

all papayas handled by him during the immediately preceding calendar month. Such report shall include, but is not limited to, the following information:

(1) Quantity of papayas handled subject to assessments including the date and destination of each shipment;

(2) Quantity of papayas handled without regard to the assessment or regulatory provisions of the marketing agreement and order with such quantity itemized as to the amount (i) shipped to authorized commercial processors, (ii) donated to charitable organizations or relief agencies, (iii) shipped to authorized market research and development projects, and (iv) disposed of otherwise, and indicating such disposition.

(b) [Reserved]

[36 FR 22360, Nov. 25, 1971, as amended at 59 FR 38104, July 27, 1994; 65 FR 70284, Nov. 22, 2000; 66 FR 29219, May 30, 2001]

EFFECTIVE DATE NOTE: At 67 FR 50582, Aug. 5, 2002, §928.160 was suspended.

EDITORIAL NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .314 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 928.226 Assessment rate.

On and after July 1, 1999, an assessment rate of \$0.008 per pound is established for Hawaii papayas.

[64 FR 59606, Nov. 3, 1999]

EFFECTIVE DATE NOTE: At 67 FR 50582, Aug. 5, 2002, §928.226 was suspended.

§ 928.313 Hawaiian Papaya Regulation 13.

(a) During the period January 2, 2001, through January 2, 2002, no handler shall ship any container of papayas to any destination (except immature papayas handled pursuant to §928.152) unless such papayas grade at least Hawaii No. 1: *Provided*, That the weight requirements specified in this grade shall not apply to such shipments.

(b) *Hawaii No. 1* cited in this regulation is specified in the Hawaii Department

of Agriculture, Standards for Fruits and Vegetables (Title 4, Subtitle 4, Chapter 41, Subchapter 7, §4-41-52, Standards for Hawaii-Grown Papaya) (8/6/90). Copies of the grade specifications are available from the Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250; and they are also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a), and 1 CFR part 51. The materials are incorporated as they exist on the date of approval and a notice of any changes in the material will be published in the FEDERAL REGISTER.

[65 FR 70284, Nov. 22, 2000; 69 FR 18801, Apr. 9, 2004]

EFFECTIVE DATE NOTE: At 66 FR 29219, May 30, 2001, §928.313 was suspended indefinitely.

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

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- 929.250 Marketable quantity and allotment percentage for the 2000-2001 crop year.
- 929.251 Marketable quantity and allotment percentage for the 2001-2002 crop year.

AUTHORITY: 7 U.S.C. 601-674.

SOURCE: 27 FR 8101, Aug. 15, 1962, unless otherwise noted.

Subpart—Order Regulating Handling

DEFINITIONS

§ 929.1 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the United States Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 929.2 Act.

Act means Public Act No. 10, 73d Congress (May 12, 1933), as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

§ 929.3 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 929.4 Production area.

Production area means the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin,

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Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York.

§ 929.5 Cranberries.

Cranberries means all varieties of the fruit *Vaccinium Macrocarpon*, known as cranberries, grown in the production area.

§ 929.6 Fiscal period.

Fiscal period is synonymous with *fiscal year* and *crop year* and means the 12-month period beginning September 1 of 1 year and ending August 31 of the following year.

[33 FR 11640, Aug. 16, 1968]

§ 929.7 Committee.

Committee means the Cranberry Marketing Committee established pursuant to § 929.20.

§ 929.8 Grower.

Grower is synonymous with producer and means any person who produces cranberries for market and who has a proprietary interest therein.

§ 929.9 Handler.

Handler means any person who handles cranberries.

§ 929.10 Handle.

(a) *Handle* means:

(1) To can, freeze, or dehydrate cranberries within the production area or;

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

(b) The term handle shall not include:

(1) The sale of non harvested cranberries;

(2) The delivery of cranberries by the grower thereof to a handler having packing or processing facilities located within the production area;

(3) The transportation of cranberries from the bog where grown to a packing or processing facility located within the production area; or

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

[57 FR 38748, Aug. 27, 1992]

§ 929.11 To can, freeze, or dehydrate.

To can, freeze, or dehydrate means to convert cranberries into canned, frozen, or dehydrated cranberries or other cranberry products by any commercial process.

§ 929.12 Acquire.

Acquire means to obtain cranberries by any means whatsoever for the purpose of handling such cranberries.

§ 929.13 Sales history.

Sales History means the number of barrels of cranberries established for a grower by the committee pursuant to § 929.48.

[57 FR 38748, Aug. 27, 1992]

§ 929.14 Marketable quantity.

Marketable quantity means for a crop year the number of pounds of cranberries necessary to meet the total market demand and to provide for an adequate carryover.

[33 FR 11640, Aug. 16, 1968]

§ 929.15 Annual allotment.

A grower's annual allotment for a particular crop year is the number of barrels of cranberries determined by multiplying such grower's sales history by the allotment percentage established pursuant to § 929.49 for such crop year.

[57 FR 38748, Aug. 27, 1992]

§ 929.17 Barrel.

Barrel means a quantity of cranberries equivalent to 100 pounds of cranberries.

[57 FR 38748, Aug. 27, 1992]

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ADMINISTRATIVE BODY

§ 929.20 Establishment and membership.

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

(b) The committee shall include one public member and one public alternate member nominated by the committee and selected by the Secretary. The public member and public alternate member shall not be a cranberry grower, processor, handler, or have a financial interest in the production, sales, marketing or distribution of cranberries or cranberry products. The

committee, with the approval of the Secretary, shall prescribe qualifications and procedures for nominating the public member and public alternate member.

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

District 1: The States of Massachusetts, Rhode Island, and Connecticut;

District 2: The State of New Jersey and Long Island in the State of New York.

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

District 4: The States of Oregon and Washington.

TABLE 1

Districts	Major cooperative	Major cooperative	Other than major	Other than major
			Members	Alternates
1	2	1	2	1
2	1	1	1	1
3	2	1	2	1
4	1	1	1	1
Any	1 member-at-large			

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

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

[69 FR 18806, Apr. 9, 2004]

§ 929.21 Term of office.

(a) The term of office for each member and alternate member of the committee shall be for two years, beginning on August 1 of each even-numbered year and ending on the second succeeding July 31. *Provided*, That following adoption of this amendment, the term of office for the initial mem-

bers and alternates shall also include any time served prior to August 1 of the first even numbered year served. Members and alternate members shall serve the term of office for which they are selected and have been qualified or until their respective successors are selected and have been qualified.

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

(c) Members who have served three consecutive terms must leave the committee for at least one full term before

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becoming eligible to serve again unless specifically exempted by the Secretary. The consecutive terms of office for alternate members shall not be so limited.

[69 FR 18806, Apr. 9, 2004]

§ 929.22 Nomination.

(a) *Initial members.* As soon as practicable after adoption of this amendment, the committee shall hold nominations in accordance with this section. The names and addresses of all nominees shall be submitted to the Secretary for selection as soon as the nomination process is complete. Nominees selected for the initial Committee, following adoption of this amendment, shall serve a minimum of one two-year term beginning on August 1 of the first even-numbered year served.

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

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

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

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

(3) Six qualified persons for members and four qualified persons for alternate members of the committee shall be nominated by those growers who market their cranberries through entities other than the major cooperative mar-

keting organization. Nominees for member and alternate member representing entities other than the major cooperative marketing organization shall represent growers from each of the marketing order districts as designated in §929.20(c).

(d) Whenever any major cooperative marketing organization handles 50 percent or less of the total volume of cranberries produced during the fiscal period in which nominations for membership on the committee are made, the major cooperative or growers affiliated therewith, shall nominate:

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

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

(3) A seventh member nominee shall be referred to as the member-at-large representing entities other than the major cooperative marketing organization. The member-at-large may be nominated from any of the marketing order districts.

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

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

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

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

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

(5) The nominee receiving the highest number of votes cast in districts two and four shall be the member nominee representing entities other than the major cooperative marketing organization from that district. The nominee receiving the second highest number of votes cast in districts two and four shall be the alternate member representing entities other than the major cooperative marketing organization from that district.

(6) The nominees receiving the highest and second highest number of votes cast in districts one and three shall be the member nominees representing entities other than the major cooperative marketing organization from that district. The nominee receiving the third highest number of votes cast in districts one and three shall be the alternate member representing entities other than the major cooperative marketing organization from that district.

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

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

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

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

(4) The nominee receiving the highest number of votes cast shall be designated the member-at-large nominee representing entities other than the major cooperative marketing organization. The nominee receiving the second highest number of votes cast shall be declared the alternate member-at-large nominee representing entities other than the major cooperative marketing organization.

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

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

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

[69 FR 18807, Apr. 9, 2004]

§ 929.23 Selection.

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

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

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

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

(3) Six members and four alternate members from growers who market their cranberries through other than the major cooperative marketing organization made pursuant to § 929.22(c)(3).

(c) Whenever any major cooperative marketing organization handles 50 percent or less of the total volume of cranberries produced during the fiscal year in which nominations for membership

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on the committee are made, the Secretary shall select:

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

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

(3) One member-at-large representing entities other than the major cooperative marketing organization from nominations made pursuant to § 929.22(d)(3).

[69 FR 18808, Apr. 9, 2004]

§ 929.24 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in § 929.22, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of representation provided for in §§ 929.20 and 929.23.

§ 929.25 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

§ 929.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in §§ 929.22 and 929.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in §§ 929.20 and 929.23.

§ 929.27 Alternate members.

An alternate member of the committee shall act in the place and stead

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

(a) An alternate member representing the major cooperative shall not serve in place of a member representing other than the major cooperative or the public member.

(b) An alternate member representing other than the major cooperative shall not serve in place of a major cooperative member or the public member.

(c) A public alternate member shall not serve in place of any industry member.

[69 FR 18808, Apr. 9, 2004]

§ 929.30 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 929.31 Duties.

The committee shall have, among others, the following duties:

(a) To select a chairman and such other officers as may be necessary, and to define the duties of such officers;

(b) To appoint such employees, agents, and representatives as it may deem necessary and to determine the compensation and to define the duties of each:

(c) To submit to the Secretary as soon as practicable after the beginning of each fiscal period a budget for such

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fiscal period, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;

(d) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;

(f) To cause its books to be audited by a competent public accountant at least once each fiscal year and at such times as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate and assemble data on the growing, handling, and marketing conditions with respect to cranberries;

(i) To submit to the Secretary the same notice of meetings of the committee as is given to its members;

(j) To submit to the Secretary such available information as he may request; and

(k) To investigate compliance with the provisions of this part.

§ 929.32 Procedure.

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

(b) The committee may vote by mail, telephone, fax, telegraph, or other electronic means; Provided that any votes cast by telephone shall be confirmed promptly in writing. Voting by proxy, mail, telephone, fax, telegraph, or

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other electronic means shall not be permitted at any assembled meeting of the committee.

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

[69 FR 18808, Apr. 9, 2004]

§ 929.33 Expenses and compensation.

The members of the committee, and alternates when acting as members, shall serve without compensation but shall be reimbursed for necessary expenses, as approved by the committee, incurred by them in the performance of their duties under this part. The committee at its discretion may request the attendance of one or more alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members, and may pay expenses, as aforesaid.

EXPENSES AND ASSESSMENTS

§ 929.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions hereof. The funds to cover such expenses shall be paid to the committee by handlers in the manner prescribed in § 929.41.

§ 929.41 Assessments.

(a) As a handler's pro rate share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee during a fiscal period, a handler shall pay to the committee assessments on all cranberries acquired as the first handler thereof during such period, except as provided in § 929.55: *Provided*, That no handler shall pay assessments on excess cranberries as provided in § 929.57. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

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(b) The Secretary shall fix the rate of assessment to be paid by each handler during a fiscal period in an amount designated to secure funds sufficient to cover the expenses which may be incurred during such period and to accumulate and maintain a reserve fund equal to approximately one fiscal period's expenses. At any time during or after the fiscal period, the Secretary may increase the assessment rate in order to secure funds sufficient to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all cranberries acquired during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal year, before sufficient operating income is available from assessments, the committee may accept the payment of assessments in advance and may also borrow money for such purposes.

(c) If a handler does not pay such assessment within the period of time prescribed by the committee, the assessment may be increased by either a late payment charge, or an interest charge, or both, at rates prescribed by the committee, with the approval of the Secretary.

[57 FR 38748, Aug. 27, 1992]

§ 929.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, the committee, with the approval of the Secretary, may carryover such excess into subsequent fiscal periods as a reserve: *Provided*, That funds already in the reserve do not exceed approximately one fiscal period's expenses. Such reserve funds may be used (1) to cover any expenses authorized by this part and (2) to cover necessary expenses of liquidation in the event of termination of this part. If any such excess is not retained in a reserve, it shall be refunded proportionately to the handlers from whom the excess was collected. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate; *Provided*, That to the extent practical, such funds

shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

RESEARCH

§ 929.45 Research and development.

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

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

[57 FR 38748, Aug. 27, 1992]

REGULATIONS

§ 929.46 Marketing policy.

(a) Each year prior to May 1 the committee shall estimate the marketable quantity for the following crop year.

(b) As soon as practicable after August 1 of each crop-year and prior to making any recommendations pursuant to paragraphs (b) (7) and (8) of this section or to § 929.51, the committee shall submit to the Secretary a report setting forth its marketing policy for the crop-year. Such marketing policy shall contain the basis therefor and information relating to:

(1) The estimated total production of cranberries;

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

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

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

(5) Supplies of competing commodities;

(6) Trend and level of consumer income;

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

(8) Regulation pursuant to § 929.52 expected to be recommended by the committee during the crop year together with its recommendation of the free and restricted percentages and beginning with the 1974-75 crop year, the recommended allotment percentages, if any, for the crop year; and

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

[33 FR 11640, Aug. 16, 1968, as amended at 38 FR 29801, Oct. 29, 1973]

§ 929.47 Preliminary regulation.

(a) Beginning with the 1968-69 crop year, and continuing for each crop year thereafter through August 31, 1974, no handler shall handle, as the first handler thereof, cranberries purchased by him from a grower or acquired by him for handling for the account of a grower until he has determined the identity of the grower and the quantity of cranberries attributed to such grower. The handler shall furnish such information to the committee at such times and in such forms as the committee, with the approval of the Secretary, may request.

(b) So that each producer may qualify for a base quantity, pursuant to § 929.48, the committee shall furnish each producer early in each calendar year beginning in 1969, and as soon as practicable after the effective date of the amendment for the 1968 calendar year, a form to be filed with the committee whereon the producer reports the location of his bog(s), the acreage of cranberries he intends to harvest, and such other information as the committee needs to establish a base quantity for such producer.

[33 FR 11641, Aug. 16, 1968]

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§ 929.48 Sales history.

(a) *Determination of sales history.* (1) The initial sales history shall be computed by the committee for each grower using the best four out of six years of such grower's sales history, which shall include all commercial sales from the first complete crop year following adoption of this amendment, plus the prior five years' history of commercial sales, except as otherwise provided in paragraph (a)(5) of this section. For a grower with four years or less of commercial sales history, the initial sales history shall be computed by the committee using all available years of such grower's commercial sales history.

(2) A new sales history shall be computed for each grower after each crop year during which no volume regulation was established, in the same manner as for the initial sales history, except that the most recent crop year shall be used instead of the earliest crop year, and except as otherwise provided in paragraph (a)(4) of this section. The committee, with the approval of the Secretary, may, by regulation, alter the number and identity of years to be used in computing these subsequent sales histories.

(3) A new sales history shall be calculated for each grower after each crop year, during which a volume regulation has been established, using a formula determined by the committee, with the approval of the Secretary.

(4) Beginning with the first complete crop year following the adoption of this section, if a grower has no commercial sales from such grower's cranberry acreage for three consecutive crop years due to forces beyond the grower's control, the committee shall compute a level of commercial sales for the fourth year for that acreage using an estimated production, obtained by crediting the grower with the average sales from the preceding three years during which sales occurred. Any and all relevant factors regarding the grower's lost production may be considered by the committee prior to establishing a sales history for such acreage.

(5) The committee shall compute a sales history for a grower who has no history of sales associated with such grower's cranberry acreage during a crop year when a volume regulation

has been established, using the greater of the following:

(i) The total estimated commercial sales from a grower's cranberry acreage, or

(ii) The state average yield per acre multiplied by the grower's cranberry producing acreage. *Provided*, That a grower having unused allotment and received a sales history computed under either of these methods shall forfeit such unused allotment.

(b) *Grower report.* Each grower shall file a report with the committee by January 15 of each crop year, indicating the total acreage harvested, the total commercial cranberry sales in barrels from such acreage, and the amount of any new or renovated acreage planted, to allow the committee to compute a sales history for each grower.

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

[57 FR 38749, Aug. 27, 1992]

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

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

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

(c) In any crop year in which the production of cranberries is estimated by the committee to be equal to or less

than its recommended marketable quantity, the committee may recommend and the Secretary may increase or suspend the allotment percentage applicable to that year. In the event it is found that market demand is greater than the marketable quantity previously set, the committee may recommend and the Secretary may increase such quantity.

(d) *Issuance of annual allotments.* The committee shall require all growers to qualify for that allotment by filing with the committee, on or before April 15 of each year, a form wherein growers include the following information: The location of their cranberry producing acreage from which their annual allotment will be produced; the amount of acreage which will be harvested; changes in location, if any, of annual allotment; and such other information, including a copy of any lease agreement, as is necessary for the committee to administer this part. On or before June 1, the committee shall issue to each grower an annual allotment determined by applying the allotment percentage established pursuant to paragraph (b) of this section to the grower's sales history.

(e) On or before June 1 of any year in which an allotment percentage is established by the Secretary, the committee shall notify each handler of the annual allotment that can be handled for each grower whose total crop will be delivered to that handler. In cases where a grower delivers a crop to more than one handler, such grower's annual allotment will be apportioned equitably among the handlers.

(f) Growers who do not produce cranberries equal to their computed annual allotment shall transfer their unused allotment to such growers' handlers. The handler shall equitably allocate the unused annual allotment to growers with excess cranberries who deliver to such handler. Unused annual allotment remaining after all such transfers have occurred shall be transferred to the committee pursuant to paragraph (g) of this section.

(g) Handlers who receive cranberries more than the sum of their growers' annual allotments have "excess cranberries," pursuant to § 929.59, and shall so notify the committee. Handlers who

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have remaining unused allotment pursuant to paragraph (f) of this section are "deficient" and shall so notify the committee. The committee shall equitably distribute unused allotment to all handlers having excess cranberries.

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

[33 FR 11641, Aug. 16, 1968, as amended at 57 FR 38749, Aug. 27, 1992]

EFFECTIVE DATE NOTE: At 65 FR 42614, July 11, 2000, in § 929.49(d), the phrase "On or before June 1", and in § 929.49(e), the phrase "On or before June 1 of any year in which an allotment percentage is established by the Secretary" were suspended indefinitely.

§ 929.50 Transfers.

(a) Transfers to another grower. A grower who owns cranberry acreage on which a sales history has been established may transfer the acreage and sales history to another grower. When transfers of acreage occur, transfers of sales history will be made under the following conditions:

(1) A lease agreement between the owner of the cranberry producing acreage and a lessee: Terms of such lease agreement shall be filed with the committee prior to the committee recognizing such transfer. The lease agreement filed with the committee shall include the following information:

- (i) Name of owner and lessee;
- (ii) Starting and ending dates of the lease;
- (iii) Amount of acreage transferred; and
- (iv) The amount of sales history transferred.

(2) Total sale of cranberry acreage. When there is a sale of a grower's total cranberry producing acreage, the seller and buyer shall file a completed transfer form with the committee and the buyer will have immediate access to the sales history computation process.

(3) Partial sale or lease of cranberry acreage. When less than the total cranberry producing acreage is sold or leased, sales history associated with the portion of the acreage being sold or leased shall be transferred with the acreage. The seller and lessor shall provide the committee with a completed

transfer or lease form outlining such distribution of acreage and sales history between the parties. Such transfer or lease form shall include that percentage of the sales history, as defined in § 929.48(a)(1), attributable to the acreage being transferred or leased.

(4) No transfer shall be recognized by the committee unless the transferee and transferor notify the committee in writing: *Provided That*, if unusual circumstances exist, the Committee may recognize a transfer when only one form from the transferee or transferor is filed with the committee.

(5) In a year of nonregulation, in the absence of any sales history associated with the cranberry acreage being transferred or leased, the committee shall determine the buyer's or lessee's sales history pursuant to § 929.48 of the order.

(6) During a year when a volume regulation has been established, 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.

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

[57 FR 38749, Aug. 27, 1992]

§ 929.51 Recommendations for regulation.

(a) Whenever the committee deems it advisable to regulate the handling of cranberries in the manner provided in § 929.52, it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply of and demand for cranberries during the period or periods when it is proposed that such regulation should be made effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

§ 929.52 Issuance of regulations.

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

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

[27 FR 8101, Aug. 15, 1962, as amended at 57 FR 38750, Aug. 27, 1992]

§ 929.53 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 929.52 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated in order to effectuate the declared policy of the act, he shall modify, suspend, or terminate such regulation: *Provided*, That no such modification shall increase the restricted percentage previously established for the then current fiscal year. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulation.

§ 929.54 Withholding.

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

from handling a portion of the cranberries he acquires during such period: *Provided*, That such withholding requirements shall not apply to any lot of cranberries for which such withholding requirement previously has been met by another handler in accordance with § 929.55. The withheld portion shall be equal to the sum of the products obtained by multiplying each of the following quantities, as applicable, by the restricted percentage:

(1) The quantity of screened cranberries acquired;

(2) The quantity of screened cranberries obtained at the time unscreened lots of cranberries are screened: *Provided*, That, if the cranberries have not been screened by a date specified by the committee, with the approval of the Secretary, as the date by which each handler shall have met the withholding requirement, the quantity of screened cranberries shall be determined as set forth in paragraph (a)(3) of this section; and

(3) The quantity of screened cranberries contained in unscreened lots of cranberries acquired (i) which are destined for disposition without screening, or (ii) but which have not been screened prior to the date referred to in paragraph (a)(2) of this section. The committee, with the approval of the Secretary, shall prescribe uniform rules to be followed in determining the quantity of screened cranberries in each lot of unscreened cranberries.

(b) The committee, with the approval of the Secretary, shall prescribe the manner in which, and date or dates during the fiscal period by which, handlers shall have complied with the withholding requirements specified in paragraph (a) of this section.

(c) Withheld cranberries shall meet such standards of grade, size, quality, or condition as the committee, with the approval of the Secretary, may prescribe. All such cranberries shall be inspected by the Federal or Federal-State Inspection Service. A certificate of such inspection shall be issued which shall show, among other things, the name and address of the handler, the number and type of containers in the lot, the location where the lot is stored, identification marks, including lot stamp, if used, and a certification

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of the quantity of cranberries in such lot that meet the prescribed standards. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the committee at the place designated by the committee a copy of the certificate of inspection issued with respect to such cranberries.

(d) Any handler who withholds from handling a quantity of cranberries in excess of that required pursuant to paragraph (a) of this section shall have such excess quantity credited toward the next fiscal year's withholding obligation, if any, of such handler: *Provided*, That such credit shall be applicable only (1) if the restricted percentage established pursuant to § 929.52 was modified pursuant to § 929.53; (2) to the extent such excess was disposed of prior to such modification; and (3) after such handler furnishes the committee with such information as it prescribes regarding such withholding and disposition.

[27 FR 8101, Aug. 15, 1962, as amended at 29 FR 6617, May 21, 1964; 38 FR 29801, Oct. 29, 1973]

§ 929.55 Interhandler transfer.

(a) Transfer of cranberries from one handler to another may be made without prior notice to the committee, except during a period when a volume regulation has been established. If such transfer is made between handlers who have packing or processing facilities located within the production area, the assessment and withholding obligations provided under this part shall be assumed by the handler who agrees to meet such obligation. If such transfer is to a handler whose packing or processing facilities are outside of the production area, such assessment and withholding obligation shall be met by the handler residing within the production area.

(b) All handlers shall report all such transfers to the committee on a form provided by the committee four times a year or at other such times as may be recommended by the committee and approved by the Secretary.

(c) The committee may establish, with the approval of the Secretary, rules and regulations necessary for the

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implementation and operation of this section.

[38 FR 29801, Oct. 29, 1973, as amended at 57 FR 38750, Aug. 27, 1992]

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

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

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

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

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

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

(b) Any handler may make a written request to the committee for the release of all or part of the cranberries he is withholding from handling pursuant to § 929.54(a). Each such request shall state, in addition to all other information as may be prescribed by the committee, the quantity of cranberries for which release is requested and shall be accompanied by a deposit (in cash, or a cashier's or certified check made payable to the Cranberry Marketing Committee) in an amount equal to the

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product of the number of barrels stated in the request multiplied by the then effective amount per barrel to be deposited. If the committee determines such request is properly filled out, is accompanied by the required deposit, and contains a certification that the handler is withholding such cranberries, it shall release to such handler the quantity of cranberries specified in his request. Such determination shall be made not later than 72 hours after the request is received by the committee.

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

(d) In the event any portion of the funds deposited with the committee pursuant to paragraph (a) of this section cannot, for reasons beyond the committee's control, be expended to purchase unrestricted (free percentage) cranberries to replace those released, such unexpended funds shall, after deducting expenses incurred by the committee in connection with the purchase and disposition of cranberries pursuant to paragraph (c) of this section, be offered and paid or credited proportionately to handlers on the basis of the

volume of cranberries withheld by each handler. In the event that the offer is not accepted or directions given by a handler to credit the funds within 90 days, the funds will accrue to the committees's general account.

(e) Cranberries purchased by the committee to replace released cranberries shall be inspected and shall meet such standards as are prescribed for withheld cranberries.

(f) Inspection of withheld cranberries released to a handler is not required.

[29 FR 6618, May 21, 1964, as amended at 38 FR 29801, Oct. 29, 1973; 43 FR 29765, July 11, 1978]

§ 929.57 Outlets for restricted cranberries.

(a) Except as provided in this section and in §929.56, cranberries withheld from handling may be disposed of only through diversion to such outlets as the committee, with the approval of the Secretary, finds are noncompetitive to outlets for unrestricted (free percentage) cranberries.

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

§ 929.58 Exemption.

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

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

§ 929.59 Excess cranberries.

(a) Whenever the Secretary establishes an allotment percentage pursuant to §929.52, handlers shall be notified by the committee of such allotment percentage and shall withhold

from handling such cranberries in excess of the total of their growers' annual allotments obtained during such period. Such withheld cranberries shall be defined as "excess cranberries" after all unused allotment has been allocated.

(1) Excess cranberries received by a handler shall be made available for inspection by the committee or its representatives from the time they are received until final disposition is completed. Such excess cranberries shall be identified in such manner as the committee may specify in its rules and regulations with the approval of the Secretary.

(2) All matters dealing with handler-held excess cranberries shall be in accordance with such rules and regulations established by the committee, with the approval of the Secretary.

(b) Prior to January 1, or such other date as recommended by the committee and approved by the Secretary, handlers holding excess cranberries shall submit to the committee a written plan outlining procedures for the systematic disposal of such cranberries in the outlets prescribed in § 929.61.

(c) Prior to March 1, or such other date as recommended by the committee and approved by the Secretary, all excess cranberries shall be disposed of pursuant to § 929.61.

[57 FR 38750, Aug. 27, 1992]

REPORTS AND RECORDS

§ 929.60 Handling for special purposes.

Regulations in effect pursuant to §§ 929.10, 929.41, 929.47, 929.48, 929.49, 929.51, 929.52, or 929.53 or any combination thereof, may be modified, suspended, or terminated to facilitate handling of excess cranberries for the following purposes:

- (a) Charitable institutions;
- (b) Research and development projects described pursuant to § 929.61;
- (c) Any nonhuman food use;
- (d) Foreign markets, except Canada; and
- (e) Other purposes which may be recommended by the committee and approved by the Secretary.

[57 FR 38750, Aug. 27, 1992]

§ 929.61 Outlets for excess cranberries.

(a) *Noncommercial outlets.* Excess cranberries may be disposed of only in the following noncommercial outlets that the committee finds, with the approval of the Secretary, meet the requirements outlined in paragraph (c) of this section:

- (1) Charitable institutions; and
- (2) Research and development projects approved by the U.S. Department of Agriculture for the development of foreign and domestic markets, including, but not limited to, dehydration, radiation, freeze drying, or freezing of cranberries.

(b) *Noncompetitive outlets.* Excess cranberries may be sold to outlets that the committee finds, with the approval of the Secretary, are noncompetitive with established markets for regulated cranberries and meet the requirements outlined in paragraph (c) of this section. These outlets include:

- (1) Any nonhuman food use; and
- (2) Foreign markets, except Canada.

(c) *Requirements for diversion.* The following requirements, as applicable, shall be met by the handler diverting excess cranberries into noncompetitive or noncommercial outlets:

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

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

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

(4) *Diversion to foreign markets, except Canada.* A copy of the on-board bill of lading shall be submitted to the committee showing the amount of cranberries loaded for export.

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

(e) The committee, with the approval of the Secretary, may establish as

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needed rules and regulations for the implementation and operation of this section.

[57 FR 38751, Aug. 27, 1992]

§ 929.62 Reports.

(a) *Inventory.* Each handler shall, upon request of the committee, file promptly with the committee a certified report, showing such information as the committee shall specify with respect to any cranberries and cranberry products which were held by him on such date as the committee may designate.

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

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

(d) *Withholding.* Each handler shall, upon request of the committee, file promptly with the committee a certified report showing, for such period as the committee may specify, the total quantity of cranberries withheld from handling, in accordance with § 929.54, the portion of such withheld cranberries on hand, and the quantity and manner of disposition of any such withheld cranberries disposed of.

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

[27 FR 8101, Aug. 15, 1962. Redesignated at 57 FR 38750, Aug. 27, 1992]

§ 929.63 Records.

Each handler shall maintain such records of all cranberries acquired, withheld from handling, handled, and otherwise disposed of as will substantiate the required reports and as may be prescribed by the committee. All such records shall be maintained for

not less than three years after the termination of the crop year in which the transactions occurred or for such lesser period as the committee may direct.

[27 FR 8101, Aug. 15, 1962. Redesignated at 57 FR 38750, Aug. 27, 1992]

§ 929.64 Verification of reports and records.

For the purpose of assuring compliance and checking and verifying records and the reports filed by handlers, the committee, through its duly authorized agents, shall have access to any premises where applicable records are maintained, where cranberries are received, stored, handled, and otherwise disposed of and, at any time during reasonable business hours, shall be permitted to inspect such handler premises and any and all records of such handlers with respect to matters within the purview of this part.

[27 FR 8101, Aug. 15, 1962. Redesignated at 57 FR 38750, Aug. 27, 1992]

§ 929.65 Confidential information.

All reports and records furnished or submitted by handlers to the committee and its authorized agents which include data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handler from whom received, shall be received by and at all times kept in the custody and under the control of one or more employees of the committee, who shall disclose such information to no person other than the Secretary.

[27 FR 8101, Aug. 15, 1962. Redesignated at 57 FR 38750, Aug. 27, 1992]

MISCELLANEOUS PROVISIONS

§ 929.66 Compliance.

Except as provided in this part, no person shall handle cranberries, the handling of which has been prohibited by the Secretary in accordance with the provisions of this part; and no person shall acquire or handle cranberries except in conformity with the provisions of this part and the regulations issued hereunder.

[27 FR 8101, Aug. 15, 1962. Redesignated at 57 FR 38750, Aug. 27, 1992]

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§ 929.67 Right of the Secretary.

The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

[27 FR 8101, Aug. 15, 1962. Redesignated at 57 FR 38750, Aug. 27, 1992]

§ 929.68 Effective time.

The provisions of this part, and of any amendment thereto, shall become effective at such time as the Secretary may declare above his signature and shall continue in force until terminated in one of the ways specified in § 929.68.

[27 FR 8101, Aug. 15, 1962. Redesignated at 57 FR 38750, Aug. 27, 1992]

§ 929.69 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner in which he may determine.

(b) The Secretary shall terminate or suspend the operation of any or all of the provisions of this part whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part whenever he finds by referendum or otherwise that such termination is favored by a majority of the growers: *Provided*, That such majority has, during the current fiscal year, produced more than 50 percent of the volume of the cranberries which were produced within the production area. Such termination shall become effective on the last day of July subsequent to the announcement thereof by the Secretary.

(d) The Secretary shall conduct a referendum during the month of May 1975

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to ascertain whether continuance of this part is favored by the growers as set forth in paragraph (c) of this section. The Secretary shall conduct such a referendum during the month of May of every fourth year thereafter.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be effective.

[27 FR 8101, Aug. 15, 1962, as amended at 33 FR 11642, Aug. 16, 1968. Redesignated at 57 FR 38750, Aug. 27, 1992]

§ 929.70 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

[27 FR 8101, Aug. 15, 1962. Redesignated at 57 FR 38750, Aug. 27, 1992]

§ 929.71 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which

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shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued hereunder, or (b) release or extinguish any violation of this part or any regulation issued hereunder, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

[27 FR 8101, Aug. 15, 1962. Redesignated at 57 FR 38750, Aug. 27, 1992]

§ 929.72 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

[27 FR 8101, Aug. 15, 1962. Redesignated at 57 FR 38750, Aug. 27, 1992]

§ 929.73 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

[27 FR 8101, Aug. 15, 1962. Redesignated at 57 FR 38750, Aug. 27, 1992]

§ 929.74 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

[27 FR 8101, Aug. 15, 1962. Redesignated at 57 FR 38750, Aug. 27, 1992]

§ 929.75 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or

agent, except for acts of dishonesty, willful misconduct, or gross negligence.

[27 FR 8101, Aug. 15, 1962. Redesignated at 57 FR 38750, Aug. 27, 1992]

§ 929.76 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

[27 FR 8101, Aug. 15, 1962. Redesignated at 57 FR 38750, Aug. 27, 1992]

Subpart—Rules and Regulations

§ 929.101 Minimum exemption.

The requirements of § 929.41 *Assessments* and § 929.54 *Withholding* shall not apply to any handler in a fiscal year during which the handler handles not more than a total of 300 barrels of cranberries.

[53 FR 12374, Apr. 14, 1988]

§ 929.102 Procedure to determine quantity of screened cranberries in unscreened lots.

The determination pursuant to § 929.54 of the quantity of screened cranberries contained in an unscreened lot shall be made in accordance with the following procedure and on the basis of a sample of representative boxes comprising no less than 2 percent of the cranberries in the lot:

(a) The cranberries in the sample are cleaned to remove chaff, and the boxes of cleaned berries are weighed. The weight of the boxes themselves is then deducted to determine the weight of the cleaned berries. The weight of the cleaned berries is divided by the number of boxes in the sample to obtain the net weight of cleaned cranberries per box. The net weight is multiplied by the number of boxes in the lot to obtain the net weight of the berries in the unscreened lot.

(b) The cleaned berries are run through a separator, having a $\frac{3}{32}$ inch screen, and with the bounce boards in the lowest position.

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(c) The berries from the lower three bounce boards are rerun through the separator.

(d) The berries from the upper four bounce boards are thoroughly mixed and a random cupful (approximately 1 pint) is used to determine, from a count of the sound and unsound berries, the percentage of sound berries in the lot.

(e) Such percentage is adjusted by increasing it by 5 percentage points but not to exceed a total of 100 percent. (This increase makes the sample comparable to lots of screened cranberries, as such lots generally contain an average of 5 percent unsound berries.)

(f) The net weight, as determined in accordance with paragraph (a) of this section, of the berries in the unscreened lot, is multiplied by the adjusted percentage to obtain the quantity of screened cranberries in the unscreened lot.

[28 FR 11611, Oct. 31, 1963]

§ 929.103 Inspection procedure.

(a) Inspection of withheld cranberries shall be limited to any plant, storage facility, or other location, within the production area where facilities suitable to the inspection service are available for sampling, weighing, and inspection of cranberries.

(b) The handler offering any lot of cranberries for inspection shall furnish the necessary labor and pay the costs of moving, weighing, and otherwise making available the sample the inspector chooses for inspection. The size of the sample shall be determined by the inspector. In the case of inspection of a lot of unscreened cranberries, the sample shall be screened by the handler under the supervision of the inspector and the inspection certificate shall show the quantity of cranberries in such lot which meets the requirements established for withheld cranberries pursuant to § 929.54(c).

[28 FR 11611, Oct. 31, 1963]

§ 929.104 Outlets for excess cranberries.

(a) In accordance with § 929.61, excess cranberries may be disposed of only in the following noncommercial or non-competitive outlets, but only if the re-

quirements in paragraph (b) of this section are complied with:

(1) Foreign countries, except Canada.

(2) Charitable institutions.

(3) Any nonhuman food use.

(4) Research and development projects 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.

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

[65 FR 42614, July 11, 2000, as amended at 66 FR 34351, June 27, 2001]

§ 929.105 Reporting.

(a) Each report required to be filed with the committee pursuant to §§ 929.6 and 929.48 shall be mailed to the committee office or delivered to that office. If the report is mailed, it shall be deemed filed when postmarked.

(b) Certified reports shall be filed with the committee, on a form provided by the committee, by each handler not later than January 5, May 5, and August 5 of each fiscal period and by September 5 of the succeeding fiscal period showing:

(1) The total quantity of cranberries the handler acquired and the total quantity of cranberries and *Vaccinium oxycoccus* cranberries the handler handled from the beginning of the reporting period indicated through December 31, April 30, July 31, and August 31, respectively, and

(2) The respective quantities of cranberries and *Vaccinium oxycoccus* cranberries and cranberry products and *Vaccinium oxycoccus* cranberry products held by the handler on January 1, May 1, August 1, and August 31 of each fiscal period.

[53 FR 12374, Apr. 14, 1988, as amended at 61 FR 30498, June 17, 1996; 62 FR 916, Jan. 7, 1997]

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§ 929.106 Fiscal period.

The fiscal period specified in § 929.6 of this part which began September 1, 1968, and ends on August 31, 1969, is changed to include the period of August 1, through August 31, 1968. Thereafter, the fiscal period will begin on September 1 and end on August 31 of the following year.

[33 FR 16492, Nov. 13, 1968]

§ 929.110 Transfers or sales of cranberry acreage.

(a) Sales or transfers of cranberry acreage shall be reported by the transferor and transferee to the committee, in writing, on forms provided by the committee. Completed forms shall be sent to the committee office not later than 30 days after the transaction has occurred.

(b) Upon transfer of all or a portion of a grower's acreage, the committee shall be provided with certain information on the forms it will provide to the parties. The transferor and transferee must provide the following information:

(1) Crop records for the acreage involved;

(2) Annual production and sales for each crop year on the acreage involved, either in total, or for each individual parcel; and

(3) Such other information as the committee deems necessary.

(c) Cranberry acreage sold or transferred shall be recognized in connection with the issuance of sales history as follows:

(1) If a grower sells all of the acreage comprising the entity, all prior sales history shall accrue to the purchaser;

(2) If a grower sells only a portion of the acreage comprising the entity from which prior sales have been made, the purchaser and the seller must agree as to the amount of sales history attributed to each portion and shall provide, on a form provided by the committee, sufficient information so that sales are shown separately by crop year. However, the sales history attributed to each portion shall not exceed the total sales history, as determined by the committee, for such acreage at the time of transfer.

(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.

[59 FR 36023, July 15, 1994, as amended at 66 FR 34351, June 27, 2001]

§ 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.

[66 FR 34351, June 27, 2001]

§ 929.142 Reserve.

(a) It is necessary and appropriate to establish and maintain a reserve in an amount not to exceed approximately one fiscal period's operational expenses

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to be used in accordance with the provisions of § 929.42 of the marketing agreement and this part, and

(b) Assessments collected for each of the fiscal periods ended July 31, 1963; July 31, 1965; July 31, 1966; and July 31, 1967, were in excess of expenses for such periods. The committee is hereby authorized to place excess funds in said reserve.

[28 FR 11052, Oct. 16, 1963, as amended at 32 FR 13253, Sept. 20, 1967. Redesignated at 44 FR 73011, Dec. 17, 1979]

§ 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

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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.

[66 FR 34351, June 27, 2001]

§ 929.150 Transfer or assignment of sales history.

(a) If indebtedness is incurred with regard to the acreage to which the cranberries are attributed, and on which a sales history is established, the sales history holder may transfer or assign the sales history solely as security for the loan. During the existence of such indebtedness no further transfer or assignment of sales history by the sales history holder shall be recognized by the committee unless the lender agrees thereto: Provided, That a copy of such loan agreement or assignment shall be filed with the committee before any right expressed therein, with regard to the sales history, shall be recognized by the committee under this paragraph (a).

(b) This regulation shall not in any way be construed to affect the right of the Secretary of Agriculture to amend, modify or terminate this regulation, or the marketing order under which it is issued as provided by law.

[34 FR 705, Jan. 17, 1969, as amended at 59 FR 36023, July 15, 1994]

§ 929.152 Delinquent assessments.

There shall be a late payment charge of five percent and an interest charge of 1½ percent per month applied to any assessment not received at the committee's office before the end of the month in which such assessment was first invoiced to the handler: *Provided*, That if an assessment is first invoiced later than the 15th of the month, no late payment or interest charge shall be levied if such assessment is received at the committee office by the end of the following month in which the assessment was first invoiced to the handler.

[60 FR 2, Jan. 3, 1995]

§ 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.

[66 FR 34351, June 27, 2001]

§ 929.160 Public member eligibility requirements and nomination procedures.

(a) Public member and alternate member candidates shall not represent an agricultural interest and shall not have a financial interest in, or be associated with the production, processing, financing, or marketing of cranberries.

(b) Public member and alternate member candidates should be able to devote sufficient time to attend committee activities regularly and to familiarize themselves with the background and economies of the cranberry industry.

(c) Names of candidates together with evidence of qualification for public membership on the Cranberry Marketing Committee shall be submitted to the committee at its business office.

(d) Questionnaires shall be sent by the committee to those persons submitted as candidates to determine their eligibility and interest in becoming a public member.

(e) The names of persons nominated by the committee for the public member and alternate positions shall be submitted to the Secretary with such information as deemed pertinent by the committee or as requested by the Secretary.

(f) Public members shall serve a two-year term which coincides with the term of office of industry members of the committee.

[44 FR 16884, Mar. 20, 1979, as amended at 53 FR 12374, Apr. 14, 1988]

EDITORIAL NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .300 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

Subpart—Assessment Rate

§ 929.236 Assessment rate.

On and after September 1, 2001, an assessment rate of \$0.18 per barrel is established for cranberries.

[67 FR 6846, Feb. 14, 2002; 67 FR 14844, Mar. 28, 2002]

§ 929.250

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

The marketable quantity for the 2000–2001 crop year is set at 5.468 million barrels and the allotment percentage is designated at 85 percent. The marketable quantity may be adjusted to retain the 85 percent allotment percentage if the total industry sales history increases due to established growers receiving additional sales history on acreage with four years sales or less.

[65 FR 42615, July 11, 2000]

§ 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.

[66 FR 34352, June 27, 2001]

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

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