

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