



Billing code 3410-02 P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Doc. No. AMS-FV-12-0002; FV12-929-1 IR]

Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Changing Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule revises the reporting requirements currently prescribed under the marketing order that 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 (order). The order is administered locally by the Cranberry Marketing Committee (Committee). This rule changes the dates covered by the third reporting period and the date by which the Handler Inventory Report (Form HIR) is due to the Committee. These changes will help ensure the Committee has current and complete information available for its discussions during

its annual August meeting, while providing handlers sufficient time to submit their reports.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]; comments received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER] will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the document 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.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 325-8793, or E-mail: Doris.Jamieson@ams.usda.gov or Christian.Nissen@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Laurel.May@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 929, both as amended (7 CFR part 929), regulating the handling of cranberries produced in 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. This rule is not intended to have retroactive effect.

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 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. A handler is afforded the opportunity for a hearing on the petition. After the hearing, 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 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 revises the reporting requirements currently prescribed under the order. This rule changes the dates covered by the third reporting period and the date by which

the Handler Inventory Report (Form HIR) is due to the Committee. These changes will help ensure the Committee has current and complete information available for its discussions during its annual August meeting, while providing handlers sufficient time to submit their report. These changes were unanimously recommended by the Committee at a meeting on August 31, 2011.

Section 929.62 of the cranberry marketing order provides, in part, that each handler engaged in the handling of cranberries or cranberry products shall, upon request of the Committee, report as to the quantity of cranberries acquired and handled during any designated period or periods. This section also provides that handlers report cranberries or cranberry products held in inventory on such date as the Committee may designate.

Currently, § 929.105 provides that certified reports shall be filed with the Committee, on a form provided by the Committee, by each handler not later than January 20, May 20, and August 20 of each fiscal period and by September 20 of the succeeding fiscal period. This Handler Inventory Report (Form HIR) must show the total quantity of cranberries acquired and the total quantity of cranberries and *Vaccinium oxycoccus* cranberries handled from the

beginning of the reporting period indicated through December 31, April 30, July 31, and August 31, respectively. The report must also show the total quantity of cranberries and *Vaccinium oxycoccus* cranberries as well as cranberry products and *Vaccinium oxycoccus* cranberry products held by the handler on January 1, May 1, August 1, and August 31 of each fiscal period. The information obtained from handlers is compiled into reports which are reviewed by the Committee and used to make informed decisions regarding the activities under the order.

In 2010, the Committee recommended changing the dates when handler reports were due in order to provide handlers with additional time to submit their report (75 FR 5898). Under that action, the due dates were changed from January 5, May 5, and August 5 of each fiscal period and by September 5 of the succeeding fiscal period to January 20, May 20, and August 20 of each fiscal period and by September 20 of the succeeding fiscal period, respectively. This change was made to allow handlers more time to file their report.

After changing the due dates of the report, the Committee realized that given the new due dates, the handler report due by August 20 may not be received prior

to the Committee's annual August meeting. In discussing this issue, the Committee recognized that having as current industry information as possible available for the August meeting is important for administering the order. Further, it is particularly significant as the Committee is required to make decisions regarding the need to establish a volume regulation using a handler withholding not later than August 31 each year.

Consequently, the Committee unanimously voted to change the due date for the third reporting period from August 20 to July 20. To accommodate the new due date, this rule also adjusts the timeframes covered under third period reporting by adjusting the end date from July 31 to June 30 for cranberries acquired and handled and for reporting inventory held changes August 1 to June 30. With these changes, handler information from the third reporting period will be received and compiled into reports prior to the Committee's meeting in August. These changes will help ensure that the Committee has current and complete information available for its discussions, while providing handlers sufficient time to submit their reports.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), 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 the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 55 handlers of cranberries who are subject to regulation under the marketing order and approximately 1,200 cranberry producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

Based on Committee data and information from the National Agricultural Statistics Service, the average

annual f.o.b. price of cranberries during the 2010 season was approximately \$46.50 per barrel and total shipments were approximately 6.8 million barrels. As a percentage, about 18 percent of the handlers shipped approximately 6.5 million barrels of cranberries. Using the average f.o.b price and shipment data, about 82 percent of cranberry handlers could be considered small businesses under SBA's definition. In addition, based on production and producer prices, and the total number of cranberry growers, the average grower revenue is less than \$750,000. Therefore, the majority of growers and handlers of cranberries may be considered small entities.

This rule revises the reporting requirements currently prescribed under the cranberry marketing order. This rule revises § 929.105 by changing the due date for the third reporting period from August 20 to July 20. To accommodate the new due date, this rule also adjusts the end date for the timeframe covered under the third period reporting from July 31 to June 30 for cranberries acquired and handled, and changes August 1 to June 30 for reporting inventory held. These changes will help ensure the Committee has current and complete information available for discussion during its annual August meeting, while providing handlers

sufficient time to submit their Handler Inventory Report (Form HIR). The authority for these actions is provided in § 929.62. These changes were unanimously recommended by the Committee at a meeting on August 31, 2011.

It is not anticipated that this action will impose any additional costs on the industry nor will it change the reporting and recordkeeping burden on handlers. Having current and complete information available during the Committee's August meeting will assist the Committee when making decisions regarding the administration of the order. The benefits of this rule are not expected to be disproportionately greater or less for small handlers or growers than for large entities.

The Committee considered one alternative to these changes, making no changes to the reporting requirements. The Committee recognized making no changes to the reporting requirements could mean that current and complete information for the third reporting period may not be available for discussion during the August meeting. Therefore, this alternative was rejected.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been approved by the Office of

Management and Budget (OMB) and assigned OMB No. 0581-0189, Generic Fruit Crops. Because this revision changes neither the content of the Handler Inventory Report (Form HIR) nor its calculated burden, no changes in OMB requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any 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.

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.

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

Further, 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. Like all Committee meetings, the August 31, 2011, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:
www.ams.usda.gov/MarketingOrdersSmallBusinessGuide. Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on changes to the reporting requirements currently prescribed under the cranberry marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and

other information, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The handler reporting cycle for the current fiscal period has already begun; (2) the Committee would like this action in place prior to the start of the third reporting period which begins May 1; (3) the Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

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 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. Amend § 929.105 by revising paragraph (b) to read
as follows:

§ 929.105 Reporting.

* * * * *

(b) Certified reports shall be filed with the
committee, on a form provided by the committee, by each
handler not later than January 20, May 20, and July 20 of
each fiscal period and by September 20 of the succeeding
fiscal period showing:

(1) The total quantity of cranberries the handler
acquired and the total quantity of cranberries and
Vaccinium oxycoccus cranberries the handler handled from
the beginning of the reporting period indicated through
December 31, April 30, June 30, and August 31,
respectively, and

(2) The respective quantities of cranberries and *Vaccinium oxycoccus* cranberries and cranberry products and *Vaccinium oxycoccus* cranberry products held by the handler

on January 1, May 1, June 30, and August 31 of each fiscal period.

Dated: August 22, 2012

David R. Shipman
Administrator
Agricultural Marketing Service

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