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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket Nos. AO-341-A6; FV02-929-1]

Cranberries Grown in the States of Massachusetts, et al.; Secretary's Decision and Referendum Order on Proposed Amendment of Marketing Agreement and Order No. 929

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes amendments to the marketing agreement and order for cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, and provides growers and processors with the opportunity to vote in a referendum to determine if they favor the changes. The amendments are based on those proposed by the Cranberry Marketing Committee (Committee), which is responsible for local administration of the order and other interested parties representing cranberry growers and handlers. This action is a partial decision on six of the proposed amendments listed in the notice of hearing. It has been determined that these amendments need to be expedited. The amendments include increasing Committee membership and related amendments. The proposed amendments are intended to improve the operation and functioning of the cranberry marketing order program.

DATES: The referendum will be conducted from January 19 to January 30, 2004. The representative period for the purpose of the referendum is September 1, 2002, through August 31, 2003. Pursuant to the Paperwork Reduction Act, comments on information collection burden that

would result from this proposal must be received by February 10, 2004.

ADDRESSES: Interested persons are invited to submit written comments concerning the information collection burden. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, or Fax: (202) 720-8938. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone (202) 720-2491; Fax (202) 720-8938.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of hearing issued on April 23, 2002, and published in the May 1, 2002, issue of the **Federal Register** (67 FR 21854).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

The proposed amendments were formulated based on the record of a public hearing held in Plymouth, Massachusetts on May 20 and 21, 2002; in Bangor, Maine on May 23, 2002; in Wisconsin Rapids, Wisconsin on June 3 and 4, 2002; and in Portland, Oregon on June 6, 2002. The hearing was held to consider the proposed amendment of Marketing Agreement and Order No. 929, regulating the handling of 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, hereinafter referred to collectively as the "order." The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900). The notice of hearing contained numerous proposals submitted by the Committee, other interested parties and one proposed by the Agricultural Marketing Service (AMS). This action is a partial decision addressing a portion of the amendments listed in the notice of hearing that have been determined necessary to be expedited. Other proposed amendments listed in the notice of hearing will be addressed in a separate decision.

The proposed amendments included in this decision would: Increase Committee membership to 13 grower members, 1 public member, 9 grower alternate members and 1 public alternate member; incorporate a "swing" position whereby the group (either the major cooperative or growers representing other than the major cooperative) which handles more than 50 percent of the total volume produced is assigned an additional seat; revise nomination and selection provisions of the order, as well as quorum and voting requirements, to reflect the change in Committee membership; authorize tenure limitations to be restarted with the seating of the expanded Committee; re-establish districts and allocate the revised membership among those districts; allow the Committee to request tax identification numbers for voting purposes; authorize mail nominations for independent members; revise the alternate member provisions to reflect the change in Committee membership and for clarity purposes; and require Committee member nominee disclosure of non-regulated cranberry production.

The Fruit and Vegetable Programs of AMS proposed to allow such changes as may be necessary to the order, if any of the proposed amendments are adopted, so that all of the order's provisions conform to the effectuated amendments.

Thirty-two witnesses testified at the hearing. These witnesses represented

cranberry growers and handlers in the States currently covered by the order and in Maine. Some witnesses supported the proposed amendments, while others were opposed to the recommended changes or suggested modifications to them.

At the conclusion of the hearing, the Administrative Law Judge fixed August 9, 2002, as the final date for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing on proposal numbers 1, 3, 7 and 13. The Administrative Law Judge fixed September 13, 2002, as the final date for interested persons to file proposed findings and conclusions or written arguments and briefs based on evidence received at the hearing on all other proposals. This briefing period was extended until September 20, 2002. A total of 17 briefs were filed, 16 of which addressed proposals in this decision.

Regarding the proposals being discussed in this decision, the Committee filed a brief in support of its proposed amendments. Linda and Paul Rinta and Stephen L. Lacey (attorney for Clement Pappas & Company and Cliffstar Corporation) filed briefs requesting that all proposals relating to Committee structure be considered together. The Cape Cod Cranberry Growers' Association (CCCGA) filed a brief opposing a portion of proposal on the Committee structure. Ranger Cranberry Co., LLC, a Wisconsin grower, filed a brief supporting a modification to the Committee structure. Nine of the 11 briefs recommended that growers from the major cooperative be required to vote independently for Committee representatives rather than the current method of nomination by the cooperative management. All discussions on briefs pertaining to the proposals being recommended in this decision have been considered.

Proposals Being Recommended in this Decision

The Committee's proposal to amend the Committee structure included: Increasing the membership; incorporating a member-at-large position; revising nomination and selection procedures, as well as quorum and voting requirements to reflect the increase in Committee membership; authorizing tenure limitations to be restarted with the seating of the expanded Committee; authorizing mail nominations; allowing the Committee to request tax identification numbers for voting purposes; and changing how alternates may fill positions on any member's absence. This proposal

provided for amendments to §§ 929.20, 929.21, 929.22, 929.23, 929.27 and 929.32.

Two other interested parties submitted proposals relating to restructuring the Committee. Stephen L. Lacey on behalf of Clement Pappas and Company, Inc., and Cliffstar Corporation proposed an amendment to § 929.22 to alter the way nominations of cooperative members on the Committee are conducted by requiring cooperative nominees to be selected through an election process administered by the Committee. The Wisconsin Cranberry Cooperative proposed amendments to §§ 929.22 and 929.23 to allow for equitable representation for all cooperative marketing associations in the industry.

Stephen Lacey also proposed an amendment to § 929.20 to require Committee member disclosure of unregulated production.

Material Issues

The material issues in this decision presented on the record of the hearing are as follows:

1. Whether to increase Committee membership to 13 grower members, 1 public member, 9 grower alternate members and 1 public alternate member; incorporate a "swing" position whereby the entity (either the major cooperative or other than the major cooperative) which handles more than 50 percent of the total volume produced is assigned an additional seat; incorporate nomination and selection procedures to reflect the change in Committee membership; allow the Committee to request tax identification numbers for voting purposes; authorize mail nominations for independent members; modify the quorum and voting requirements to reflect the increased number of Committee members; restart tenure limitations to begin with the seating of the expanded Committee; and revise and clarify which alternates may fill positions in any member's absence.

2. Whether to require Committee member disclosure of non-regulated production.

3. Whether to expedite the decision on any or all of the proposals by omitting the recommended decision and proceeding directly to the Secretary's decision and referendum order.

Findings and Conclusions

The following findings and conclusions on the material issues are based on the record of the hearing.

Material Issue Number 1

Section 929.20 should be amended to increase Committee membership to 13 grower members, 1 public member, 9 grower alternate members and 1 public alternate member and to reestablish districts. This section should also be amended to incorporate a "member-at-large" position whereby the group (either growers representing the major cooperative or growers representing entities other than the major cooperative) that handles more than 50 percent of the total volume produced is assigned an additional seat.

Section 929.21 should be amended to restart tenure limitations with the seating of the expanded Committee and allow the initial members of the newly formed Committee to be seated for at least one term.

Section 929.22 should be amended to revise nomination procedures to reflect the change in Committee membership and to allow the reestablished Committee to be nominated as soon as possible.

Section 929.22 should be amended to allow the Committee to request tax identification numbers for voting purposes.

Section 929.22 should be amended to authorize mail nominations for growers who represent entities other than the major cooperative.

Section 929.27 should be amended to revise and clarify which alternate members can be seated in place of absent members.

Section 929.32 should be amended to incorporate quorum and voting requirements to reflect the increased number of Committee members.

Currently, the Committee is composed of 7 grower members, each with an alternate, and 1 public member and alternate. The public member position is not required. The production area is divided into 4 districts and at least 1 member and alternate represent each district. The term of office for members and alternate members is 2 years beginning on August 1 of each even-numbered year, and members are limited to 3 consecutive terms. Those members who serve 3 consecutive terms are not eligible to serve as either a member or alternate member on the Committee until they have been off the Committee for at least 1 full two-year term. There are no tenure requirements for alternate members.

Representation is divided among 4 districts. District 1 includes the States of Massachusetts, Rhode Island and Connecticut. District 2 includes the State of New Jersey and Long Island in the State of New York. District 3

includes the States of Wisconsin, Michigan and Minnesota. District 4 includes the States of Oregon and Washington.

Any cooperative marketing association that handles more than two-thirds of the total volume of cranberries produced during the fiscal period during which nominations are made, or affiliated growers, nominates 4 persons to serve as members and 4 persons to serve as alternate members. At least one nominee must be from Oregon or Washington (District 4). For growers not affiliated with the cooperative marketing association, the committee holds nomination meetings in Districts 1, 2 and 3 to select nominees for the remaining 3 positions. District 4 growers participate in the District 3 nomination procedure by mail ballot. Growers are entitled to cast one vote for the nominee in his or her respective district. USDA selects the members from the nominations made.

Five members constitute a quorum and any action of the Committee requires at least five concurring votes. If the public member is present and chooses to vote, six members constitute a quorum and any Committee actions require at least six concurring votes.

Section 929.27 sets forth that an alternate member shall act in the place and stead of his or her member. In the event both the member and alternate are absent, the Committee may designate any other alternate member to serve in the absent member and alternate's place. This provision also provides that no more than 4 cooperative members or alternates can serve as members at the same meeting and that the grower alternate cannot serve for a non-industry member.

For the 2002 selection process, no cooperative marketing association handled more than two-thirds of the volume of cranberries produced during the 2001–2002 year. The order does not specify how the Committee should be structured under this circumstance. The order provides that members and alternate members shall serve until their respective successors are selected and have been qualified. Therefore, the current cooperative members of the Committee representing the major cooperative, as previously selected, will remain seated until an amendment to the order, if any, is adopted to address this situation. Nominations and selections were made for the 3 independent member and alternate seats.

Increasing Committee Membership

The Committee proposed increasing Committee membership from 7 grower

members and 7 grower alternates to 13 grower members and 9 grower alternates. As in the current order, there would be 1 public member and alternate, but the public member position would be required. Six members would represent the cooperative and six members would represent independent growers. The remaining grower position would represent the group (either the cooperative or independents) that handled more than 50 percent of the volume of cranberries produced in the prior crop year.

The Committee's proposal retains 4 marketing order districts but recommends that they be reestablished to accommodate the expanded production area States.

District 1 would include Massachusetts, Rhode Island, Connecticut, New York and Maine. Currently, District 1 includes Massachusetts, Rhode Island and Connecticut. District 2 would include New Jersey and Delaware. Currently, District 2 includes New Jersey and Long Island in the State of New York. District 3 would remain unchanged and include Wisconsin, Michigan and Minnesota. District 4 would remain unchanged and include Oregon and Washington. The expansion of the production area is not being considered in this document. Therefore, for purposes of discussion, the existing districts and production area are being used in this decision.

Under the Committee's proposal, there would be 2 cooperative members (with 1 alternate member) and 2 independent members (with 1 alternate member) each for Districts 1 and 3. There would be 1 cooperative member and alternate member and 1 independent member and alternate member each for Districts 2 and 4. The member-at-large position would be selected from any of the marketing order districts.

Record evidence indicated that the additional representation in Districts 1 and 3 is based, in large part, on the percentage of the production these two districts represent. During the 2000 crop year, production in District 1 represented 35 percent, District 2 represented 9 percent, District 3 represented 46 percent and District 4 represented 10 percent of total cranberry production.

The Committee manager testified that increasing grower membership would provide more opportunities for a larger and more diverse group of growers to actively participate in the Committee process. He further testified that expansion of the membership is very important to ensuring that the industry

would benefit from new ideas, approaches, viewpoints, and perspectives brought to the complex environment facing the cranberry industry.

In support of increasing membership, a witness representing the major cooperative testified that the increased Committee size would allow for broader representation of growers from different producing areas while recognizing different volumes of cranberries being produced in different growing areas. He testified that without increasing the membership, it would be difficult to recognize the larger volume of cranberries produced in Wisconsin and Massachusetts without reducing representation from growing areas that produce lower volumes like New Jersey, Washington and Oregon.

The record revealed that the Committee appointed an amendment subcommittee in 1997 to deliberate on ways to improve the marketing order. On modifying Committee membership, many alternatives were discussed. Alternatives included leaving the membership at 8 and increasing the membership to 9, 11 or 13. The primary reason for agreeing on membership of 13 involved determining how to allocate membership among the districts. The subcommittee believed that it was important to recognize the larger growing areas by providing them with at least one additional member. Equally important was to provide opportunities for membership for smaller growing areas.

The subcommittee carefully considered increased costs. To compromise on this issue, the subcommittee recommended a lower number of alternates. In addition, discussions involved whether it was necessary for alternate members to attend every meeting. There were differing opinions on this, but most agreed that it was important for alternates to stay current with Committee activities so they are more prepared to serve as a member when needed.

Witnesses testified in opposition to the Committee's proposal. Two witnesses were opposed to the increase in Committee size. A Wisconsin grower/handler testified that the additional costs associated would be excessive. Another witness representing the views of the Wisconsin Cranberry Growers Association believed that increasing the number of Committee members could hinder the Committee's ability to make timely decisions and would increase program administrative costs, which are ultimately borne by the growers.

Other witnesses testified in opposition to the allocation of membership under the Committee's proposal. A Wisconsin grower/handler testified that this allocation was inequitable to independent growers in Wisconsin. He testified that membership should consistently be based on the volume of cranberries produced. This witness was primarily concerned that under the Committee's proposal, the State of Wisconsin would be grossly underrepresented on the Committee while other States would be significantly overrepresented. He offered alternatives that would provide the Wisconsin district with an additional seat by transferring a seat from one of the other districts.

Another alternative discussed suggested that the number of growers should also be considered in allocating membership. Under this scenario, the State of Massachusetts would be allocated an additional seat.

A witness representing the Wisconsin Cranberry Grower's Association, also agreed that membership should be modified to be proportional to production. He suggested 3 districts be established providing seats based on volume of cranberries produced and by association with independent and cooperative growers.

Another Wisconsin grower proposed retaining the current 8 member Committee. She proposed having 3 districts—East coast, Midwest and West coast. There would be no allocation between cooperative and independent growers. Two members would be allocated for each district, with 1 swing vote for the growers affiliated with the handler who handled more than 50 percent of the crop.

Record evidence supports modifying the Committee structure as proposed by the Committee. Increasing membership on the Committee should allow more growers to participate in the decision-making processes of the Committee. The benefits of increasing membership outweigh associated increased costs by providing more growers opportunities to have a voice on decisions that impact their livelihood. In addition, increasing membership will allow for more diverse membership and new and different ideas on the direction the Committee should follow in the future. Testimony indicated that a larger Committee would enable a larger number of growers to better understand how the marketing order works and the rationale behind the decisions. More growers becoming familiar with these complicated regulatory issues can only help to further disseminate information to even more industry members. Allowing more

opportunities for growers to actively participate in this process will benefit the progress of the Committee.

Increasing membership will also allow larger representation of growing areas that produce the majority of the volume of cranberries and still recognize the importance of all producing areas, regardless of size.

Allocating the membership equally between the largest cooperative and the rest of the industry will provide an appropriate balance between representatives in the industry who may have different ideas on Committee determinations based on their affiliation. With this allocation, no group can impose their will on the other. Committee recommendations will need to have more than the votes of one group to pass. In addition, the member-at-large position will allow for the dominant group to be recognized by providing that group with an additional seat.

Having 2 members from the districts that represent Wisconsin and Massachusetts reasonably recognizes the fact that those districts have a great economic interest at stake when more significant actions, such as volume regulation, are considered by the Committee. It is important to take into account the significance of the smaller growing regions, while recognizing that the potential scale of the impact increases with the volume of cranberries produced and regulated. In this regard, the Committee's proposal improves the current structure of the Committee.

Allowing the smaller volume districts to have 1 member recognizes their significance to the industry. Using volume alone as a means of determining Committee membership does not take into consideration smaller growing regions. Although volume is certainly one criterion to be considered, opportunities must be provided for input by all segments of the industry.

The proponents of providing District 3 an additional independent member based on the State of Wisconsin's comparative volume produced based their opinion solely on volume of production. However, USDA concludes, based on the reasons mentioned above, that providing an additional seat for District 3 at the exclusion of membership from Districts 2 or 4 is not desirable.

Similar concerns would result with regard to the alternative proposed at the hearing to have 3 districts and no differentiation of membership based on cooperative or independent members. The proponent of this alternative was not concerned that it would be possible for the largest handler's growers to win

all the seats. The chances for that happening would be real under this scenario and must be considered. Although the approach is simple and keeps the membership at its current level, this alternative could result in the undesirable result of one entity having every seat.

The increase in Committee membership will likely increase costs to the Committee with the additional members attending meetings. Currently, 16 representatives generally attend meetings, as all alternates are entitled to attend each meeting. With a 14 member Committee and 9 alternates, there is the potential that costs will increase to send an additional 7 persons to meetings if all alternates attend. However, the benefits of broadening the membership of the Committee and equitably allocating seats would outweigh these increased costs. Since the implementation of volume regulations, more growers are expressing interest in being a part of the Committee's recommendations. Expansion of the Committee will allow more growers the opportunity to be involved in the process. The Committee's recommendation to reduce the number of alternates will provide appropriate district coverage for members that cannot attend meetings, while taking costs into account.

By increasing the membership to 14 and establishing 4 districts as proposed by the Committee, regional representation will be maintained and additional representation to the largest growing districts will be provided. Committee and subcommittee deliberations on this issue were extensive and many alternatives were discussed. The Committee recommended the most equitable number and allocation of Committee membership while considering associated costs.

Regarding the public member and alternate position, the Committee proposed requiring that position to be a part of the administrative body as opposed to the current structure where that position is not required. There was no opposition testimony on this, and the record evidence is that the public member's views are an important aspect of the Committee's decision making and should therefore be required.

For the above reasons, it is recommended that § 929.20 be amended to increase Committee membership to 13 grower members, 1 public member, 9 grower alternates and 1 public alternate and to reestablish districts to accommodate the additional members. Included in the 13 grower members will be one member-at-large position (who

will have an alternate), which will be discussed later in this decision. Of the remaining 12 grower members, 6 will represent the major cooperative and 6 will represent growers from groups other than the major cooperative. Four districts will be established as follows:

District 1 will represent the States of Massachusetts, Rhode Island and Connecticut. There will be 2 members from the major cooperative and 1 alternate member, and 2 members from other than the major cooperative and 1 alternate member.

District 2 will represent the State of New Jersey and Long Island in the State of New York. There will be 1 member from the major cooperative and 1 alternate member, and 1 member from other than the major cooperative and 1 alternate member.

District 3 will represent the States of Wisconsin, Michigan, and Minnesota. There will be 2 members from the major cooperative and 1 alternate member, 2 members from other than the major cooperative and 1 alternate member.

District 4 will represent the States of Oregon and Washington. There will be 1 member from the major cooperative and 1 alternate member, 1 member from other than the major cooperative and 1 alternate member.

The member-at-large position can be from any of the marketing order districts.

The order language should also provide that the Committee may establish, with USDA's approval, rules and regulations for the implementation and operation of this section. The Committee recommended this provision in the event a clarification or procedural change was needed in the future.

Nomination Procedures

With the recommended expansion of the Committee and the establishment of a member-at-large position, it is necessary to modify the nomination procedures to correspond to the new Committee structure.

Allocation of Membership

The Committee's proposed amendment to the nomination procedures allocates membership on the Committee based upon the expanded Committee.

As proposed by the Committee, if the cooperative marketing association handles more than 50 percent of the total volume of cranberries produced, USDA would select 6 cooperative producer members representing growers from each of the 4 districts, 1 member-at-large cooperative producer member from any of the marketing order districts, 6 independent producer

members representing growers from each of the 4 districts, 1 public member, 4 cooperative alternate members representing each of the 4 districts, 4 independent alternate members representing each of the 4 districts, 1 cooperative alternate at large member from any district, and 1 public member alternate.

If the cooperative marketing association handles less than 50 percent of the total volume of cranberries produced, the Committee proposed that USDA would select 6 cooperative producer members representing growers from each of the 4 districts, 6 independent producer members representing growers from each of the 4 districts, 1 member-at-large independent producer member from any of the marketing order districts, 1 public member, 4 cooperative alternate members representing each of the 4 districts, 4 independent alternate members representing each of the 4 districts, 1 independent alternate at large member from any district, and 1 public member alternate.

The Committee proposed that the 2 independent producer nominees receiving the highest number of votes cast in Districts 1 and 3 would be declared the independent member nominees from each of those districts. The nominee receiving the third highest number of votes cast in Districts 1 and 3 would be declared the independent alternate member nominee from each of those districts. The independent producer nominee receiving the highest number of votes cast in Districts 2 and 4 would be declared the independent member nominee from each of those districts. The independent producer nominee receiving the second highest number of votes cast in Districts 2 and 4 would be declared the independent alternate member nominee from each of those districts.

If the independent growers are entitled to the member-at-large position, a separate election would be conducted. The producer receiving the highest number of votes would be declared the independent member-at-large and the producer receiving the second highest number of votes would be declared the independent alternate member-at-large.

Testimony revealed that the amendment subcommittee appointed by the Committee deliberated at length on the nomination procedures and, after consensus was reached, recommended the proposal to the full Committee.

The Committee's proposal does not modify the current order language that authorizes the cooperative or its growers to nominate qualified persons for the allotted member and alternate positions.

Under the Committee's modified proposal, the group, either cooperative or independent, that handles more than 50 percent of the volume of cranberries handled, is awarded the member-at-large seat.

At the hearing, the Committee proposed modifying their amendment regarding the member-at-large position in two regards. First, there is currently more than one cooperative marketing association in the industry. The proposed amendment published in the notice of hearing did not take this into consideration. The Committee proposed amending this section by allowing the cooperative marketing association that handles the greatest volume of cranberries produced during the fiscal period in which nominations are made to nominate the cooperative members and alternates.

The second modification made by the Committee to the amendment published in the notice of hearing was to change the criteria used to determine which group is entitled to the member-at-large position from sales of cranberries to volume of cranberries handled. Testimony revealed that using handler sales could be problematic and administratively burdensome.

Witnesses opposed to combining the smaller cooperatives with the largest cooperative testified that if the volume handled by the two current cooperatives were combined to determine which group is awarded the additional seat, the largest cooperative could handle 49 percent of the crop and the smaller cooperative could handle 2 percent. Under that scenario, the major cooperative would be allocated the additional seat. Witnesses did not believe it would be equitable for the major cooperative to have less than 50 percent of the volume handled and be entitled to an additional seat. A witness for the smaller cooperative testified that if his cooperative cannot be represented in the group with the dominant cooperative, he believes his cooperative should be able to participate in the independent elections to provide more opportunities for his cooperative to be represented.

In addition, a brief filed on this issue on behalf of a handler states that the hearing record does not support establishing the threshold for determining which group is entitled to the member-at-large position as 50 percent. The brief states that the cooperative should be entitled to an additional seat only if it handles more than 66⅔ percent of the crop. In addition, the brief states that the Committee must demonstrate how conditions in the industry have changed

since the order was amended in 1962 and established a 66 $\frac{2}{3}$ percent threshold to limit the cooperative to 4 seats.

At the time the order was promulgated, the major cooperative handled more than 80 percent of the cranberries produced. The threshold for membership established at that time had nothing to do with allocating additional seats to a dominant group based on volume handled. The purpose of allowing 4 seats to the cooperative handling more than two-thirds of the volume of cranberries handled was to ensure their membership was limited to 4 seats, rather than guaranteeing them a certain number of seats. Conditions in the industry have changed in that the major cooperative now handles approximately two-thirds of the volume of cranberries produced. The current order language does not address how the industry should be structured in the event the major cooperative's percentage of volume handled falls below the two-thirds threshold and the order should be amended to address this inadequacy.

With the Committee's recommendation of the member-at-large position, it is intended that the dominant group in the industry be awarded an additional seat on the Committee. The Committee recognized that the potential scale of the impact of Committee recommendations increases with the volume of cranberries produced and regulated. For this reason, the Committee recommended assigning an additional seat to the dominant group. It seems eminently reasonable to use a simple majority as a means of determining which group is entitled to an additional seat. Therefore, the threshold for determining the dominant group should be fifty percent.

It has been concluded previously in this decision that the committee should be expanded. Therefore, it is necessary to revise current nomination provisions to accommodate the increase in seats on the committee. Nomination procedures for the independent members based on the increased membership as proposed by the Committee are found to be reasonable and are being recommended for adoption. Based on record evidence, smaller cooperatives should be allowed similar opportunities to be represented on the Committee. In addition, because the large cooperative will continue to nominate its members to the Committee if it chooses, it is necessary to modify this section of the nomination provisions regarding the independent and small cooperative seats.

It is important that all growers are provided the opportunity for membership on the Committee and have

a voice in who should represent their interests. Alternatives discussed included allowing the smaller cooperative to participate in the independent elections, as suggested by witnesses representing the small and large cooperative. Record evidence supports the notion that smaller cooperatives should not be combined with the dominant cooperative in the nomination process. They should be provided a greater opportunity to be represented on the Committee. Therefore, smaller cooperatives should be authorized to participate in the independent elections. It is expected that these growers can easily become a part of this nomination process, with minimal additional administrative expenses by the Committee. Although this process does not guarantee any smaller cooperatives membership on the Committee, it provides the same opportunities as those provided for the independent nominees.

In addition, it is reasonable that the threshold for determining which entity will be assigned the member-at-large position should be based on the volume handled by the major cooperative versus all others. This specifically addresses the concerns expressed at the hearing where the major cooperative could be assigned the member-at-large position while handling less than a majority of the crop. Only the major cooperative's volume handled will be counted to determine if they are the dominant group entitled to an additional seat on the Committee.

Since members of small cooperatives and independent growers will be participating in the same nomination process, it is necessary to modify the terminology used in defining the representation. In setting forth the nomination procedures and to determine which group is assigned the member-at-large position, the terminology will be changed from growers that represent "cooperatives" and "independents" to growers that represent the "major cooperative", which will be the dominant cooperative in the industry and growers that represent "other than the major cooperative".

For the above stated reasons, the Committee's proposal establishing nomination procedures for the expanded Committee is being recommended for adoption, with modifications as discussed.

Sales Versus Handle in Determining Member-at-Large Position

The Committee's proposal as set forth in the notice of hearing recommended using the percentage of handler sales of

cranberries as opposed to the percentage of volume handled in determining which entity is entitled to the member-at-large position. At the hearing, the Committee modified this portion of the proposal to use volume handled in determining the member-at-large position. According to testimony, the Committee realized that using handler sales could be problematic and administratively burdensome.

According to testimony from a grower who was a member of the amendment subcommittee, the reason the subcommittee recommended sales was that some of the independent handlers believed that their sales were climbing faster than the major cooperative. In addition, the subcommittee thought sales would be a better choice since the threshold for determining the dominant group was being established to 50 percent. This subcommittee member stated that there was much discussion and controversy on determining what constituted a sale, but that the consensus was that the first sale would be the one that counted.

One of the reasons the Committee modified their proposal from handler sales back to volume handled was that it would be difficult to gain consensus on how sales would be allocated. In its brief, the Committee stated that even the proponents of the amendment found the terms "sale" and "sold" confusing when questions arose about the possibility of double accounting of cranberry inventories when interhandler transfers occur. The debate centered on which handler would be entitled to take credit for the sale. When a handler buys from another handler, it is a sale for the first handler. When the second handler resells the cranberries to its customer, it is also a sale.

The Committee does report sales in its inventory reports for information purposes based on handler reports. The reporting of this data is for informational purposes only.

It was determined by the Committee that due to these complexities and the possibility of an increased administrative burden associated with using handler sales as a basis for assigning the additional seat, the threshold should be based on volume handled. Under the order, "Handle" means to can, freeze, or dehydrate cranberries with the production area, or to sell, consign, deliver, or transport fresh cranberries in or out of the production area. Handlers are accustomed to reporting figures based on handling of cranberries, and the Committee has an internal mechanism in place to track interhandler transfers

to ensure that double accounting does not take place.

This is not to be confused with grower sales which are used in establishing each grower's sales history. Grower deliveries (or sales) to handlers are easily tracked for the purposes of computing sales histories.

Record evidence does not support basing the member-at-large position on handler sales. The hearing record indicated there could be confusion and possible controversy in coming to consensus on determining what constitutes a sale. As stated in the record, handlers have been reporting volumes handled since the order was implemented. There have been very few problems associated with defining what is "handled". The Committee manager testified that there are safeguards in place that allow the Committee to crosscheck and assure that proper numbers are being reported.

Therefore, the member-at-large position should be determined by calculating the volume of cranberries handled.

Major Cooperative's Nomination of Members

Two proposed amendments submitted by industry representatives recommended altering the way the nominations of the major cooperative are currently authorized under the order by requiring cooperative nominees to be selected through an election process administered by the Committee.

The Committee's proposal did not modify the current order language that authorizes the cooperative, or its growers to nominate qualified persons for the allotted member and alternate positions.

Proponents of changing the nomination procedures for the cooperative testified that the major cooperative's growers should be provided the right to vote for a member on the Committee. It was testified that both groups should nominate members the same way.

A proponent testified that allowing the cooperative to nominate its members without direct input from its growers while independent members are nominated through a voting process has caused controversy in the industry and a lack of confidence in Committee activities. He testified that the cooperative nominees should be nominated in the same manner as independents, through an election process administered by the Committee.

The witness further testified that to allow the cooperative growers to elect their nominees would bolster industry confidence in the Committee, ensure

better representation of the interests of growers, and more clearly demonstrate desires of industry to USDA and the public. He testified that there may be a slight increase in Committee expenses if the cooperative is required to nominate its members through an election process due to additional nomination procedures. The number of Committee meetings would remain the same so costs would not increase in that regard. He believed that any increase would be outweighed by benefits of ensuring that the Committee better represents the needs of producers while bolstering public confidence in the Committee.

Another proponent, representing a small cooperative, testified that the Committee's proposal for nomination procedures where the small cooperatives are combined with the large cooperative would provide no opportunity for his organization to be represented on the Committee. He believed his proposal would address this by allowing all cooperative growers to nominate and vote for the cooperative representatives on the Committee.

A witness in support of the proposals testified that under the process that independent members are selected, if a grower is unhappy with the way an independent member voted during a meeting, the grower's recourse is to try to ensure that that member does not get elected during the next election. He testified that the major cooperative's growers do not have that opportunity because their members are nominated by management.

A representative of the major cooperative testified in opposition to the proposals. He stated that the current nomination procedures for cooperative members on the Committee are consistent with the principles of cooperative governance. He testified that the board of the major cooperative is charged with the responsibility and authority to oversee the operation of the cooperative's business. Committee nominations being made by their cooperative helps assure that they carefully consider the collective voice growers provide through their cooperative.

The order currently authorizes the cooperative marketing organization, or the growers affiliated therewith, to nominate its members. The cooperative has two options under this provision and currently chooses to allow the board to make the nominations. It also has the option of conducting an election of its growers to nominate the seats to the Committee.

Congress recognized the importance of cooperatives as representative of the collective voice of many growers when

the Act was enacted. It is not USDA's intent to regulate the internal operations of cooperative management through an amendment to the marketing order. The order authorizes the cooperative or its growers to nominate seats to the Committee. That discretion should remain with the cooperative.

Record evidence supports that the nomination by the cooperative for cooperative representatives to the Committee should remain unchanged in that the cooperative or the growers affiliated therewith, shall nominate its members. Therefore, the proposals to change the way the cooperative nominates its members are denied.

Tenure

The term of office for members and alternates on the Committee is currently 2 years. Committee members are limited to 3 consecutive terms. The Committee is proposing that the term limitations for the current members be reset. In its proposal, the Committee recommended that current Committee members who have not met the 3 consecutive term limitation and who are re-nominated and selected would be able to serve an additional 3 consecutive 2-year terms before becoming ineligible to serve on the Committee.

Testimony revealed that with the increase in Committee membership, a loss of a member solely due to term limitations could have an adverse impact on the Committee's decision-making abilities, particularly when there are new and inexperienced members selected for membership. Restarting term limitations when the expanded Committee is seated would ensure that experienced and knowledgeable members could remain on the Committee. There was no opposition testimony regarding resetting term limits at the hearing.

A grower/handler who is opposed to term limits in general testified that with the small turnout for nominations and limited growers to be nominated in some districts, there should not be term limits. He believed that term limits take away growers' rights to choose who they want to represent them. A suggestion was made to allow an exemption from term limits in the event another grower was not available to fill the position.

Since it is recommended that the Committee be re-structured by increasing membership, it is determined that term limitations should be reset to allow for a smooth transition of the new Committee. With the increase in membership, it is possible that there would be members that have never served on the Committee before. It is critical to maintain the experience and

expertise needed so that the Committee can continue its operations with a minimum of disruptions. Resetting the tenure limitations simultaneously with the seating of the expanded Committee would provide the experienced members opportunities to remain on the Committee and assist in transitioning the newer members as they become familiar with the regulatory process.

Regarding the testimony on the need for term limits, it is USDA's view that a limit on tenure for Committee members would improve representation on the Committee by allowing for different and more contemporary ideas, and that such a limit would be beneficial to the Committee's operations. However, the issue of the smaller districts not having enough growers who want to be on the Committee is a concern. If a district with 15 growers only had one or two growers interested in serving on the Committee, it would be detrimental to have a qualified member step down because of term limits and have no one willing to step in. It does not appear that this would be an issue in districts with many growers, like Districts 1 and 3.

In its brief, the Committee suggested a change to alleviate this situation. It proposed modifying the language in that provision to provide that members who have served 3 consecutive terms must leave the Committee for at least one full term before becoming eligible to serve again "unless specifically exempted by the Secretary." The Committee's reason for including this language is to allow the Committee to petition USDA to retain an incumbent member beyond term limits if it is unable to find a new member to serve. The Committee believes this would ensure that growers from specified districts would continue to have representation.

Because of the small number of growers in some districts, this situation could prove problematic in the future. For this reason, the phrase "unless specifically exempted by the Secretary" is being added to paragraph (c) of § 929.21. This addition should not discourage the continued search by the Committee for new and diverse membership.

The nomination provisions (§ 929.22) provided that nominations for the re-established Committee shall be held as soon as practicable after adoption of this amendment. Depending upon the timing of adoption of this amendment, new members could be nominated and selected to serve on the Committee close to the time of the next selection period.

Therefore, USDA has added a proviso under this provision that initial members of the re-established

Committee shall be seated for a minimum of one full term. For example, if a change in Committee structure becomes effective in March of 2004, the nomination process would commence immediately. Members selected through this process would serve up to August 2004 and at least two years from August 2004. This would help provide continuity on the Committee. In addition, the tenure limits would not start until August 1 of the first even numbered year after seating of the new Committee so that term limits and tenure can be computed concurrently.

Therefore, § 929.21 is proposed to be amended to restart tenure limitations on August 1 of the first even numbered year the new members serve. If this proposal were adopted, any past time served would not be counted toward any member's tenure. The term of office for each member and alternate member of the Committee would be for 2 years, beginning on August 1 of each even-numbered year and ending on the second succeeding July 31. Tenure limits would start on August 1 of the first even numbered year served.

Exceptions are possible if deemed necessary by USDA. Term limits do not apply to alternates.

Quorum and Voting Requirements

An increase in membership necessitates a proportionate increase to the number of members necessary to constitute a quorum and the number of concurring votes necessary to approve actions of the Committee. The Committee's proposal included such modifications.

Specifically, the Committee recommended that 10 members must be present to constitute a quorum which expands to 11 if the public member is present. The Committee also proposed that the concurring votes necessary to pass any action be 10 if the public member is absent or abstains from voting and 11 if the public member votes.

Adoption of this proposal would retain the super majority requirement for passing Committee actions that is in the current order. Concerns were raised at the hearing that these requirements were too stringent but testimony revealed that having stringent voting requirements ensures that consensus is reached among Committee members prior to any action being passed. Also, this proposal maintains the same requirements that are in the current order.

Therefore, based on the above discussion, § 929.32 is to be modified as proposed by the Committee. Implementation of this amendment, if

adopted, would correspond to the establishment of the new Committee.

Mail Nominations

Currently, the Committee is required to hold meetings in Districts 1, 2, and 3 to elect independent nominees for member and alternate member positions on the Committee. District 4 growers who participate with District 3 in nominations are authorized to participate by mail.

The Committee proposes eliminating the requirement for holding meetings of independent growers within each of the districts to nominate nominees for independent member and alternate members and authorizing all nominations to be conducted by mail. The record revealed that this proposal will allow growers greater opportunities to participate in Committee activities. The Committee would recommend procedures to USDA, wherein nominations could be made through a call for nominations mailed to each eligible independent producer. Such notification could contain a deadline for eligible, independent producers to submit the name of eligible, independent nominees. The Committee would prepare and mail a ballot to each grower. The ballots would be tallied and the nominations made in accordance with the nomination procedures.

Following the end of the voting period, ballots received by the deadline would be separated by district and tallied in accordance with the nomination procedures for independent members.

If the group other than the major cooperative were entitled to the member-at-large position, it is the Committee's intent that the member-at-large position and independent nominations would take place simultaneously. This could cause confusion among growers interested in either position. To address this issue, testimony indicated that the Committee would need to develop and recommend procedures in the event the group other than the major cooperative is entitled to this seat. Section 929.22(i) provides authority for the Committee, with the approval of the Secretary, to issue rules and regulations to carry out the provisions of this section. The Committee may recommend regulations to clarify and implement this section, especially if there is any confusion in conducting nominations for the member-at-large position in the instance where it is assigned to the group representing growers from other than the major cooperative.

The Committee expects that costs in conducting nominations under this

proposal would be decreased by not having to travel to hold meetings within the marketing order districts. There was no opposition testimony on authorizing mail balloting.

It is determined that adoption of this proposal would have a positive impact by allowing more producers greater opportunity to participate in Committee activities. It should also provide for greater participation in the voting process as well as reduce costs associated with holding nomination meetings. Therefore, this proposal is recommended for adoption.

Selection

The Committee proposed modifying this section to conform to the proposed increase in Committee structure. This section authorizes USDA to select the members and alternates on the Committee based on the nominees appointed in accordance with § 929.22. This section has been modified to correspond with the nomination procedures as discussed previously.

Using Tax Identification Numbers

The Committee proposed that a grower's tax identification number be used in the independent voting process to ensure that only eligible independent growers qualify for nomination and voting procedures. The Committee testified that using the tax identification number would assure that only eligible, independent producers qualify to nominate, be nominated and cast ballots in the independent nomination process.

Currently, the Committee uses a "grower identification number" or "farm unit." The unit is based on growers' acreage and ownership of the property as reported to the Committee. Although this method has been mostly efficient, there are incidences where growers subdivide their acreage so they can track production from each bog/marsh. In these instances, growers are qualified to obtain separate grower numbers for each subdivided parcel and thereby, would have one vote for each grower number assigned.

A grower/handler testified in opposition to this proposal because he believes it provides incentives for abuse. He advised that using tax identification numbers would make it possible for his company to break up its properties and receive 100 tax identification numbers. The witness supports the current method of identifying properties as farm units.

In its brief, the Committee stated that if the proposal to authorize mail balloting is approved, a mechanism should be in place to discourage growers to subdivide their acreage in

order to gain the ability to cast multiple ballots on behalf of a nominee. The Committee believes that growers who subdivide their bogs/marshes do so for a variety of reasons unrelated to the nomination process.

Requiring one tax identification number for one nomination vote more appropriately clarifies the voting procedure. Growers may have reasons other than nomination voting to apply for multiple tax identification numbers as well as for subdividing their properties. However, tax identification numbers are considered more cumbersome to obtain than grower identification numbers and it would be less likely that growers would do so merely to obtain multiple votes in the nomination procedures.

One grower testified that it would be unlikely that she would get another tax identification number because it would be too cumbersome. She supported the use of tax identification numbers as being a consistent way to keep track of properties. It is agreed that this would be a more efficient method of ensuring that growers are eligible to be nominated and vote in Committee member elections. Therefore, it is recommended that the order be amended to authorize the use of tax identification numbers in the voting process for growers that represent other than the major cooperative.

Alternates Authorized To Fill Member Positions

The Committee proposal would also clarify which alternates could be seated in place of absent members. This change is needed to conform to the proposed change in Committee structure. The current language in this section states that not more than 4 members from each group can serve as members at the same meeting. Since there would be a minimum of 6 members from each group in the proposed Committee, this language must be changed to reflect the change in Committee structure. This proposal would also be beneficial for clarity because the proposed change in Committee structure would have only 9 alternates selected to accommodate 14 members.

As proposed, alternate members representing cooperative marketing organizations cannot be seated to serve in the place of either an independent or public member. Alternates representing independents cannot be seated to serve in the place of either cooperative marketing organizations or the public member, and the alternate public member cannot be seated to serve in the place of either the cooperative marketing organizations or independent

members. There was no opposition testimony on this proposal.

The Committee's proposal designates the groups of representatives on the Committee as cooperatives and independents. This decision modifies those designations as growers representing the major cooperative and growers representing other than the major cooperative. Because of this change, it is necessary to modify the language in the proposal to conform to this proposed amendment.

Therefore, the amendatory text is being modified to provide that an alternate member representing the major cooperative cannot serve for a member representing other than the major cooperative or the public member. Likewise, an alternate member representing other than the major cooperative cannot serve for a member representing the major cooperative or the public member. The public alternate member cannot serve in place of any industry members.

This proposed change is necessary to reflect the proposed change in Committee structure. In addition, because the proposal would provide fewer alternates than members, this clarification would be beneficial as it more specifically designates which member seat each alternate can replace in the member's absence. Therefore, record evidence herein supports amending § 929.27, with modifications.

The record supports these proposed amendments to §§ 929.20, 929.21, 929.22, 929.23, 929.27 and 929.32, with modifications.

Material Issue Number 2

Section 929.20 should be amended to require Committee industry member and alternate member nominees' disclosure of non-regulated cranberry production. Currently, nominees for member and alternate member positions on the Committee are required to complete a qualification form providing information on the nominee's relation to the cranberry industry. This information includes how long the grower has been in the cranberry business, its associated handler, and involvement in cranberry associations. The information collected is used to determine whether nominees are eligible to serve in the positions for which they were nominated. Currently, there is no reporting requirement for members or alternate members regarding non-regulated production.

A proposal was made by an attorney representing a cranberry handler and recommended that Committee members also be required to submit information regarding their interest in foreign cranberry production. He testified that

foreign countries and States not regulated under the order are starting to emerge as significant producers of cranberries. Many producers in the production area are involved in this production. The proponent testified that when nominees for Committee representatives have a financial interest in the production of cranberries that are not subject to the order's regulations, it could be perceived as a conflict of interest, especially when these members are voting on issues as critical as volume regulation.

This proposal would require Committee grower nominees and alternate grower nominees to disclose any financial interest in non-regulated production at the time of their nomination. The proponent believes it would be fair for growers to be informed of nominees' interests in production that would not be subject to order requirements.

The proponent testified that this proposal would help maintain the integrity of the Committee and its actions by providing assurance that the Committee is acting in the best interest of production area producers. He suggested this information could be disclosed at meetings held for election of nominees or it could be required information on the qualifications statement currently required by nominees. He testified that this would ensure that growers are informed of this information prior to casting their vote to nominate a representative. He explained that it is not the intent of the proposal to bar potential members from serving on the Committee, as these producers are valuable members of the industry whose extensive knowledge can benefit the Committee.

The proponent testified that the proposal is not intended to require disclosure of information such as the number of acres, financial information, or the nature of the business relationship as that level of detail could be proprietary in nature. The intent is to merely require the nominees to acknowledge the interest without divulging proprietary information. He further testified that the producers should only be required to report their individual interest in non-regulated production and not that of their handler.

Although there was no opposition to the concept of requiring this information, questions arose at the hearing regarding what the term "financial interest" would entail. For example, testimony indicated that the selling of vines, irrigation equipment, fertilizer, and etc. to foreign cranberry interests would not constitute financial interest.

Testimony indicated that the disclosure would not need to include detailed financial information but instead be limited to only a general acknowledgement as to the nature of the financial interests, such as part and majority ownership.

The record supports adding the requirement under § 929.20 that nominees be required to acknowledge financial interest in non-regulated production. Because mail nominations are being authorized with this action, this information cannot be collected at nomination meetings. The collection of this information shall be added to the qualification statement required to be completed by nominees prior to selection. The information required would be an acknowledgement of financial interest in non-regulated production. In the event there is confusion in determining the nature or extent of information necessary for this proposed amendment, the committee may establish, with the approval of USDA, rules and regulations for the implementation and operation of this section in accordance with paragraph (e) of § 929.20.

Record evidence supports amending § 929.20 by adding a requirement that grower nominees and alternate grower nominees of the Committee shall disclose annually any financial interest in the production of cranberries that are not subject to regulation by this part.

Material Issue Number 3

The Committee requested expedited rulemaking on all of their proposals. This document sets forth a decision on Committee proposals 1 (Committee structure); 19 (Committee member disclosure of non-regulated production) and 20 (Committee nomination procedures) filed by Stephen Lacey on behalf of Clement Pappas & Company, Inc. and Cliffstar Corporation; and 23 (Committee nomination procedures) and 24 (Committee selection procedures) filed by the Wisconsin Cranberry Cooperative.

Evidence presented at the hearing established that the proposals relating to changing the Committee's administrative body need to be expedited. All other proposals will be addressed in a separate decision.

The order currently states that any cooperative marketing organization that handled more than two-thirds of the total volume of cranberries produced during the fiscal period during which nominations for membership on the Committee are made, or the growers affiliated therewith, shall nominate four or more qualified persons for members and four or more qualified persons for

alternate members. There is currently no cooperative marketing organization that handles more than two-thirds of the total volume of cranberries produced. Because the current order does not specify how the Committee should be structured in this event, the order should be amended as soon as possible to address this inadequacy.

Consequently, it is determined that emergency conditions exist and the issuance of a recommended decision is therefore being omitted. In accordance with the rules of practice (7 CFR part 900), it is found and determined that the record establishes a basis as noted above for proceeding directly to a Secretary's decision and referendum order. The proposed expedited amendments are to §§ 929.20, 929.21, 929.22, and 929.23.

The proposal clarifying how alternates may fill positions in any member's absence must be expedited as well. This proposal modifies § 929.27. The current order language states that not more than four members and alternate members selected from the large cooperative shall serve as members at the same meeting. Since the Committee is being expanded, there will be a minimum of six members and three alternates serving at the same meeting. Therefore, this provision should be changed at the same time the Committee structure is expanded.

As stated above, for the proposals recommending altering the Committee structure and clarifying how alternates fill absent member positions, the recommended decision is being omitted. These proposals were listed in the notice of hearing as proposal numbers 1, 2, 20, 23, and 24. Proposal number 19, submitted by Stephen Lacey, recommended adding a paragraph to § 929.20, which would require Committee member disclosure of unregulated production. This proposal is being included to simplify the amendment of this section. The remaining proposals will be resolved in a separate decision.

Small Business Considerations

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own

benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$750,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than \$5,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses. The record indicates that these amendments would not result in additional regulatory requirements being imposed on some cranberry growers and handlers.

There are about 20 handlers currently regulated under Marketing Order No. 929. In addition, the record indicates that there are about 1,250 producers of cranberries in the current production area.

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. In 2001, a total of 34,300 acres were harvested with an average U.S. yield per acre of 156.2 barrels. Grower prices in 2001 averaged \$22.90 per barrel. Average total annual grower receipts for 2001 are estimated at \$153,375 per grower. However, there are some growers whose estimated sales would exceed the \$750,000 threshold. Thus, these proposed amendments will apply almost exclusively to small entities.

Five 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 decision proposes that the order be amended: (1) To increase Committee membership to 13 members, 1 public member, 9 grower alternate members, 1 public alternate member; to incorporate a "swing" position whereby the entity (either the major cooperative or the group representing other than the major cooperative) which handles more than 50 percent of the total volume of cranberries produced is assigned an additional seat; incorporate nomination and selection procedures to reflect the change in Committee membership; establish districts to reflect the change

in Committee membership and to include additional States; allow the Committee to request tax identification numbers for voting purposes and authorize mail nominations for independent members; revise and clarify the provisions for alternates to reflect the change in Committee structure; and (2) require Committee member disclosure of non-regulated cranberry production.

The proposed amendment to increase Committee membership to 13 members, 1 public member, 9 grower alternate members, 1 public alternate member would increase the Committee's size by 6 members and 1 alternate member. This would likely increase costs to the Committee with the additional members attending meetings. If alternate members are not required to attend all meetings, costs could be reduced. However, the record evidence supports increasing the Committee. The benefits of broadening the membership of the Committee and equitably allocating seats would outweigh increased costs. Since the implementation of volume regulations, more growers are expressing interest in being a part of the Committee's processes. Expansion of the Committee would allow more growers the opportunity to be involved in the process. The Committee's recommendation to not have one alternate for each member would provide appropriate district coverage for members that cannot attend meetings while taking costs into account. By increasing the membership to 14 and establishing 4 districts, regional representation would be maintained and additional representation to the largest growing regions would be provided.

The proposal to include a member-at-large position on the Committee to the entity (either the major cooperative or the group representing other than the major cooperative) that handles more than 50 percent of the total volume of cranberries produced would provide an additional member and alternate to the dominant group. This allows for recognition that the scale of the impact increases with the volume of cranberries produced and regulated.

The proposed amendment to reset term limitations for the current members would help maintain the experience and expertise needed so that the Committee can continue its operations with a minimum of disruptions.

The proposed amendment to allow nominations to be conducted by mail would allow more growers greater opportunity to participate on the Committee and provide for greater participation in the voting process.

Administrative Committee costs associated with holding nomination meetings would decrease.

The proposed amendment to use growers' tax identification numbers in the voting process for the group representing other than the major cooperative would help ensure that only eligible growers qualify for nomination and the voting process.

The proposed amendment to revise and clarify which alternates can be seated in place of absent members is necessary to conform to the proposed change in Committee structure. In addition, it would be beneficial as it more specifically designates which member seats each alternate can replace in the member's absence.

The proposed amendment to require Committee member disclosure of non-regulated cranberry production would ensure that growers are informed of this information prior to casting their vote to nominate a representative on the Committee.

All of these changes are designed to enhance the administration and functioning of the marketing agreement and order to the benefit of the industry. Accordingly, it is determined that the benefits of implementing the proposed revisions of the order would outweigh any associated costs. Costs are not anticipated to be significant.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces that AMS is seeking approval from the Office of Management and Budget (OMB) for a new information collection request for Cranberries grown in 10 States, Marketing Order No. 929.

Title: Cranberries grown in the States of Massachusetts, *et al.*, Marketing Order No. 929.

OMB Number: 0581-NEW.

Type of Request: New collection.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the cranberry marketing order program, which has been operating since 1962.

Specifically, if the membership on the Committee is increased, the overall burden of completion of Committee generated forms and reports relative to Committee membership would increase due to additional membership. In addition, if the proposed amendment to require Committee member disclosure of non-regulated production is authorized, the qualification statement would have to be modified to include

this information. Total burden hours for completion of qualification forms for grower members and alternates is .58 hours. The additional membership and information required would increase this amount by .375 hours, or a total of .955 hours. There would be no increase in the non-regulated disclosure proposal since that would only entail an acknowledgement as to whether the member has a financial interest in non-regulated production.

If the proposed amendment to authorize mail nominations is approved, a nomination form and ballot would be necessary to conduct mail nominations. It is estimated that there are approximately 500 growers who would be entitled to vote by mail ballot once every two years. The estimated time to complete the nomination form would be approximately 5 minutes for an annual increase in burden hours of 20.75. The estimated time to complete the ballot would be approximately 5 minutes for an annual increase in burden hours of 20.75.

If the proposed amendment to require growers to submit a tax identification number is approved, this information will be added to the grower sales and acreage report form (Form No. CMC-GSAR-1) currently approved under OMB. With minimal amount of time needed to add this number on the form, there will be no increase in burden for growers to complete this form.

The information collection would be used only by authorized representatives of USDA, including AMS, Fruit and Vegetable Programs' regional and headquarters staff, and authorized Committee employees. Authorized Committee employees will be the primary users of the information and AMS is the secondary user.

The request for approval for the new information collection under the order is as follows:

Cranberry Marketing Order Member and Alternate Member Nomination Form

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Cranberry growers.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: .50.

Estimated Total Annual Burden on Respondents: 20.75 hours.

Cranberry Marketing Order Member and Alternate Member Ballot

Estimate of Burden: Public reporting burden for this collection of information

is estimated to average 5 minutes per response.

Respondents: Cranberry growers.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: .50.

Estimated Total Annual Burden on Respondents: 20.75 hours.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581-NEW and the Cranberry marketing order, and be sent to USDA in care of the Docket Clerk at the previously mentioned address. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

As mentioned before, AMS is seeking approval from OMB for the additional burden imposed by the *Cranberry Marketing Order Member and Alternate Member Nomination Form and Cranberry Marketing Order Member and Alternate Member Ballot*. Upon OMB approval, the additional burden will be merged into the information collection currently approved under OMB No. 0581-0189, Generic OMB Fruit Crops.

In addition to the information collection burden, a 60-day comment period is invited to allow interested persons to respond to this proposal. All written comments timely received will be considered prior to finalization of this decision.

These provisions and any additional provisions modifying reporting and recordkeeping burdens that generate from these proposed amendments would not be effective until receiving OMB approval. Current information collection requirements for part 929, including referendum ballots, are approved by OMB under OMB number 0581-0189.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

Committee meetings regarding these proposals as well as the hearing dates were widely publicized throughout the cranberry industry, and all interested persons were invited to attend the meetings and the hearing and participate in Committee deliberations on all issues. All Committee meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues.

Civil Justice Reform

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

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

Rulings on Briefs of Interested Persons

Briefs, and the evidence in the record were considered in making the findings and conclusions set forth in this decision. To the extent that the suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions of

this decision, the requests to make such conclusions are denied.

Annexed hereto and made a part hereof is the document entitled "Order Amending the Order Regulating the Handling of 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." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, that this entire decision be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR part 900.400 *et seq.*) to determine whether the issuance of the annexed order amending the order regulating the handling of 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 is approved or favored by growers and processors, as defined under the terms of the order, who during the representative period were engaged in the production or processing of cranberries in the production area.

The representative period for the conduct of such referendum is hereby determined to be September 1, 2002, through August 31, 2003.

The agent of the Secretary to conduct such referendum is hereby designated to be Kenneth G. Johnson, Regional Manager, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 4700 River Road, Unit 155, Suite 2A04, Riverdale, Maryland 20737; telephone (301) 734-5243.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

Dated: December 4, 2003.

A. J. Yates,

Administrator, Agricultural Marketing Service.

Order Amending the Order Regulating the Handling of 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 York¹

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings and Determinations Upon the Basis of the Hearing Record.

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and Order No. 929 (7 CFR part 929), regulating the handling of 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.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of cranberries grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The marketing agreement and order, as amended, and as hereby

proposed to be further amended, are limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as amended and as hereby proposed to be further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of cranberries grown in the production area; and

(5) All handling of cranberries grown in the production area as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, all handling of 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, shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing agreement and the order amending the order will be and are the terms and provisions of this order amending the order and are set forth in full herein.

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. Revise "929.20 to read as follows:

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

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

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.

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

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

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

(4) District 4: The States of Oregon and Washington.

TABLE 1

Districts	Major cooperative members	Major cooperative alternates	Other than major cooperative members	Other than major cooperative 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.

3. Revise § 929.21 to read as follows:

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

4. Revise § 929.22 to read as follows:

§ 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 marketing 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.

(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.

5. Revise § 929.23 to read as follows:

§ 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 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).

6. Revise § 929.27 to read as follows:

§ 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.

7. Revise § 929.32 to read as follows:

§ 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 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.

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024-AC97

Lake Meredith National Recreation Area, Personal Watercraft Use

AGENCY: National Park Service, Interior.
ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing to designate areas where personal watercraft (PWC) may be used in Lake Meredith National Recreation Area, Texas. This proposed rule implements the provisions of the NPS general regulations authorizing a park unit to allow the use of PWC by promulgating a special regulation. The *NPS Management Policies 2001* directs individual parks to determine whether PWC use is appropriate for a specific park unit based on an evaluation of that park's enabling legislation, resources and values, other visitor uses, and overall management objectives.

DATES: Comments must be received by February 10, 2004.

ADDRESSES: Comments on the proposed rule should be sent to the Superintendent, Lake Meredith National Recreation Area, P.O. Box 1460, Fritch, TX 79036-1460, Fax: (806) 857-2319, e-

mail: LAMR_Superintendent@nps.gov. If you comment by e-mail, please include "PWC rule" in the subject line and your name and return address in the body of your Internet message. Also, you may hand deliver comments to the Superintendent, Lake Meredith National Recreation Area, 419 East Broadway, Fritch, Texas.

For additional information see "Public Participation" under **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Judy Shafer, Office of Policy and Regulations, National Park Service, 1849 C Street, NW., Room 7250, Washington, DC 20240. Phone: (202) 208-7068. E-mail: Judy_Shafer@nps.gov.

SUPPLEMENTARY INFORMATION:

Background

Additional Alternatives

This proposed rule would implement portions of the preferred alternative in the Environmental Assessment published March 10, 2003. The public should be aware that two other alternatives were presented in the EA, including a no-PWC alternative, and those alternatives should also be reviewed and considered when making comments on this proposed rule.

Personal Watercraft Regulation

On March 21, 2000, the National Park Service published a regulation (36 CFR 3.24) on the management of personal watercraft (PWC) use within all units of the National Park System (65 FR 15077). This regulation prohibits PWC use in all national park units unless the NPS determines that this type of water-based recreational activity is appropriate for the specific park unit based on the legislation establishing that park, the park's resources and values, other visitor uses of the area, and overall management objectives. The regulation banned PWC use in all park units effective April 20, 2000, except 21 park units. The regulation established a 2-year grace period following the final rule publication to provide these 21 park units time to consider whether PWC use should be allowed.

Description of Lake Meredith National Recreation Area

Lake Meredith National Recreation Area is near Fritch, Texas, in the center of the Texas Panhandle, about 40 miles northeast of Amarillo, Texas. The reservoir was formed in the 1960s when the U.S. Bureau of Reclamation constructed Sanford Dam on the Canadian River. The dam was built to supply water to 11 communities in the Panhandle by means of 322 miles of

pipeline. The National Recreation Area consists of about 45,000 acres; the historic average reservoir pool covers about 10,000 acres.

Lake Meredith is a major site of water-based recreation in the Panhandle, averaging more than 1.5 million visits per year from 1992 to 1999. There are no comparable large bodies of water or land that provide such recreational diversity in the Panhandle area. The largest nearby recreation area is Palo Duro Canyon State Park, a beautiful scenic and historic area, but lacks the water resources of Lake Meredith.

The lands and waters of Lake Meredith National Recreation Area support a major sport fishery and contain facilities for camping, picnicking, and boating. Lake Meredith is the only public land in a radius of approximately 50 miles that permits the hunting of deer, quail, ducks, and other migratory birds.

Congress created Lake Meredith National Recreation Area on November 28, 1990. Public Law 101-628 states this National Park System unit is "to provide for public outdoor recreation use and enjoyment of the lands and waters associated with Lake Meredith in the State of Texas, and to protect the scenic, scientific, cultural, and other values contributing to the public enjoyment of such lands and waters" (16 U.S.C. 460eee). By making Lake Meredith part of the National Park System, Congress emphasized the importance of protecting and interpreting the natural and cultural resources of the park. The legislation codified the long-standing administrative arrangements between the Bureau of Reclamation and the NPS.

Purpose of Lake Meredith National Recreation Area

The purpose of the park is addressed in the following statements excerpted from the park's *Strategic Plan*.

1. Provide for the safe public use, understanding, and enjoyment of the diverse recreational opportunities.
2. Educate the public to instill an understanding and sense of stewardship of the cultural, natural, historic, scenic and recreational resources of the park.
3. Provide opportunities for scientific study of natural and cultural resources.

Significance of Lake Meredith National Recreation Area

The following park resources and values define the significance of Lake Meredith:

1. The impounding of the Canadian River in 1965 created a man-made lake that fulfills outdoor recreational needs such as sport fishing, hunting, boating, horseback riding, hiking, scuba diving,