

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 In addition, they would like the marketing order rescinded to end the negative impacts on production for small producers in small production areas.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,

Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, cranberries are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable cranberries beginning September 1, 2006, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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 USDA 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. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the USDA 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 USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the 2006–2007 and subsequent fiscal years from \$0.18 to \$0.28 per pound of cranberries.

The cranberry marketing order provides authority for the Committee, with approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of cranberries. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and

assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

Authority to fix the rate of assessment to be paid by each handler and to collect such assessment appears in § 929.41 of the order. In addition, § 929.45 of the order provides that the Committee, with the approval of the USDA, may establish or provide for the establishment of production research, marketing research, and market development projects designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of cranberries. The expense of such projects is paid from funds collected pursuant to § 929.41 (Assessments), or from such other funds as approved by the USDA.

For the 2001–2002 fiscal year, the Committee recommended, and USDA approved, an assessment rate of \$0.18 per barrel of cranberries handled that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on August 28, 2006, and recommended 2006–2007 expenditures of \$3,522,062 and an assessment rate of \$0.28 per pound of cranberries. The Committee passed the assessment rate increase by a vote of 12 to 2. Those not supporting the recommendation wanted a lesser increase. In comparison, last year's budgeted expenses were \$2,612,265. The assessment rate of \$0.28 is \$0.10 higher than the rate currently in effect.

The Committee recommended the \$0.10 per barrel increase to cover increased costs. The Committee has expanded its contributions to the export market development program from \$50,000 in 1999 to \$480,000 in 2006. The Committee has increased funding of the export market development program as target markets have expanded from two in 1999 (Japan and Germany), to five in 2006 (Japan, Germany, Mexico, France and Australia) with contingency plans to expand activities regionally within Europe and in South Korea. According to the Committee, cranberries and cranberry products going into export markets have steadily increased from 10 percent of the annual cranberry production during the 1999–2000 fiscal period to approximately 24 percent of the annual production in the 2005–2006 fiscal period.

In order to expand and maintain activities within the target markets, the Committee has used funds from its

reserve account to meet the costs of educating consumers and the trade industry.

Since the last increase published in the **Federal Register** on February 14, 2002, at 67 FR 6843, the assessment rate has not been increased to compensate for increases in the costs of goods and services, costs contributable to increasing the Committee membership and to pay back funds taken from the reserve for the expanding export market development program. As a result, the reserve has continued to decrease until it is at a point where the Committee is unable to meet the order's reserve funding requirements or balance its budget without an increase in assessments and/or cutback in program activities. The Committee recommended the assessment rate increase to continue to expand the generic export market development program and have sufficient funding to meet its operational expenses. Without this increase, the Committee would have to curtail expansion of the export market development program.

All cranberry handlers regulated under the marketing order would pay the proposed assessment rate. However, certain organic handlers may be exempt from paying assessments for market promotion activities pursuant to 7 CFR 900.700.

The major expenditures recommended by the Committee for the 2006–2007 fiscal year include \$500,000 for domestic promotion, \$480,000 for export promotion, \$154,116 for personnel, \$103,500 for meetings, and \$107,527 for administrative expenses. Budgeted expenses for major items in 2005–2006 were \$488,225 for domestic promotion, \$147,420 for personnel, \$105,500 for meetings, and \$116,542 for administrative expenses. The Committee recommended an increased assessment rate to generate larger revenue to meet its operational and export promotion expenses and keep its reserves at an acceptable level.

In deriving the recommended assessment rate, the Committee determined assessable cranberry production for the upcoming fiscal period at 6,506,000 barrels. Therefore, total assessment income for the 2006–2007 fiscal year is estimated at \$1,821,680 (6,506,000 barrels × \$0.28). This amount plus \$1,767,600 from USDA's Foreign Agricultural Service's Market Access Program and adequate funds in the reserve and interest income would be adequate to cover budgeted expenses. Funds in the reserve (approximately \$541,122) would be kept within the approximately one fiscal period's expenses as recommended by

the Committee consistent with § 929.42(a) of the order.

The assessment rate established in this rule would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and other information submitted by the Committee or other available information.

Although the assessment rate would be effective for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2006–2007 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the USDA.

#### Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of cranberries who are subject to regulation under the cranberry marketing order and approximately 1250 producers of cranberries in the regulated area. Small agricultural service firms, which includes handlers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$6,500,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. The majority of producers and handlers of cranberries under the order are

considered small entities under SBA's standards.

The principal demand for cranberries is in the form of processed products. Cranberries are dried, frozen, canned, and juiced. During the 2001–2002 fiscal year through the 2005–2006 fiscal year, approximately 91 percent of the U.S. cranberry crop, or 5.4 million barrels, was processed annually.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to cranberry production has leveled off over the last several crop years. Bearing acres have declined slightly from a high of 39,600 acres in the 2003–2004 fiscal year to 39,100 in the 2005–2006 fiscal year. Wisconsin and Massachusetts lead the nation in cranberry acreage, with approximately 81 percent of the total, and production also at approximately 81 percent of the total U.S. cranberry crop each year.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2006–2007 fiscal period and subsequent periods from \$0.18 to \$0.28 per barrel of cranberries.

The Committee discussed continuing the existing assessment rate, but concluded that it needed the additional funds to devote to its export market development and promotion program and replenish its financial reserve which would be funded through assessments.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the cranberry industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large cranberry handlers. 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 AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2006–2007 fiscal period began September 1, 2006, and the marketing order requires that the rate of assessment for each fiscal year apply to all assessable cranberries handled during such period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was recommended by the Committee at a public meeting.

#### List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is proposed to be amended as follows:

#### **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. Section 929.236 is revised to read as follows:

#### **§ 929.236 Assessment rate.**

On and after September 1, 2006, an assessment rate of \$.28 per barrel is established for cranberries.

Dated: January 10, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7-428 Filed 1-12-07; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 930

[Docket No. AMS-FV-06-00187; FV07-930-1 PR]

#### Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2006-2007 Crop Year for Tart Cherries

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on the establishment of final free and restricted percentages for the 2006-2007 crop year. The percentages are 55 percent free and 45 percent restricted and will establish the proportion of cherries from the 2006 crop which may be handled in commercial outlets. The percentages are intended to stabilize supplies and prices, and strengthen market conditions. The percentages were recommended by the Cherry Industry Administrative Board (Board), the body that locally administers the marketing order. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

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

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. 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*: [moabdocket.clerk@usda.gov](mailto:moabdocket.clerk@usda.gov); or *Internet*: <http://www.regulations.gov>. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be 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, Marketing Order Administration Branch, Fruit and

Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737; Telephone: (301) 734-5243, or 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, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders 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 proposed rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and restricted percentages may be established for tart cherries handled by handlers during the crop year. This rule establishes final free and restricted percentages for tart cherries for the 2006-2007 crop year, beginning July 1, 2006, through June 30, 2007. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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 exempt therefrom. Such 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 in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The order prescribes procedures for computing an optimum supply and preliminary and final percentages that establish the amount of tart cherries that can be marketed throughout the season. The regulations apply to all handlers of tart cherries that are in the regulated districts. Tart cherries in the free percentage category may be shipped immediately to any market, while restricted percentage tart cherries must be held by handlers in a primary or secondary reserve, or be diverted in accordance with § 930.59 of the order and § 930.159 of the regulations, or used for exempt purposes (to obtain diversion credit) under § 930.62 of the order and § 930.162 of the regulations. The regulated Districts for this season are: District one—Northern Michigan; District two—Central Michigan; District three—Southwest Michigan; District four—New York; District seven—Utah; and District eight—Washington. Districts five, six and nine (Oregon, Pennsylvania, and Wisconsin, respectively) will not be regulated for the 2006-2007 season.

The order prescribes under § 930.52 that those districts to be regulated shall be those districts in which the average annual production of cherries over the prior three years has exceeded six million pounds. A district not meeting the six million-pound requirement shall not be regulated in such crop year. Because this requirement was not met in the Districts of Oregon, Pennsylvania, and Wisconsin, handlers in those districts would not be subject to volume regulation during the 2006-2007 crop year.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. Demand for tart cherries and tart cherry products tends to be relatively stable from year to year. The supply of tart cherries, by contrast, varies greatly from crop year to crop year. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, because tart cherries are processed either into cans or frozen, they can be stored and carried over from crop year to crop year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely balanced. The primary purpose of setting free and restricted percentages is to balance supply with demand and reduce large surpluses that may occur.