

# Proposed Rules

Federal Register

Vol. 72, No. 9

Tuesday, January 16, 2007

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 No. AMS-FV-06-0172; FV06-929-610 Review]

#### Cranberries Grown in the States of Massachusetts, et al.; Section 610 Review

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Confirmation of regulations.

**SUMMARY:** This action summarizes the results under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA), of an Agricultural Marketing Service (AMS) review of Marketing Order No. 929 regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York.

**ADDRESSES:** Interested persons may obtain a copy of the review. Requests for copies should 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; E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov) or Internet: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737; Telephone: (301) 734-5243, Fax: (301) 734-5275, or E-mail: [Patricia.Petrella@usda.gov](mailto:Patricia.Petrella@usda.gov) or [Kenneth.Johnson@usda.gov](mailto:Kenneth.Johnson@usda.gov).

**SUPPLEMENTARY INFORMATION:** Marketing Order 929, as amended (7 CFR part 929), regulates the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the

State of New York. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601-674).

The Cranberry Marketing Committee (Committee) is established under the marketing order and works with AMS in overseeing program operations. The Committee consists of 13 grower members and 9 grower alternate members representing four districts. Membership is allocated among producers representing the cooperative marketing association and independent producers (those not affiliated with the cooperative marketing association). The cooperative marketing association nominates its representatives, while independent member representatives are nominated and elected through a mail balloting process.

Currently, there are approximately 1,250 cranberry growers and approximately 50 handlers. The majority of the growers and handlers may be classified as small entities. The regulations implemented under the orders are applied uniformly to all size entities, and are designed to benefit all entities, regardless of size.

AMS published in the **Federal Register** (64 FR 8014; February 18, 1999), its plan to review certain regulations, including Marketing Order 929, under criteria contained in section 610 of the RFA (5 U.S.C. 601-612). An updated plan was published in the **Federal Register** on January 4, 2002 (67 FR 525), and again on August 14, 2003 (68 FR 48574). Accordingly, AMS published a notice of review and request for written comments on the cranberry marketing order in the July 12, 2005, issue of the **Federal Register** (70 FR 39987). The deadline for comments ended September 12, 2005. Numerous comments were received and they are discussed later in this document.

The review was undertaken to determine whether the cranberry marketing order should be continued without change, amended, or rescinded to minimize the impacts of small entities. In conducting this review, AMS considered the following factors: (1) The continued need for the marketing order; (2) the nature of complaints or comments received from the public concerning the marketing order; (3) the complexity of the marketing order; (4) the extent to which the marketing order overlaps, duplicates, or conflicts with

other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the marketing order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the marketing order.

The marketing order authorizes the following activities: Volume control to help stabilize cranberry supplies and prices, and strengthen market conditions; generic promotion programs to increase demand in domestic and foreign markets; and reporting requirements used by the Committee to obtain production, shipment, and other marketing information used by the industry in making sound marketing decisions, and in furthering marketing order goals. Funds to administer the marketing order are obtained from handler assessments.

Based on the potential benefits of the marketing order to producers, handlers, and consumers, AMS has determined that the order should continue without change.

In regard to complaints or comments received from the public concerning the marketing order, USDA has received 23 comments from cranberry growers and other interested parties.

Six comments were in favor of the continuation of the marketing order. Several made suggestions for changes to the order or its operations, and others considered the marketing order to be a very valuable tool. The commenters suggested the following changes to the order. The suggestions include: (1) Enlarging the production area by adding the States of Maine and Delaware, and the entire State of New York. This issue was considered during the most recent amendment proceeding. It was not supported by the evidence of record and was not adopted by USDA; (2) Support for the redistricting and reallocation of members on the Committee and appointment of a subcommittee to investigate this issue. The order authorizes redistricting and reallocation of members. A subcommittee on this issue was appointed in 2005. At this time, no recommendations have been made or approved by the Committee to redistrict or reallocate membership; and (3) Urging USDA to make more timely decisions on volume control recommendations made by the Committee to help growers and handlers

plan accordingly. The rulemaking process requires USDA to provide adequate notice to interested parties and opportunity for comment. Steps are taken to complete this process efficiently.

Seventeen comments were received in opposition. Some of the commenters expressed the belief that the portions of the production area where cranberry production has not dramatically changed over the past ten years should not be subject to volume controls, when implemented. Also, they believe that handlers who can sell all of the fruit they acquire should be exempted from volume controls. The commenters believe that only handlers with an oversupply of cranberries should be regulated. Similar opposing comments were from growers in the State of Oregon. Most urged that volume regulation not be invoked and, if it is, producers in Oregon should be exempt. The commenters believe that Oregon growers suffered financially when volume regulations were implemented in 2000–01 and 2001–02 because Oregon cranberry farms are small and do not significantly impact the overall supply. In addition, they would like the marketing order rescinded to end the negative impacts on production for small producers in small production areas.

Modifications to the volume regulation provisions were considered during the most recent cranberry amendment proceeding. Many changes were made to improve the process to the benefit of producers and handlers and were supported in a producer referendum. Any additional modifications, including providing exemptions, would require further amendment to the order.

Marketing order issues and programs are discussed at public meetings, and all interested persons are allowed to express their views. All comments are considered in the decision making process by the Committee and USDA before any program changes are implemented.

In considering the order's complexity, AMS has determined that the marketing order is not unduly complex.

During the review, the order was also checked for duplication and overlap with other regulations. AMS did not identify any relevant Federal rules, or State and local regulations that duplicate, overlap, or conflict with the marketing order for cranberries.

As stated previously, the order was established in 1962. During this time, AMS and the cranberry industry have continuously monitored marketing operations. Changes in regulations have

been implemented to reflect current industry operating practices, and to solve marketing problems as they occur. The goal of these evaluations is to assure that the marketing order and the regulations implemented under it fit the needs of the industry and are consistent with the Act.

The Committee meets whenever needed, but at least bi-annually, to discuss the marketing order and the various regulations issued thereunder, and to determine if, or what, changes may be necessary to reflect current industry practices. As a result, regulatory changes have been made numerous times over the years to address industry operation changes and to improve program administration. In 2002, the Committee made several recommendations to improve the order's volume control provisions. Amendment hearings were held in several parts of the cranberry production area to receive evidence regarding the Committee's recommendations. A referendum was held in December 2004 to determine producer and processor support for the proposed amendments. The proposed amendments were favored by both producers and processors voting in the referendum.

Accordingly, AMS has determined that the cranberry marketing order should be continued. The marketing order was established to help the cranberry industry work with USDA to solve marketing problems. The marketing order regulations on volume control, research and promotional activities, and reporting requirements continue to be beneficial to producers, handlers, and consumers. AMS will continue to work with the cranberry industry in maintaining an effective program.

Dated: January 9, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E7–424 Filed 1–12–07; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 929

[Docket No. AMS–FV–06–0174; FV06–929–1 PR]

### Cranberries Grown in the States of Massachusetts, et al.; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate established for the Cranberry Marketing Committee (Committee) for the 2006–2007 fiscal year and subsequent fiscal years from \$0.18 to \$0.28 per barrel. Authorization to assess cranberry handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The Committee locally administers the marketing order which regulates 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. The fiscal year began September 1, 2006, and ends August 31, 2007. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by February 15, 2007.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this action. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, E-mail: [moabdocket.clerk@usda.gov](mailto:moabdocket.clerk@usda.gov); or Internet: <http://www.regulations.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:**

Patricia A. Petrella or Kenneth G. Johnson, DC Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, Maryland 20737; telephone: (301) 734–5243, Fax: (301) 734–5275, or E-mail at [Patricia.Petrella@usda.gov](mailto:Patricia.Petrella@usda.gov) or [Kenneth.Johnson@usda.gov](mailto:Kenneth.Johnson@usda.gov).

Small businesses may request information on complying 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, or e-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 929, as amended (7 CFR part 929), regulating the handling of cranberries produced in the States of Massachusetts, Rhode Island,