

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Parts 250 and 251

#### General Regulations and Policies—Food Distribution

##### CFR Correction

In Title 7 of the Code of Federal Regulations, parts 210 to 299, revised as of January 1, 2000, make the following corrections:

(1) Section 250.3 is corrected by removing the definition of *State* and *United States* in the effective date note on page 414, first column, and adding it to the codified text below the definition of *Situation of distress* on page 413 to read as follows:

##### § 250.3 Definitions.

\* \* \* \* \*

*State* and *United States* means any one of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

\* \* \* \* \*

(2) Section 251.10 is corrected in paragraph (f)(3) by removing the words “emergency feeding organization or distribution site” and adding in their place “eligible recipient agency” and in paragraph (f)(4) by removing the words “or distribution site”.

[FR Doc. 00-55518 Filed 11-1-00; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 929

[Docket No. FV00-929-4 FIR]

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

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which increased the assessment rate established for the Cranberry Marketing Committee (Committee) for the 1999-2000 and subsequent fiscal periods from \$0.04 to \$0.06 per barrel of cranberries acquired by handlers. 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. Authorization to assess cranberry handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began September 1, 1999, and ended August 31, 2000. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** November 3, 2000.

#### FOR FURTHER INFORMATION CONTACT:

Patricia A. Petrella or Kenneth G. Johnson, DC Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, Maryland 20737, telephone: (301) 734-5243; Fax: (301) 734-5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room

2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 929, as amended (7 CFR part 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, hereinafter referred to as the “order.” The marketing 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 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, cranberry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable cranberries beginning September 1, 1999, 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 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 exempted 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 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.

This rule continues the increase in the assessment rate established for the Committee for the 1999-2000 and

subsequent fiscal periods from \$0.04 to \$0.06 per barrel of cranberries acquired by handlers.

The cranberry marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers 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.

For the 1996–1997 fiscal period, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

In August of 1999, the Committee recommended, and the Department administratively approved, 1999–2000 expenditures of \$548,231. The Committee met on March 30, 2000, and unanimously recommended additional 1999–2000 expenditures of \$127,108 for total 1999–2000 expenditures of \$675,339 and an assessment rate of \$0.06 per barrel of cranberries. An increased assessment rate was recommended by the Committee to cover additional startup costs in connection with implementing a volume control program for 2000–2001. The Committee held numerous meetings to discuss the need for volume regulation which were not contemplated in the original budget for 1999–2000. Volume regulation has been implemented by the Department for the 2000–2001 season to address the industry's oversupply situation.

The major increased expenditures recommended by the Committee for the 1999–2000 fiscal period included \$128,239 for administration costs, \$120,307 for personnel, and \$81,700 for Committee meetings. Budgeted expenses for these items in the original 1999–2000 budget were \$63,531 for administration, \$93,407 for personnel, and \$49,200 for Committee meetings.

In deriving the recommended assessment rate increase, the Committee used the actual assessable production of 6,355,413 barrels. This figure is 1,005,413 barrels more than the

5,350,413 barrels estimated at the beginning of the fiscal period. This increased rate generated an additional \$127,108 for a total of \$341,108 in assessment income. This amount plus interest income, funds from other sources, and funds in the reserve will be sufficient to cover budgeted expenses. Funds in the reserve (currently \$45,000) will be kept within the approximately one year's operational expenses permitted by the order (§ 929.42(a)).

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although the assessment rate is effective for an indefinite period, the Committee will 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 Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1999–2000 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

In a separate action, the Department will propose to increase the assessment rate for the 2000–2001 fiscal period to cover the Committee's increased costs associated with implementing volume regulation. The proposed rule inviting comments on the increase is being published in this issue of the **Federal Register**.

#### **The Regulatory Flexibility Act and Effects on Small Businesses**

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 final 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 20 handlers of cranberries who are subject to regulation under the order and approximately 1,100 producers of cranberries in the regulated area. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000. The majority of cranberry handlers and producers may be classified as small businesses.

This rule continues the increase in the assessment rate established for the Committee and collected from handlers for the 1999–2000 and subsequent fiscal periods from \$0.04 to \$0.06 per barrel of cranberries. In August of 1999, the Committee recommended, and the Department administratively approved, 1999–2000 expenditures of \$548,231. On March 30, 2000, the Committee met and unanimously recommended additional expenditures of \$127,108 for total 1999–2000 expenditures of \$675,339. The assessment rate of \$0.06 is \$0.02 higher than the previous rate. The quantity of assessable cranberries for the 1999–2000 year was 6,355,413 barrels, 1,005,413 barrels more than the 5,350,000 estimated at the beginning of the fiscal period. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

The major increased expenditures recommended by the Committee for the 1999–2000 fiscal period include \$128,239 for administration costs, \$120,307 for personnel, and \$81,700 for Committee meetings. Budgeted expenses for these items in the original 1999–2000 budget were \$63,531 for administration, \$93,407 for personnel, and \$49,200 for Committee meetings.

An increased assessment rate was recommended by the Committee because the industry is in a surplus situation and recommended a volume regulation for the 2000–2001 season. The Department has approved that volume regulation. The Committee incurred additional startup costs in connection with the development and implementation of the volume regulation program. Also, the Committee held numerous meetings to discuss the volume regulation which were not contemplated in the original budget.

The Committee discussed the alternative of continuing the existing

assessment rate, but concluded that the Committee could run out of funds with the implementation of the volume regulation program. In deriving the recommended assessment rate increase, the Committee used the actual assessable production for the crop year at 6,355,413 barrels. This amount plus adequate supplies in the reserve will be sufficient to cover budgeted expenses. Funds in the reserve (currently \$45,000) will be kept within the approximately one year's operational expenses permitted by the order (§ 929.42(a)).

This action continues the increase in the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are 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, the March 30, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes 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 Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on August 8, 2000. Finally, the interim final rule was made available through the Internet by the Office of the **Federal Register**. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on October 10, 2000, and no comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at <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.

After consideration of all relevant material presented, including the

information and recommendation submitted by the Committee and other available information, it is hereby found that this 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 that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The 1999–2000 fiscal period ended August 31, 2000, and all assessable cranberries acquired by handlers during that period have been assessed; (2) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (3) an interim final rule was published on this action which provided for a 60-day comment period; no comments were received.

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

Marketing agreements, Cranberries, Reporting and recordkeeping requirements.

#### 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

Accordingly, the interim final rule amending 7 CFR Part 929 which was published at 65 FR 48349 on August 8, 2000, is adopted as a final rule without change.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–28142 Filed 11–1–00; 8:45 am]

BILLING CODE 3410–02–P

#### DEPARTMENT OF AGRICULTURE

#### 7 CFR Parts 1411, 1421, 1427, 1434, 1439, and 1447

RIN 0560–AG18

#### 2000 Crop Agricultural Disaster and Market Assistance

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule implements provisions of the Agricultural Risk Protection Act of 2000 (ARPA) related to oilseeds payments, peanut marketing assistance, honey recourse loans, crop and pasture flood compensation, and the expansion of eligibility for loan

deficiency payments, for the 2000 crop year only, to include producers whose cropland is not covered by a production flexibility contract. Other provisions of the ARPA will be implemented under separate rules.

**EFFECTIVE DATE:** October 27, 2000.

**FOR FURTHER INFORMATION CONTACT:** Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, USDA/FSA/ORAS/RRFIDB/STOP 0540, 1400 Independence Ave., SW, Washington, DC, 20250–0540, telephone (202)205–5851, or by e-mail to: [tom\\_witzig@wdc.fsa.usda.gov](mailto:tom_witzig@wdc.fsa.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Notice and Comment

Section 263 of the ARPA requires that these regulations are to be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These regulations are thus issued as final.

##### Executive Order 12866

This final rule has been determined to be economically significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB). A cost-benefit assessment was completed and is summarized after the background section explaining the actions this rule will take.

##### Federal Assistance Programs

The titles and numbers of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are: Commodity Loan and Loan Deficiency Payments—10.051; Production Flexibility Payments for Contract Commodities—10.055; Disaster Reserve Assistance—10.452.

##### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

##### Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.