales for 2000 are estimated at 5.9 million barrels. Most of the recent increase in sales can be attributed to stronger activity in export markets.

Increased total supplies in excess of demand have resulted in large inventories. Carryin inventories have grown from 883,773 barrels in 1988 to 3,058,921 barrels in 1999, to 4,273,067 barrels in 2000. From 1988 through 1997, carryin as a percent of production ranged from 21 to 36 percent. However, in 1998, carryin as a percent of production increased to 40 percent; in 1999 it increased to 49 percent. Carryin inventory for the 2000 season exceeded 4 million barrels for the first time in the industry's history. Carryin for the 2001 crop is estimated at 3.325 million barrels.

When supply outpaces demand, resulting in high levels of carryover inventories, grower prices can be negatively impacted. Grower prices rose from $8.83 per barrel in 1960 to a peak level of $65.90 per barrel in 1996. These rising price levels provided an incentive for producers to expand planted acres and to increase yields. In recent seasons, prices have declined dramatically. In 1998, grower prices decreased to $36.60 per barrel. The returns for the 1999 crop year were $17.70 per barrel. Returns for the 2000 season are expected to be between $15 and $20 per barrel. The cost of production ranges from $15 to $45 per barrel.

Similarly, grower revenues have dropped from a high of $350 million in 1997 to $112 million in 1999. Grower revenues declined by 68 percent in just two growing seasons. Grower revenues are expected to be less than $100 million for the 2000 crop year, potentially the first time that grower revenues will be less than $100 million since the 1980 crop year.

Impacts of Volume Control

To help stabilize market supply and demand conditions, volume regulation was introduced in 2000, marking the first time in 30 years that such regulation was implemented. A marketable quantity of 5.468 million barrels was established for the 2000–01 season, implemented through an allotment percentage of 85 percent. This, in addition to a planned government purchase of up to 1,000,000 barrels, assisted somewhat in relieving market pressures. Also, yields in parts of the production area were below normal due to adverse weather during the growing season.

In an industry such as cranberries, where the product can be stored for long periods of time, volume control is a method that can be used to reduce supplies so that they are more in line with market needs. Large inventories are costly to maintain and, with the outlook for continued high production levels, these inventories are difficult to market. Producers may not receive full payment for cranberries delivered to storage for several years, and storage costs are deducted from their final payment.

The demand for cranberries is inelastic. A producer allotment program results in a decrease in supply because producers can only deliver a certain portion of their past sales history. With an inelastic demand, a small shift (decrease) in the supply curve results in relatively large impacts on grower prices. An allotment program results in increasing grower prices and grower revenues.

The level of unsold inventory, the current capacity to produce in excess of expected demand, and continuing low grower prices have resulted in the industry debating various alternatives under their marketing order.

Level of Volume Restriction for the 2001 Crop

As previously discussed, two levels of volume regulation for the 2001 crop have been widely discussed within the cranberry industry in recent months and were included in the proposed rule. Also included was a proposal to have no volume regulation. The Department believed that both levels of volume regulation could tend to further the goals of the Act—that is, improve grower returns and establish more orderly conditions in the cranberry market. One of those levels proposed to establish a marketable quantity of 4.7 million barrels and an allotment percentage of 67, with an exemption for fresh and organically-grown fruit. The second proposed to establish a marketable quantity of 4.0 million barrels and an allotment percentage of 54, applicable to all fruit.

In its initial analysis of these options, the Department relied in part upon an econometric model developed by the University of Wisconsin and widely discussed within the industry to project the impact of each on grower returns and revenues for the 2001 crop. We looked at both levels of regulation recommended by the industry, as well as what might occur with no regulation. In making our projections, we used figures from the Committee's marketing policy. For example, carryin inventory was estimated at 3.325 million barrels, domestic production was estimated at 5.675 million barrels, imports were projected at 0.835 million barrels, and total sales for the 2001–02 crop year were projected at 5.508 million barrels. We used a figure of 1.8 million barrels for the desirable carryout into the 2002 crop year. The following table summarizes our findings.

MARKETABLE QUANTITIES

[In millions of barrels]

	No volume control	4.0 with no fresh fruit exemption	4.7 with a fresh fruit exemption
Supply:			
Domestic production	5.675	4.000	5.000
Carryin Inventory	3.325	3.325	3.325
Imports	0.835	0.835	0.835
Shrink	0.327	0.327	0.327
Total Available Supply	9.508	7.833	8.833
Demand:			
Processed Domestic and Export Sales	5.198	5.198	5.198
Fresh Fruit	0.310	0.310	0.310
Total Sales	5.508	5.508	5.508
Carryout Inventories	4.000	2.325	3.325
Desirable Carryout	1.800	1.800	1.800
Surplus	2.200	0.525	1.525
Allotment Percentage	0	56	66
Estimated Price per Barrel	$10.00	$31.00	$19.50
Estimated Total Revenue (in millions)	$56.750	$124.000	$97.500

As shown above, ample supplies are expected to be available during the upcoming year, and prices will likely continue to fall in 2001 without some form of market intervention. Absent any regulation in 2001, the estimated grower price per barrel is projected to decline to $10, grower revenue would drop to an estimated $56.75 million, and ending inventories would grow to 4 million barrels. Heavy inventories will continue to put downward pressure on grower prices for ensuing seasons.

The second column of the table shows that a 4.0 million barrel marketable quantity will result in inventories declining to 2.325 million barrels, and the grower price increasing to an estimated $31 per barrel. Total grower revenue under this option is projected to reach $124 million. Under this option, sales will have to reach 6.0 million barrels to reach the desirable carry out level of 1.8 million barrels. A marketable quantity of 4.0 million barrels applicable to total sales history of an estimated 7.4 million barrels would result in an allotment percentage of 56 percent.

As shown in the last column, the 4.7 million barrel alternative will result in carryout inventories remaining at 3.325 million barrels. The grower price will be an estimated $19.50 per barrel, and revenues will total $97.5 million. With a marketable quantity of 4.7 million barrels, sales will have to increase to 6,723,000 barrels to reach the desirable carry out inventory level of 1.8 million barrels. Under this option, total growers' sales histories are estimated at 7.1 million barrels of processed sales. Using the formula established under the order (4.7 million barrels divided by 7.1 million barrels), the annual allotment percentage would be 66 percent.

As previously discussed, the Department believes carryin inventories will be higher than originally projected because USDA purchases during the 2000–01 crop year are likely to be less than anticipated. An increase in the carryin level (100,000 barrels) would be offset by a like reduction in the marketable quantity. Thus, total available supplies would remain the same as in the above table, and the impact on grower prices and sales would be as estimated above.

The econometric model provides a framework for estimating the short-term price impacts of reducing supplies at the grower level. According to the above table, of the three options presented, the 4.0 million barrel marketable quantity alternative will result in the highest grower price for the upcoming season, and the lowest level of carry out inventories.

However, in deciding whether to issue a volume regulation for the 2001 crop, and at what level, other factors need to be considered as well. In the proposed rule, we solicited comments on all three alternatives, including the longer range impacts of these alternatives at the grower, handler and consumer levels. Based on current information, including the comments received (which are analyzed in the subsequent portion of this document), we have reached the following conclusions.

Given the anticipated size of the 2001 cranberry crop in addition to current inventory levels, volume regulation appears to be the favorable market stabilization technique over no volume regulation. A no volume regulation adjustment could easily result in a loss of a substantial number of smaller to mid-sized cranberry producers, as market prices without any form of market intervention would remain below the cost of production until market supply fell to the level of market demand. In addition to a loss of a profitable return on commodity production, which is a mainstay for many of the producers likely to be negatively impacted, investments in land and production start-up costs would also be lost as much of the potentially affected acreage has no alternative agricultural uses. Cranberry production is a key agricultural industry in various regions of the major producing states, including Wisconsin, Massachusetts, New Jersey, Oregon, and Washington. Failure of cranberry farms in these regions would have major implications for the vitality of these economies.

Volume regulation is a market stabilization technique whereby a portion of annual production is withheld from the market, thereby reducing the flow of supply to market and improving producer prices. Depending on the amount of production

impacted by volume control regulation, short- and long-term effects on the market vary. Some proponents of volume regulation advocate a more significant reduction in market supply, indicating that such action would result in a bigger jump in market prices, a quicker improvement in grower returns, and a necessary reduction in inventories. In addition, these advocates intimate that any increases in demand could be met by drawing down surplus inventories, thereby simultaneously reducing price-depressing affects of large stocks in a time of ample production. While this argument may be well grounded in economic theory, there are many externalities which are not given due attention, as well as producers' inclinations to increase production as market prices increase. In other words, too large of a volume control regulation leaves little margin for unforeseen market events and may result in misleading market signals to producers as a result of an overly adjusted price.

A less stringent volume regulation would reduce market supply and improve market prices while allowing for a more gradual market supply-demand adjustment. While the short-term affect of a less stringent volume regulation would result in relatively lower market prices than with a greater reduction, as described above, prices would likely offer a greater return than if no volume control existed. A more conservative approach is also less likely to result in a surge of production triggered by higher prices and allow for a greater margin of supply to address any unforeseen market complications in subsequent production years.

In weighing the relative benefits of differing volume regulation, it is important to consider impacts on handler competition for product to fill sale orders, and consumer demand elasticity relative to fluctuating prices. A more restrictive volume control would result in a smaller volume of product available to handlers to satisfy sale orders or promote market growth. Handlers who do not maintain inventories of cranberries may be unable to effectively compete for supplies, thus resulting in their inability to fill sale orders and a loss of business. Such a result would have a negative impact on producers, as some market outlets (demand) may be lost to substitution of like products for cranberries. Rapid fluctuations in price could have similar results, as consumers, especially food manufacturers using cranberries to enhance processed products, are likely to respond negatively to market inconsistencies in price as well as supplies. A more gradual reduction in supply could ease market tensions and allow suppliers to maintain strong market relations with industry consumers.

Furthermore, while it has been demonstrated that end-market consumer demand is inelastic to price reductions, demand may decrease if prices were to rise. In other words, end-market consumers are more likely to consume less cranberries when prices increase drastically than they are to consume more when prices drop.

For the above reasons, we conclude that establishing a marketable quantity of 4.6 million barrels for the 2001–02 cranberry season is the best course of action. This represents the Committee's recommended marketable quantity adjusted for the increased carryin due to lower than anticipated USDA purchases during the current season.

Sales History Recalculations

The amendments to the sales history calculations will benefit a majority of growers, especially growers who planted some or all of their acreage in 1995 or later. Specifically, the amendment to the sales history calculation modifies the way growers' sales histories are calculated so that the additional sales history provided is more in line with average acreage yields. The amendment also ensures that growers with mature acres who also have newer acreage and growers with only newer acres are treated equitably.

The amendment also provides that the Committee deduct fresh sales from growers' sales histories. The amendment also provides that sales histories be computed using an average of the highest 4 of the most recent 7 years of sales. Changing the total number of years from 6 to 7 allows the year of volume regulation (2000–01) to be dropped from sales history calculations.

Regarding the 2000 volume regulation, many growers, particularly those with acreage 4 years old or less, indicated that the method of sales history calculation placed them at a disadvantage because they realized more production on their acreage than their sales history indicated. Approximately 30 percent of all cranberry acreage was planted in 1995 or later and will be impacted by this amendment. With the volume of new acres within the industry, this would affect many growers.

The Committee determined that something needed to be done to address the concerns associated in the 2000 crop year with growers with newer acreage. 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, and a fourth year harvest would receive 75 percent of State average yield. Although this method would address some of the problems experienced last year, it was determined that the method established by this action is a simpler and more practical method for growers to obtain the most realistic sales history.

The Committee and the Department gave much thought to the most equitable method of determining sales histories and the method established by this action specifically addresses growers' concerns by providing a more equitable determination of their sales histories. The method provides additional sales history for growers with newer acres 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 are in the form of additional sales histories based on the year of planting.

As discussed previously, an appeals process is in place for growers to request a redetermination of their sales histories. For the 2000–2001 volume regulation, over 250 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. This action provides more growers with realistic sales histories. Therefore, fewer appeals are likely to be filed. The appeals subcommittee chairman estimated that over 80 percent of the appeals filed last year would not have been filed if the Committee was able to implement this formula for the 2000–01 season.

These changes will have a positive effect on all growers and handlers because they will result in a more equitable allocation of the marketable quantity among growers.

Revision in the Appeals Process

Currently, § 929.125 provides a three-tiered appeal procedure for growers who are dissatisfied with the computation of their sales history pursuant to § 929.48 of the order. First, a grower may appeal to an appeals subcommittee. The grower may then further appeal to the full Committee. Finally, the grower may

appeal to the Secretary. All decisions by the Secretary are final.

This rule eliminates the full Committee review from the procedure to shorten the process. Thus, growers can take their appeals directly to the Secretary for a final decision if they are not satisfied with the appeals subcommittee's determinations. This change shortens the appeal process, which should benefit growers who disagree with their sales history determination. The earlier growers have a final decision, the more able they are to decide how to adjust to their annual allotment.

Establishment of a July 31 Deadline for Transfers of Sales History

Currently, § 929.50 provides that, during a year of regulation, no transfer or lease of cranberry producing acreage, without accompanying sales history, shall be recognized until the Committee is in receipt of a completed transfer or lease form. This rule establishes a July 31 deadline for receipt of such paperwork. This action should assist in the efficient administration of the program by having transfers recorded before the busy harvest season without unduly reducing grower flexibility in transferring acreage and sales histories.

Outlets for Excess Cranberries

This action modifies paragraph (a)(4) of § 929.104 to provide that any research and development projects approved by the Committee are eligible as outlets for excess cranberries. Currently, such projects are limited to those associated with the development of foreign markets. This action will have a positive impact on growers and handlers because it broadens the scope of projects eligible for the use of excess berries. This could encourage more market development activities, which could expand the overall cranberry market to the benefit of the industry as a whole.

Allotment Notification Date

Section 929.49 requires the Committee to notify growers and handlers of their annual allotments by June 1. This date was suspended prior to the 2000–01 crop year to allow adequate time to complete the rulemaking process for that season. The proposal to reinstate the June 1 notification date is withdrawn because USDA has decided that additional time is again needed this year. While it would be beneficial to growers to have an earlier notification of their annual allotments, any hardship incurred by delays should be outweighed by the benefits expected to be accrued by the use of volume regulation during the 2001–02 crop year.

Analysis of Comments Pertaining to Volume Restrictions for the 2001 Cranberry Crop

The proposed rule published in the May 14, 2001, **Federal Register** solicited comments on three options for restricting the 2001 cranberry crop. A total of 436 comments were filed during the comment period which ended May 29, 2001. By far, the majority of comments were filed by cranberry growers (almost 90 percent of the total). In addition, all six major cranberry handlers commented, as did the Cranberry Marketing Committee, several U.S. Congressmen and Senators, the Wisconsin State Cranberry Growers Association, the New Jersey Department of Agriculture, two agricultural economists, an industry attorney, employees of growers and handlers, and other interested parties.

Of the comments filed, 294 favored the 4.7 million barrel marketable quantity, 59 favored the 4.0 million barrel marketable quantity, and 72 favored no volume regulation at all for the upcoming season. The remaining comments generally supported volume regulation but not either of the specific levels contained in the proposed rule. Some comments also addressed the issue of whether fresh and organically-grown fruit should be exempt from any established volume restriction.

In addition to the 436 timely comments, 64 comments were received after the comment period ended. These late comments were reviewed and it was determined that no substantive issues raised by these commenters that were not already known to the Department or raised by those who filed in a timely manner and given due consideration. Therefore, even if these comments were timely filed, the outcome of this final action would not be changed.

The main arguments raised in the comments are addressed below.

Potential Impact of the Various Options on Grower Returns

As expressed by the large number of comments received, it is widely accepted that the cranberry industry's current oversupply situation has caused severe financial hardships for a majority of cranberry producers. Due to the oversupply's price-deflationary affects, grower returns have suffered sharp declines, frequently resulting in market-clearing prices below the cost of production. Since low prices have plagued the industry for more than two crop years, many growers are now at the point of facing foreclosure and bankruptcy. A financial lending institution, commenting on the financial hardships faced by many cranberry producers, indicated that the U.S. cranberry industry has lost an estimated $160 to $200 million, cumulatively, in recent growing seasons.

This comment was supported by many growers, stressing that immediate action is needed to bring about a market correction and begin the process of returning growers to financial stability. Absent any improvement in the current situation, growers will continue to operate under financial stress and will find it difficult to obtain financing for their farms. Financial institutions have already had to make arrangements for loan deferrals for many cranberry growers. Commenters asserted that if grower prices continue at the levels received during past seasons ($15 to $20 per barrel estimated for 2000), the result could be a significant loss of smaller to mid-sized producers.

In addition to producer financial distress, many commenters brought to light corollary impacts. Cranberry growers maintain a national average of five acres of open space for every acre of farm. Much of this acreage is located in States where land is under pressure for development. Loss of cranberry farms in these areas will carry with it the loss of open space, which will not be regained.

Communities in which cranberries are grown will also suffer as local resources will be strained. Cranberry production is a key agricultural industry in various regions of Wisconsin, Massachusetts, New Jersey, Oregon, and Washington. Failure of cranberry farms in these regions would have major implications for the economic vitality of smaller farming communities. Moreover, a potential loss of these cranberry growing communities would also represent a loss of long-standing cranberry heritage in these producing regions.

While divided on which form of volume control would be most effective, most commenters agreed that some level of volume regulation is necessary to increase grower returns in the upcoming 2001 season. Results from independently circulated grower surveys recently conducted by the cranberry industry also demonstrate an overwhelming support for some level of volume regulation. The two volume regulation options considered would limit the supply of marketable cranberries to either 4.0 million or 4.7 million barrels.

Those in favor of the 4.0 million barrel marketable quantity commented that a volume control at this level would significantly decrease inventory

supplies and bolster grower prices to a level close to or above the cost of production. The cost of production ranges from $15 to $45 per barrel, depending on the efficiency and economies of scale of the producer.

An industry economist in favor of a 4.0 million barrel volume restriction estimated that, based on his calculations, limiting the marketable quantity to this level would yield a 2001 season-average price of $25 to $35 per barrel. Moreover, a constant marketable quantity level of 4.0 million barrels in subsequent years would gradually elevate prices to over $40 per barrel by 2003 or 2004. Any increases in demand would be met by drawing down surplus inventories, thereby simultaneously reducing price-depressing affects of large stocks. Carryover inventories at this level would be approximately 2.3 million barrels while at the 4.7 million barrel level, carryover inventory would be in the range of 2.5 to 2.7 million barrels.

It was further argued that, at this level, fewer growers would be forced to exit the industry because recovery would be achieved more rapidly than under the alternative 4.7 million barrel scenario. Many commenters agreed with the assumptions and conclusions made in this argument and voiced their opinion in favor of a more restrictive regulation, acknowledging that, while more severe in action, this approach would result in higher prices faster.

Commenters in favor of the alternative option to the above, establishing a marketable quantity at 4.7 million barrels, stressed the need for a more gradual, cautionary return to market stability and grower profitability. Most commenters supporting this option believe that a more gradual correction in inventory supplies and grower prices is necessary rather than the severe cut proposed with the 4.0 million barrel marketable quantity level. A more conservative approach to volume regulation would reduce market supply and improve market prices while allowing for a more gradual market supply-demand adjustment. A more conservative approach is also less likely to result in a surge of production triggered by artificially high prices and allow for a greater margin of supply to address any unforeseen market complications in subsequent crop years. It is estimated that under the 4.7 million barrel volume control scenario, 2001–02 grower returns would be approximately $20 per barrel, as compared to returns of $15 to $20 in 2000. One handler's comment included estimated crop returns of $20 to $25 per barrel for the 2001 crop, $22 to $30 for the 2002 crop, and higher returns for the 2003 crop.

A third option considers no volume regulation and would allow market forces to address market supply and demand imbalances. Commenters in favor of no regulation stated that this is the only option that supports fairness to all growers and handlers involved in the cranberry industry.

As discussed above, while divided on which form of volume control would be most effective, most commenters agreed that some level of volume regulation is necessary to increase grower returns in the upcoming 2001 season. Those in favor of volume control, for the most part, view no volume regulation as potentially detrimental to the cranberry industry.

In a separate comment filed in favor of the 4.7 million barrel marketable quantity limit, another industry economist asserted that allowing the market forces to correct demand-supply imbalances would not be effective in the case of cranberries due to the nature of this industry's crop production cycle and high start-up costs. A supply-demand adjustment in production of a perennial crop such as cranberries does not occur as quickly as traditional economic theory would imply, and others have argued. Moreover, investment in land and bog preparation represents a significant share of cranberry production costs that can not be re-captured or transferred to alternate agriculture crop production. For these reasons, the current conditions in the cranberry industry strongly justify implementation of some form of volume control for the 2001–02 season.

Another commenter opposing the option of no volume regulation stated that prices would be far below production costs if no regulation were implemented for the 2001–02 season. Marginal acreage would be driven out of production as less efficient producers and operations of smaller economies of scale would not be economically able to survive.

Other comments opposing the no volume regulation option claimed that this approach to market stabilization could easily result in a loss of a substantial number of smaller to mid-sized cranberry producers, as market prices without any form of market intervention would remain below the cost of production until market supply fell to the level of market demand. In addition to a loss of a profitable return on commodity production, which is a mainstay for many of the producers likely to be negatively impacted, investments in land and production start-up costs would also be lost as much of the potentially affected acreage has no alternative agricultural uses.

Given the anticipated large size of the 2001 cranberry crop in addition to currently existing inventory levels, volume regulation is the preferable market stabilization technique.

Availability of Sufficient Supplies to Support Market Expansion Efforts

As long as production capacity exceeds market demand, the cranberry industry will continue to be in a surplus situation. An alternative solution to reducing supply through regulation is to increase demand. Comments filed to this effect noted that a volume regulation at the 4.7 million barrel level would allow a more gradual correction in prices, thereby affording market participants the time needed to increase demand through the introduction of new products and export market development. These comments also stated that a 4.0 million barrel marketable quantity limit would result in too drastic, and too substantial, of an increase in product cost from one season to the next. They argue that erratic price fluctuations could hinder expansion efforts and be counterproductive, resulting in a loss of current customers, as was experienced in 1995.

Citing the 1995 industry price increase, commenters in favor of a more conservative approach to volume regulation recollected that industrial customers at that time turned away from using cranberries as an ingredient, reduced cranberry content in existing products, and substituted other fruits for baking and cereal applications, as well as in other processed products. The industry economist cited above further supported this argument by stating that historical evidence shows that food manufacturers respond adversely to wide swings in commodity prices, and especially the inability to source the commodity.

Based on the comments, a large portion of the industry favors some form of volume control. Commenters in favor of the 4.7 million barrel marketable quantity limitation stated that it would more easily allow the development of new products and markets than if supplies were severely restricted. A commenter asserted that a 4.0 million barrel marketable quantity would dampen growth of the industry at a time when the industry cannot afford to cut back on market expansion. Another commenter added that a handler, who has announced the development of several new products, could launch new products only if reliable supplies existed in the industry.

While recognizing the need for market expansion, commenters favoring a 4.0 million barrel marketable quantity limit argued that any short-fall in supplies between handlers could be easily avoided by a draw-down of product from storage, or a transfer of product between handlers. Counter to the argument of increased market prices having a negative impact on sales, those in favor of the 4.0 million barrel limitation believe it is necessary to expand markets at prices that will restore profitability to the grower. They do not consider that a price increase would have a negative impact on sales. Moreover, they argue that growers cannot afford to develop new markets while selling at below cost of production.

The Department believes that any long-term solution to the industry's oversupply situation should include market expansion efforts, and that volume regulations should be used sparingly. The higher marketable quantity (4.6 million barrels) is consistent with this conclusion.

Impact of the Volume Restrictions at the Handler Level

In weighing the relative benefits of differing volume regulation, it is important to consider impacts on handler competition for product to fill sale orders.

The majority of handlers commenting, and others commenting on the handler supply issue, either favored no volume restriction or the more conservative, 4.7 million barrel marketable quantity option of volume control. To this effect, one commenter stated that a 4.0 million barrel marketable quantity would cause a severe reduction in inventories, which would result in an unreasonable fluctuation in supply and prices.

Even though, in addition to establishing orderly marketing conditions, a major goal of the Act is to protect the interests of producers (farmers) and consumers, we also consider the impact of this regulation on handlers (both large and small). As we have already stated, in the case of cranberries, volume regulation as a market stabilization technique appears to be a better choice than a no volume regulation adjustment. One of the reasons is because market adjustment could easily result in the loss of a substantial number of smaller to mid-sized producers. In weighing the relative benefits of the two levels of volume regulation under consideration, we also considered the impacts they would have on handlers and product needed to fill sale orders.

From the comments received, and other available information, it was apparent that the more restrictive volume control would result in a smaller volume of product available to handlers to satisfy sale orders or promote market growth. Therefore, handlers who maintain a less competitive position in the market might be unable to effectively compete for supplies, thus resulting in their inability to fill sale orders and a loss of business.

While the Committee estimates carry-in inventories at 3.325 million barrels, it has been argued by a number of commenters that these supplies will be concentrated among only a few of the major handlers. Control over a potentially limited supply of surplus cranberries could put smaller, less competitive handlers at a disadvantage. Smaller handlers would be forced to purchase cranberries at a price set by the larger handlers holding excess inventory or forego filling their sales demand. These smaller handlers have also expressed concerns that such a position of control within the market could be used as a predatory tool to consolidate market power by the larger handlers.

One handler commented that supply constricting regulation could result in some handlers turning to low-cost growing regions outside of the United States in order to obtain supplies. Overall, commenters opposed to restrictive volume control conveyed that any negative effects resulting from such regulation (any losses incurred), would be passed on to their growers.

Those in favor of a more conservative, gradual reduction in supply state that this approach could ease market tensions regarding price while allowing suppliers to maintain strong market relations with industry consumers. Commenters in favor of the 4.7 million barrel marketable quantity stated that, at this level, cranberries will be available to those independent handlers who do not have inventories. Moreover, one handler indicated that the industry is willing to ensure that independent handlers without inventories have access to an adequate supply of fruit if a volume regulation is established. It is common practice within the cranberry industry for handlers lacking adequate contracted supplies to purchase cranberries from other handlers. While those in favor of some form of volume control realize that adequate supply cannot be guaranteed, a marketable quantity of 4.7 million barrels would more likely ensure a stable supply to smaller handlers.

In addition to the above, commenters raised the issue of USDA cranberry purchases. Commenters are concerned that USDA may purchase less than previously expected and, therefore, the marketable quantity should be adjusted accordingly. A lower level of purchases would result in a higher carryin, thus making more supplies available than anticipated. It is not possible to anticipate at this time the exact number of barrel equivalents that will be purchased by USDA in 2001. However, we have estimated the shortfall in purchases at 100,000 barrels, and adjusted the marketable quantity accordingly.

Commenters also raised the issue of the establishment of a reserve pool in future years. The industry has been informed that such a concept would have to be implemented through the formal rulemaking process. This pooling mechanism could be used in years of a volume regulation in order to provide all handlers a supply of cranberries for their needs. Commenters urged the USDA to move forward on this issue.

The Need for a Prompt Decision

Many commenters were urging USDA to make an immediate decision regarding the issue of regulation for the upcoming crop. This is because a volume regulation would be more helpful to growers if they have time to save production costs. Growers can find ways to reduce costs throughout the year, however, the optimal time for growers to reduce the amount of cranberries to be harvested is during the bloom period. Growers can flood their bogs, which will eliminate the flowers and therefore the fruit. This can be done fairly inexpensively on most cranberry farms. Bloom usually occurs in the month of June but varies with the weather.

Initial Regulatory Flexibility Analysis

One comment, submitted by a law firm, was filed on behalf of several Massachusetts growers and a handler. The commenter argued that one major handler has created the surplus and that smaller independent handlers do not have, and never had, a surplus. It was further argued that volume control will leave the smaller handlers without adequate supplies to fill orders. This situation, the commenter argued, is exacerbated by USDA's refusal to create a reserve pool under the order. The commenter further argued that imposing volume control would be disruptive to the market and that USDA's regulatory flexibility analysis is flawed. Specifically, the commenter disagreed with the Department's classification of

some handlers as large businesses and argued that the Department dealt inadequately with growers in its analysis of the economic impact of volume control. The commenter concluded that volume control will result in the destruction of 33 to 44 percent of the crop to maintain prices which would encourage the importation of foreign cranberries. American handlers would be forced to seek foreign cranberries or would be forced to buy from the handlers who caused the surplus.

As we have already explained, in recent years, cranberry production has exceeded demand which has caused dramatic declines in grower prices. One of the major goals of the Act and the order is to protect the interests of growers and consumers. In 2000, the Committee (which represents the interests of the industry) recommended the use of volume control to bring supplies more in line with demand. This was the first time in over 30 years that volume control was imposed. Given the anticipated size of the 2001 crop, in March of 2001, the Committee again recommended volume regulation for the coming year. Based on its analysis of the problems faced by the cranberry growers and handlers, the comments received in response to the proposed rule, and other available information, the Department decided that volume regulation would be preferable to a no volume regulation adjustment as a market stabilization technique.

In classifying businesses as to size for purposes of the regulatory flexibility analysis, AMS has used gross annual receipts. The analysis of the impacts of this rule was based on the premise that it would apply almost exclusively to small entities (both growers and handlers). Therefore, even if one of the handlers the commenter mentions were to be reclassified as to size, the analysis would not change.

The commenter's assertion that USDA refuses to create a reserve pool disregards the fact that such a mechanism in the order can only be created through formal rulemaking (through testimony and evidence on the record). This process is normally initiated by a recommendation to the Department by members of the industry. The Department has not indicated that it would not entertain such a recommendation.

Finally, it is clear that the cranberry industry is facing a number of economic problems, the main ones being oversupply and inelasticity of demand. We realize that there are numerous ways to go about resolving some of these. The marketing order with its volume control provisions is one which the industry has chosen to pursue. The Department has come to the conclusion (for reasons explained in this document) that the volume control provisions in this rule should be implemented in order to stabilize the industry and to bring available supplies of cranberries closer to market demand.

Based on the Department's analysis of the economics of the cranberry industry and on the plight faced by many growers and handlers, it is our view that volume control is necessary and that the level of control contained in this rule will best tend to effectuate the purposes of the Act and order.

Exemption for Fresh and Organically-Grown Fruit

The 4.7 million barrel option includes an exemption for fresh and organically-grown cranberries. The 4.0 million barrel option does not include a fresh and organically-grown fruit exemption.

Most commenters who favored the 4.0 million barrel marketable quantity also agreed that there was no need for a fresh or organic fruit exemption. Those who specifically addressed this issue stated that such an exemption would create a glut of fresh fruit. Some of this fruit would be inferior in quality, and its presence would injure overall demand in the fresh fruit market. No one specifically opposed an exemption for organically-grown fruit. Some commented that the fresh fruit exemption last year provided incentives for abuse as some growers reportedly sold fruit as ''fresh'' that ultimately ended up in processing channels. Some commenters were also concerned that the exemption would give an unfair advantage to processors that handle fresh fruit and their growers. This is because (as occurred last year), allotments not used by fresh fruit growers (because their fruit was exempt) could be used to offset any excess cranberries delivered by processing fruit growers.

Most commenters in favor of a 4.7 million barrel marketable quantity also supported a fresh and organically-grown fruit exemption. They stated that fresh and organically-grown fruit does not contribute in any meaningful way to the current cranberry surplus.

The Department supports an exemption for fresh and organically-grown cranberries because they do not contribute significantly to the current cranberry surplus. This conclusion is based on: (1) The relatively minor portion of total production these cranberries represent (fresh fruit—less than 6 percent and organically-grown fruit—about 1,000 barrels); (2) the distinction between fresh market/organically-grown cranberries and cranberries for processing; (3) information relative to the production and marketing of fresh and organic cranberries; and (4) the steps that have been taken to improve compliance with the exemption and to make the exemption more equitable among handlers and growers. In addition, continued encouragement for growth in the fresh and organic markets is consistent with industry objectives to develop additional markets and expand existing markets.

Analysis of Comments Pertaining to Sales History Calculations and Other Administrative Rule Changes

A proposed rule was published in the **Federal Register** on January 12, 2001 (66 FR 2838), to change the way in which sales histories are calculated (including deducting fresh sales from growers' sales histories). That rule, among other things, also proposed a clarification of the fresh fruit exemption and expanding the outlets available for excess cranberries. Twenty-five comments were filed during the comment period ending February 12, 2001. Most of those comments expressed general opinions on the use of volume regulation under the cranberry marketing order, and did not address the specific changes in the proposal.

During the comment period of this rule, the Committee met and recommended a further modification in sales history calculations. This modification was included in a proposed rule published on May 14, 2001. Eleven additional comments were received in response to the May 14 rule relative to amendment of sales history calculations.

Three comments supported the reformulation of sales histories in general, stating that changes made to the sales history calculations make them more equitable than last year's calculations. Eight commenters (including one who commented during both comment periods) supported amending the sales histories calculations as proposed in the May 14 rule. Six commenters (one who commented during both comment periods) did not support the modifications to sales history calculations. One commenter (who commented during both comment periods) objected to the modification of sales history calculations as proposed in the May 14 rule. Three commenters said the January 12 proposal did not make it clear that replanted acres should be treated the same as new acres when calculating sales histories. Two

commenters who supported the recalculation suggested allowing greater flexibility in the appeals process regarding sales histories.

Seven commenters supported the deduction of fresh fruit sales when calculating sales histories along with the clarification of the fresh fruit exemption. One commenter did not support the fresh fruit clarification. One commenter expressed support for the modifications to the excess cranberry provision, and one commenter suggested further modifications of that provision.

Reformulation of Sales History Calculations

The comments in support of the new formula for calculating sales histories expressed that the new method would be more equitable to growers, especially newer growers, than the way sales histories were calculated last year. Regarding modifying the formula to divide all available years by 4, those in support indicated that this revision would provide growers with sales histories more in line with actual expected production from new and replanted acres.

A comment in opposition to the formula expressed that growers with newly planted acres should not be rewarded for making poor business decisions. Growers had ample information available and should have known that production was increasing and sales were not. In addition, this commenter believed that giving additional sales histories to compensate these growers is unfair to growers with established acres who did not increase plantings and did not contribute to the current surplus.

Another commenter in opposition to the new formula said that providing newer growers with additional sales histories would encourage new plantings.

The Department does not agree that new plantings will be encouraged by implementation of this formula or that growers are being rewarded for making poor business decisions. The new method of calculating sales histories is intended to address equity concerns expressed last year with newer growers being impacted to a greater extent than established growers. The formula merely compensates growers for anticipated production on recently planted acres that do not have sales histories reflective of current production potential. The formula is based on data from all growing areas, from all sizes of growing operations and represents a higher than mid range of this data. The new method is an improved method from last year.

Regarding the comment about established growers being treated unfairly by this action, the modification contained in the May 14 proposed rule was specifically recommended to ensure that sales histories for established growers were calculated in the same way as those for newer growers.

One commenter supported the new formula as proposed in the January 12 rule, but did not support the revision which divides by 4 for all acreage to obtain an actual sales history prior to being assigned the adjustment for newer acres. This commenter indicated this change would again put new growers at a disadvantage, especially those growers with well managed new acreage with relatively high production. The commenter suggested that growers who are able, be allowed to segregate sales from older and newer acreage and divide by the appropriate number of years to obtain the actual sales history prior to adjusting the acreage with the formula.

This commenter discussed the methodology to determine average yields per acre depending upon the year of planting. The data used was increased by 25 barrels to allow more growers to have satisfactory sales histories. The commenter believed this methodology was flawed in that it did not take into account the differences between efficient and non-efficient growers. This commenter provided examples showing how this formula would be detrimental. In one example, dividing by the available number of years of sales history and assigning additional barrels in accordance with the formula would provide the grower with an average 373.5 barrels per acre. Using an example with actual production with a specific percentage increase would give the grower an average of 376.31 barrels per acre. Using the formula as revised by dividing by 4 and assigning additional sales history would provide the grower with an average 271.75 barrels per acre.

The Committee, along with the amendment subcommittee, gave much thought to improving the method of calculating sales histories to minimize the differential impact among growers with newer acreage. The data used to develop the formula was a result of a Department survey of average yields per acre depending upon the year of planting. The averages were adjusted up by 25 barrels per acre to include as many growers as possible. The survey indicated that the average yield for a full producing acre was 250 barrels per acre. With the 25 barrel adjustment, the formula recognizes an acre of full production to be 275 barrels. This amount is consistent with the commenter's example that computed the sales history by dividing all years by 4 (an average of 271.75 barrels per acre).

The Committee was aware that some growers' yields exceeded the average. However, if the formula used the highest yields in its calculations, growers with lower yields would receive sales histories well above average. This would have raised the total sales histories to an unrealistic amount which would have reduced the effectiveness of a volume regulation. It was decided that increasing the yields by 25 barrels over average yields brings more growers into the realm of realizing satisfactory sales histories without defeating the purpose of volume regulation. In addition, the simpler formula should result in fewer growers filing appeals.

Therefore, the Department believes that the sales history calculations as proposed in the January 12 proposed rule and as modified in the May 14 rule are appropriate for the 2001 volume regulation.

Replanted Acres

Three commenters said that the January 12 rule did not make it clear that replanted acres should be treated the same as new acres when calculating sales histories. The Department agrees that replanted acres and new acres should be assigned sales histories in the same manner. Changes have been made where pertinent in the regulatory text for clarity.

Appeals of Sales History Calculations

One commenter supported the revised sales history formula, but suggested that exceptions be authorized under the appeals process for growers to request higher sales histories than allowed under the formula. Specifically, growers could be required to submit evidence on yields from separate acreage to be successful in receiving sales history above and beyond that allowed under the formula.

Last year, over 250 appeals were received by the appeals subcommittee (the first level of review for appeals). Many of the appeals were filed by growers who provided credible evidence to allow the Committee to segregate sales histories of newer acreage so that additional sales histories could be provided.

The formula specifies certain amounts of sales histories that will be assigned to newer acreage. Appeals filed requesting higher sales histories than authorized under the provisions of the

reformulation of sales histories provisions will be denied.

One of the intents of the reformulation of sales history calculations is to eliminate the need for appeals to be filed. Therefore, fewer appeals should be filed and the appeals process can be completed in time for growers to know what their sales histories are well before harvest.

Accordingly, no change is made as a result of this comment.

Deduction of Fresh Sales From Sales History Calculations and Clarification of the Fresh Fruit Exemption Provision

The commenters who supported the deduction of fresh sales when calculating sales histories expressed that this change will provide more fairness in the application of the fresh fruit exemption. One commenter stated that the fresh fruit exemption should not be supported unless fresh sales are deducted from a grower's sales history. Another commenter stated that growers who produce both fresh and processed fruit realized an advantage last year over growers who produced only processed fruit. As an example, growers who delivered more than 15 percent of their crop as fresh during the 2000–01 crop year did not contribute to the crop reduction.

Similar comments were made regarding the clarification of the fresh fruit exemption provision. One commenter stated that the provision was abused during the 2000–01 season as some growers allegedly sold processed fruit as fresh fruit to benefit from the exemption. The commenters in support of the clarification believe that this change will help to resolve this issue and ensure compliance with the volume regulation.

One commenter was concerned about the container requirements for fresh fruit. Another commenter said that the fresh fruit clarification will make it difficult for growers to sell their own fruit.

The clarification of the fresh fruit exemption provision is to ensure that fresh fruit does not make its way into processing outlets. The refinement of the requirements under the exemption better addresses the intent of the exemption and will assist in limiting its abuse. The clarification also allows for exceptions to the container requirement.

Therefore, the Department is implementing the provisions to subtract fresh sales from growers' sales histories and to clarify the fresh fruit exemption provisions as proposed in the January 12, 2001, rule.

Excess Cranberries

One commenter supported the modification to broaden the scope of research and development projects authorized for excess cranberries. Another commenter suggested that any outlet using less than 5 percent of a grower's crop be an authorized ''commercial'' use for excess cranberries.

Excess cranberries should continue to be limited to ''noncommercial'' and ''noncompetitive'' uses. Any other use would defeat the purpose of the volume regulation and add potential incentives for abuse. This comment is denied, and the change to the excess cranberry provisions shall remain as set forth in the January 12 rule.

Other Alternatives Considered

Withholding Volume Regulation

The marketing order provides for two methods of volume controls, the producer allotment and the withholding programs. Prior to recommending a producer allotment program for the 2001–2002 crop, the Committee also considered the benefits of a withholding program.

Unlike the producer allotment program which allows cultural practices to be changed at the grower level closer to harvest, growers deliver all their cranberries to their respective handlers under the withholding program. 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 will add costs. Although the benefits to growers under a withholding program are that all cranberries can be delivered to handlers, growers would generally only be paid by their handlers for unrestricted cranberries. In addition, it would be expected that costs associated with disposal of withheld cranberries be deducted from grower returns, further reducing grower revenues. This could result in grower returns well below cost of production.

As with the 2000–2001 volume regulation, the Committee again determined that the producer allotment method of volume regulation was preferable over the withholding method. The producer allotment program allows for less fruit to be produced and would not require the disposal of as many cranberries as with the withholding provisions. In addition, inspections are not required under the producer allotment method, which is more cost effective and would be simpler to administer. This helps growers reduce some of the variable costs associated with preparing and maintaining a bog for production and harvest.

Establishing a Cranberry Marketing Pool Under a Producer Allotment Program

During discussions of volume regulations, a group of independent handlers indicated that any volume regulation would not be supported unless there are some assurances that sufficient supplies of cranberries will be made available to meet their customer needs. Most independent handlers claim that they do not have inventories of cranberries to carry into the new season. Although handler to handler purchases are a normal business practice (with or without a volume regulation), a producer allotment restriction increases the need for handlers to purchase from handlers with inventories to maintain market share. Some handlers believe this places them in a vulnerable position, needing more fruit than normal from their competitors.

The marketing order does not contain a mechanism to provide the assurances some of the independent handlers are seeking. An amendment subcommittee is working towards amending the order to incorporate a handler marketing pool, whereby a specified amount of cranberries would be pooled to allow for handlers with little or no inventories to purchase cranberries at a price established by the Committee. However, amending the order in this manner cannot be accomplished prior to the 2001 season.

Using All or Part of Both Methods of Volume Regulation in the Same Year

Also considered by the Committee was utilizing both methods of volume regulation in the same year. Some growers and handlers believe that the producer allotment program does not adequately address all the concerns faced by the different segments of the industry. It was thought that using the most useful parts of each program would address a broader range of issues. For example, under the withholding program, handlers can apply to the Committee for a release of their restricted cranberries. To receive a release, they have to deposit with the Committee an amount equal to the fair market value of the cranberries they want to be released. The fair market value is determined by the Committee. The Committee uses these funds to

purchase an equal amount of free cranberries from other handlers and to dispose of those cranberries. This provision of the withholding program is referred to as the ''buy-back'' provision.

Some growers and handlers indicated if there were a buy-back provision under the producer allotment program, the concern of handlers without inventories having access to fruit would be specifically addressed. However, there is no authority in the marketing order to use both methods of volume control concurrently, and buy-back cannot be used under the producer allotment program. Additionally, the intent of a producer allotment program is to discourage production at the grower level so that less fruit is delivered to handlers. Establishing a ''buy-back'' under a producer allotment program is problematic for that reason. If growers believed that some of their excess fruit could eventually be ''bought back'', increased production could be encouraged, defeating the purpose of the program. Also, it is unclear exactly what amount would be ''bought back''.

Other growers and handlers have indicated that if a producer allotment and a withholding program were recommended in the same year, growers would still be encouraged to reduce growing, and handlers would be in a position to buy-back berries to meet market needs. For example, if a 20 percent restriction under a producer allotment were recommended in February for the upcoming season, growers would be encouraged to reduce production. If a withholding provision were recommended in August of the same year with a restricted percentage of 10 percent, handlers would have the opportunity to buy back cranberries to meet their marketing needs.

Section 929.52 of the order specifies that either a withholding or a producer allotment program may be implemented during any fiscal period, not both. Also, further discussion is needed to determine what problems would be associated with implementing both programs in one year, if authorized. The amendment subcommittee is considering this issue with an amendment to the order.

Reporting and Recordkeeping Requirements

As with all Federal marketing order programs, reports and forms used under the cranberry order are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

As previously discussed in the proposed rule published on January 12, 2001, this rule necessitates 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 annual burden hours of 424.05. The Committee will reconfigure this form to ensure that information relative to this rule will be included, particularly the date of planting of the acreage. The burden hours of the form will not change. Accordingly, the form does not have to be submitted to OMB.

All of the forms associated with the transfer of sales histories associated with leases have been previously approved by OMB. There are also some other 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.

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.

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 February 4 and March 4–5 meetings were public meetings. Meeting announcements were placed on websites specifically designed for the cranberry industry, and 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. 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. In addition, several grower meetings were held throughout the production area to discuss the methods of volume regulation and the procedures for regulation.

A proposed rule on reformulating the sales history calculations for the 2001–2002 crop year was published in the **Federal Register** on January 12, 2001 (66 FR 2838). A proposed rule on whether to establish volume regulation was published in the **Federal Register** on May 14, 2001 (66 FR 24291). The rules were made available on the Department's website. The rules were also made available through the Internet by the Office of the Federal Register. A 30-day comment period was provided in the January 12, 2001, rule, which ended on February 12, 2001. A 15-day comment period ending May 29, 2001, was provided on the volume regulation proposal. These comment periods allowed interested persons to respond to the proposals.

The Department has not identified any relevant Federal rules which duplicate, overlap or conflict with this rule. 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 recommendations 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, 2001. 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 discussed and

recommended at public meetings and well-publicized within the cranberry industry. Also, appropriate public comment periods were provided in the two proposed rules relevant to this final 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. Section 929.104 (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.

* * * * *

§ 929.107 [Removed]

3. Section 929.107 is removed.

4. Section 929.110(d) is added to read as follows:

§ 929.110 Transfers or sales of cranberry acreage.

* * * * *

(d) During a year of regulation, all transfers of growers' sales histories for partial or total leases of acreage shall be received in the Committee office by close of business on July 31.

5. Section 929.125 is revised to read as follows:

§ 929.125 Committee review procedures.

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

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

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

(c) The grower may further appeal to the Secretary, within 15 days after notification of the subcommittee's findings, if such grower is not satisfied with the appeals subcommittee'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.

§ 929.148 [Removed]

6. Section 929.148 is removed.

7. 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 of sales history and was planted in 1995 or later, the sales history shall be computed by averaging the highest 4 of the 5 years and shall be adjusted as provided in paragraph (d). For growers whose acreage has 4 years of sales history, the sales history shall be computed by averaging all 4 years and shall be adjusted as provided in paragraph (d). For growers whose acreage has 1 to 3 years of sales history, the sales history shall be computed by dividing the total years sales by 4 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) Fresh fruit sales shall be deducted from the sales histories. The sales history assigned to each grower shall represent processed sales only.

(f) If a grower's fruit does not qualify as fresh fruit upon delivery to the handler, and it is converted to processed fruit, the handler shall give priority to this grower when allocating unused allotment if the grower does not have sufficient processed sales history to cover the converted fruit.

8. 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.

9. A new § 929.251 is added to read as follows:

§ 929.251 Marketable quantity and allotment percentage for the 2001–2002 crop year.

The marketable quantity for the 2001–2002 crop year is set at 4.6 million barrels and the allotment percentage is designated at 65 percent. Fresh and organically grown fruit shall be exempt from the volume regulation provisions of this section.

Dated: June 22, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–16109 Filed 6–22–01; 2:06 pm]

BILLING CODE 3410–02–P