

Agricultural Marketing Service, USDA

§ 929.56

such excess quantity credited toward the next fiscal year's withholding obligation, if any—provided that such credit shall be applicable only if the restricted percentage established pursuant to § 929.52 was modified pursuant to § 929.53; to the extent such excess was disposed of prior to such modification; and after such handler furnishes the committee with such information as it prescribes regarding such withholding and disposition.

(e) The Committee, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

[70 FR 7643, Feb. 15, 2005]

§ 929.55 Interhandler transfer.

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

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

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

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

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

(a) A handler shall make a written request to the committee for the release of all or part of the cranberries that the handler is withholding from

handling pursuant to § 929.54(a). Each request shall state the quantity of cranberries for which release is requested and shall provide such additional information as the committee may require. Handlers may replace the quantity of withheld cranberries requested for release as provided under either paragraph (b) or (c) of this section.

(b) The handler may contract with another handler for an amount of free cranberries to be converted to restricted cranberries that is equal to the volume of cranberries that the handler wishes to have converted from his own restricted cranberries to free cranberries.

(1) The handlers involved in such an agreement shall provide the committee with such information as may be requested prior to the release of any restricted cranberries.

(2) The committee shall establish guidelines to ensure that all necessary documentation is provided to the committee, including but not limited to, the amount of cranberries being converted and the identities of the handlers assuming the responsibility for withholding and disposing of the free cranberries being converted to restricted cranberries.

(3) Cranberries converted to replace released cranberries may be required to be inspected and meet such standards as may be prescribed for withheld cranberries prior to disposal.

(4) Transactions and agreements negotiated between handlers shall include all costs associated with such transactions including the purchase of the free cranberries to be converted to restricted cranberries and all costs associated with inspection (if applicable) and disposal of such restricted cranberries. No costs shall be incurred by the committee other than for the normal activities associated with the implementation and operation of a volume regulation program.

(5) Free cranberries belonging to one handler and converted to restricted cranberries on the behalf of another handler shall be reported to the committee in such manner as prescribed by the committee.

(c) Except as otherwise directed by the Secretary, as near as practicable to

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

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

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

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

(4) The prices at which handlers are selling cranberry concentrate,

(5) The prices the committee has paid to purchase cranberries to replace released cranberries in accordance with this section, and

(6) The costs incurred by growers in producing cranberries.

(7) Each request for release of withheld cranberries shall include, in addition to all other information as may be prescribed by the committee, the quantity of cranberries the release is requested and shall be accompanied by a deposit (a cashier's or certified check made payable to the Cranberry Marketing Committee) in an amount equal to the twenty percent of the amount determined by multiplying the number of barrels stated in the request by the then effective amount per barrel as determined in paragraph (c).

(8) Subsequent deposits equal to, but not less than, the ten percent of the remaining outstanding balance shall be payable to the committee on a monthly basis commencing on January 1, and

concluding by no later than August 31 of the fiscal period.

(9) If the committee determines such a release request is properly filled out, is accompanied by the required deposit, and contains a certification that the handler is withholding such cranberries, it shall release to such handler the quantity of cranberries specified in his request.

(d) Funds deposited for the release of withheld cranberries, pursuant to paragraph (c) of this section, shall be used by the committee to purchase from handlers unrestricted (free percentage) cranberries in an aggregate amount as nearly equal to, but not in excess of, the total quantity of the released cranberries as it is possible to purchase to replace the released cranberries.

(e) All handlers shall be given an equal opportunity to participate in such purchase of unrestricted (free percentage) cranberries. If a larger quantity is offered than can be purchased, the purchases shall be made at the lowest price possible. If two or more handlers offer unrestricted (free percentage) cranberries at the same price, purchases from such handlers shall be in proportion to the quantity of their respective offerings insofar as such division is practicable. The committee shall dispose of cranberries purchased as restricted cranberries in accordance with § 929.57. Any funds received by the committee for cranberries so disposed of, which are in excess of the costs incurred by the committee in making such disposition, will accrue to the committee's general fund.

(f) In the event any portion of the funds deposited with the committee pursuant to paragraph (c) of this section cannot, for reasons beyond the committee's control, be expended to purchase unrestricted (free percentage) cranberries to replace those withheld cranberries requested to be released, such unexpended funds shall, after deducting expenses incurred by the committee, be refunded to the handler who deposited the funds. The handler shall equitably distribute such refund among the growers delivering to such handler.

(g) Inspection for restricted (withheld) cranberries released to a handler is not required.

(h) The committee may establish, with the approval of the Secretary, rules and regulations for the implementation of this section. Such rules and regulations may include, but are not limited to, revisions in the payment schedule specified in paragraphs (c)(7) and (c)(8) of this section.

[70 FR 7643, Feb. 15, 2005]

§ 929.57 Outlets for restricted cranberries.

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

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

§ 929.58 Exemptions.

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

(b) Upon the basis of the recommendation and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements pursuant to this part the handling of such forms or types of cranberries as the committee, with the approval of the Secretary, may prescribe. Forms of cranberries could include cranberries intended for fresh sales or organically grown cranberries.

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

[70 FR 7644, Feb. 15, 2005]

§ 929.59 Excess cranberries.

(a) Whenever the Secretary establishes an allotment percentage pursuant to § 929.52, handlers shall be notified by the committee of such allotment percentage and shall withhold from handling such cranberries in excess of the total of their growers' annual allotments obtained during such period. Such withheld cranberries shall be defined as "excess cranberries" after all unused allotment has been allocated.

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

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

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

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

[57 FR 38750, Aug. 27, 1992]

REPORTS AND RECORDS

§ 929.60 Handling for special purposes.

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

- (a) Charitable institutions;
- (b) Research and development projects described pursuant to § 929.61;
- (c) Any nonhuman food use;