

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