



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 929**

[Doc. No. AMS-SC-18-0017; SC18-929-3 PR]

**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; Proposed Amendment to Marketing Order**

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule invites comments on a proposed amendment to Marketing Order No. 929, 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 Cranberry Marketing Committee (Committee), recommended adding authority to accept contributions from domestic sources. Contributed funds would be used solely for research and development activities authorized under the marketing order and would be free from any encumbrances as to their usage by the donor.

**DATES:** Comments must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops 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 proposal 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:** Geronimo Quinones, Marketing Specialist, or Julie Santoboni, Branch Chief, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237,

Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Geronimo.Quinones@ams.usda.gov or Julie.Santoboni@ams.usda.gov.

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

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rulemaking is issued under Marketing Order No. 929, as amended (7 CFR part 929), regulating 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. Part 929 (referred to as 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."

Section 608c(17) of the Act and the applicable rules of practice and procedure governing the formulation of

marketing agreements and orders (7 CFR part 900) authorizes amendment of the Order through this informal rulemaking action. The Agricultural Marketing Service (AMS) will consider all timely-filed comments received in response to this rule, and based on all the information available, will determine if Order amendment is warranted. If AMS determines amendment of the Order is warranted, a subsequent proposed rule and referendum order would be issued, and producers and processors of cranberries regulated within the production area would be allowed to vote for or against the proposed amendment. AMS would then issue a final rule effectuating the amendment if it is approved by producers and processors in the referendum.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This proposed rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this proposed rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled

'Reducing Regulation and Controlling Regulatory Costs' "  
(February 2, 2017).

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 no later than 20 days after the date of entry of the ruling.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110-246) amended section 608c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August 21, 2008). The amendment of section 608c(17) of the Act and additional supplemental rules of practice

authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. USDA may use informal rulemaking to amend marketing orders based on the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

AMS has considered these factors and has determined that this proposed amendment is not unduly complex and its nature is appropriate for utilizing the informal rulemaking process to amend the Order. A discussion of the potential regulatory and economic impacts on affected entities is discussed later in the "Initial Regulatory Flexibility Analysis" section of this proposed rule.

The Committee, which is responsible for the local administration of the order and is comprised of growers of cranberries operating within the production area, unanimously recommended this proposal following deliberations at a public meeting. The proposed amendment would give the Committee authority to receive and use voluntary contributions from domestic sources to fund production research, marketing research, and market development projects, including paid advertising, designed

to assist, improve, or promote the marketing, distribution, consumption or efficient production of cranberries, as authorized under § 929.45, Research and development.

Currently, program operations are solely financed through assessments collected from handlers regulated under the Order. Sources not affiliated with the Order have expressed an interest in supporting many of the research and development projects currently funded by the Order but the Committee has had to decline these offers. This proposal would provide authority to accept financial contributions from domestic sources. With the additional funding, more research and development projects could be undertaken.

This proposal would add a new section, § 929.43, Contributions, to the Order which would authorize the Committee to accept voluntary financial contributions. Such contributions could only be accepted from domestic sources and would be free from any encumbrances or restrictions on their use by the donor. When received, the Committee would retain complete control of their use and the contributed funds would only be used to fund program activities authorized under § 929.45, Research and development.

## **Initial Regulatory Flexibility Analysis**

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), 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 businesses 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 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 1,100 cranberry growers in the regulated area and approximately 65 cranberry handlers subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,500,000 (13 CFR 121.201).

According to industry and Committee data, the average grower price for cranberries during the 2016-17 crop year

was \$23.50 per barrel, and total sales were around 9.5 million barrels. The value for cranberries that crop year totaled \$223,250,000 (\$23.50 per barrel multiplied by 9.5 million barrels). Taking the total value of production for cranberries and dividing it by the total number of cranberry growers (1,100) provides an average return per grower of \$202,955. Based on USDA's Market News reports, the average free on board (f.o.b.) price for cranberries was around \$30.00 per barrel. Multiplying the f.o.b. price by total utilization of 9.5 million barrels results in an estimated handler-level cranberry value of \$285 million. Dividing this figure by the number of handlers (65) yields an estimated average annual handler receipt of \$4.3 million, which is below the SBA threshold for small agricultural service firms. Therefore, the majority of growers and handlers of cranberries may be classified as small entities.

The Committee's proposed amendment was unanimously recommended at a public meeting. If the proposal is approved in a referendum, there would be no direct financial effect on growers or handlers. This proposal would provide the Committee authority to accept additional funding. With the potential for additional funding, more

research and promotional projects could be undertaken. Therefore, it is anticipated that both small and large producer and handler businesses would benefit from implementation of the proposed rule. Additionally, a past referendum concerning a similar action was supported by most eligible producers and processors. However, that referendum failed due to an oversight by processors not casting their ballot in a timely manner (82 FR 36991).

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by the OMB and assigned OMB No. 0581-0189, "Generic Fruit Crops." No changes in those requirements are necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

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 Committee's meeting was widely publicized throughout the cranberry production area. All interested persons were invited to attend the meeting and encouraged to participate in Committee deliberations on all issues.

The Committee meeting was public, and all entities, both large and small, were encouraged to express their views on this proposal.

Finally, interested persons are invited to submit comments on the proposed amendment to the Order, including comments on the regulatory and information collection impacts of this action on small businesses.

Following the analysis of any comments received on the amendment proposed in this rule, AMS will evaluate all available information and determine whether to proceed. If appropriate, a proposed rule and referendum order would be issued, and producers and processors would be provided the opportunity to vote for or against the proposed amendment. Information about the referendum, including dates and voter eligibility requirements, would be published in a future issue of the Federal Register. A final rule would then be issued to effectuate the amendment, if favored by producers and processors participating in the referendum.

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 action.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

### **General Findings**

These findings are supplementary to the findings and determinations which were previously made in connection with the issuance of the Order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. The Order as proposed to be amended and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. The Order as proposed to be amended 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 in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing order;

3. The Order as proposed to be amended is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. The Order as proposed to be amended prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of cranberries produced or handled in the production area; and

5. All handling of cranberries produced in the production area as defined in the Order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

A 60-day comment period is provided to allow interested persons to respond to this proposal. Any comments received on the amendment proposed in this rulemaking will be analyzed, and if AMS determines to proceed based on all the information presented, a referendum would be conducted to determine support for the proposed amendment. If appropriate, a final rule would then be issued to effectuate the amendment favored by producers and processors participating in the referendum.

**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. Add § 929.43 to read as follows:

**§ 929.43 Contributions.**

The Committee may accept voluntary contributions to pay expenses incurred pursuant to § 929.45, Research and development. Such contributions may only be accepted if they are sourced from domestic contributors and are free from any encumbrances or restrictions on their use by the donor. The Cranberry Marketing Committee shall retain complete control of their use.

\* \* \* \* \*

Dated: April 19, 2018.

**Bruce Summers,**

*Acting Administrator,*

*Agricultural Marketing Service.*

**BILLING CODE 3410-02 P**

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