including remedial and enforcement actions, are required.

If APHIS determines that action is not necessary to mitigate low-level presence of a regulated material in commerce to protect plant health or the environment, this determination does not preclude enforcement action against a company or individual for violation of APHIS regulations. APHIS will investigate and take appropriate enforcement action whenever regulated materials are detected in commerce.

APHIS coordinates closely with EPA and FDA on investigations, risk evaluations, and the determination of what remediation measures, if any, will be necessary. This cooperation is crucial and helps to ensure that there are no unresolved safety issues. Any regulatory action taken by APHIS will not preclude FDA or EPA from pursuing action under their own authorities, as necessary, to ensure the safety of food as well as to protect human health and the environment from the sale, distribution, or use of any pesticide.

APHIS has authority under the PPA to take or order remedial measures which include the authority to hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated materials if it is determined that such measures are necessary to prevent the dissemination of a plant pest within or throughout the United States.[10] Any remedial action taken would be determined on a case-by-case basis. Key considerations include the extent of the occurrence, the nature of the regulated material, as well as any potential risks to plant health or the environment. In any case where APHIS determines that an incident involving a GE plant would result in the introduction or dissemination of material that could pose a threat to plant health or the environment, remediation measures will be required. It is important to note that, due to the strict requirements that APHIS has developed in recent years for GE plants that pose elevated risks, such occurrences would be unlikely.

There are two principal situations in which APHIS may determine that action under the PPA was not necessary. Even though remedial measures would not generally be applied in these two situations, applicants field testing these types of plants must be authorized through either notifications or permits and must follow all APHIS requirements.

The first situation would be when the regulated material is derived from plants that meet all of the criteria to qualify for APHIS' notification process. The six eligibility requirements are: [11]

- The plant must not be listed on the Federal Noxious Weed list or be considered a weed in the area of proposed release.
- The introduced genetic material must be stably integrated, which means the introduced DNA must remain inside the living cell and replicate only with the plant DNA.
- The function of the introduced genetic material is known, and its presence in the regulated article does not result in a plant disease.
- The introduced genetic material does not cause the production of an infectious entity, produce substances that are known to be, or are likely to be, toxic to nontarget organisms, or produce products intended for pharmaceutical or industrial use.
- The introduced genetic sequences derived from plant viruses do not pose a significant risk of creating a new plant virus.
- The plant has not been modified to contain certain genetic material derived from animal or human pathogens. In addition, plants containing coding sequences whose products are known agents of diseases in humans or nontarget animals are not eligible.

The majority of GE plants field tested under APHIS regulations qualify for the notification process because they present minimal risk to plant health and the environment. Many of the plants that have been engineered for common traits such as pest resistance, herbicide tolerance, male sterility, and improved product quality such as delayed fruit ripening meet the criteria for notification. APHIS has extensive experience with these types of plants and has overseen thousands of field tests involving them.

The second situation in which APHIS may not take remedial action is if the GE plant is similar to another GE plant that has already been deregulated by APHIS with respect to both plant genotype and any novel protein(s) expressed. APHIS will carefully assess the GE plant material, including the plant genotype, the introduced genes, and any proteins produced. When these are sufficiently similar to those of a previously deregulated plant, APHIS is able to conclude confidently that, like the previously deregulated plant, the new GE plant poses no significant safety risk to plant health or the environment, and thus, remedial action may not be necessary.

[10] See 7 U.S.C. 7714; 7 CFR 340.0(b).

[11] The specific criteria for GE crops planted under notification are found at 7 CFR 340.3.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 26th day of March 2007.

Bruce Knight,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 07–1536 Filed 3–27–07; 2:00 pm]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

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

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases 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: *Effective Date:* This rule becomes effective March 30, 2007.

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* or *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*.

SUPPLEMENTARY INFORMATION: This final 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 final 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 issued herein will 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 final rule increases the assessment rate established for the 2006–2007 and subsequent fiscal years from $0.18 to $0.28 per barrel of cranberries.

The proposed rule inadvertently referred to the proposed increase as a ''per pound'' increase rather than a ''per barrel'' increase two times in the **SUPPLEMENTARY INFORMATION** section. The proposed regulatory text was correct in the proposed rule. The inadvertent errors are corrected in this document.

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 barrel 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 and promotion program.

All cranberry handlers regulated under the marketing order will 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 x $0.28). This amount plus $1,767,600 from USDA's Foreign Agricultural Service's Market Access Program (MAP) and adequate funds in the reserve and interest income will be adequate to cover budgeted expenses. Funds in the reserve (approximately $541,122) will 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 will 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 will be 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 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 will be undertaken as necessary. The Committee's 2006–2007 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the USDA.

Final 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 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 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 increases 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 increases 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 rule will 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.

As mentioned previously, a proposed rule was published in the **Federal Register** on January 16, 2007 (72 FR 1678). Copies of the proposed rule were mailed or sent via facsimile to all Committee members and handlers. Finally, the proposed rule was made available through the Internet, USDA and the Office of the Federal Register. A 30-day comment period ending February 15, 2007, was provided to allow interested persons to respond to the proposal. Four comments were received. One supported and three opposed the proposal.

The commenter in support for the assessment rate increase stated that the increase is needed to help fund the Committee's operations and to help increase consumer awareness of cranberries.

Three comments were received (two from growers and one from a grower-handler) in opposition to the proposed assessment rate increase. One of the commenters opposed the proposal because he did not believe a $.10 per barrel increase in the assessment rate will have a meaningful increase on the demand for cranberries. The commenter also stated that it is inequitable to force U.S. growers to spend another $.10 per barrel while growers in Canada and Chile pay nothing. Finally, this commenter stated that it is impossible to justify an increase in the assessment rate for advertising when cranberry supply and demand are projected to be in balance. Another commenter opposed the proposal based on his contention that he already spends a sum of money on branded advertising with a major cranberry cooperative. The last

commenter felt that the assessment rate increase was an excessive and unjustified expense.

In response to these comments, the $.10 per barrel increase is not specifically for export promotional activities but to provide the Committee with funds for its operational expenses. As previously stated, the assessment rate has not been increased since 2002. Since that time, there have been increases in the costs of goods and services, costs contributable to increasing Committee membership and to pay back funds taken from the reserve for the export market development program. The increase in the assessment rate is needed to generate larger revenue for the Committee to meet its expenses and keep its reserves at an acceptable level. Without the increase, the Committee will have to curtail its operational expenses including the export market development and promotion program that has[K1] been funded by assessments and MAP funds for the past several years.

With regard to the equitability of some handlers paying the increased assessment rate while others pay no assessments, all cranberry handlers regulated under the marketing order will have to pay the increased assessment rate. Certain organic handlers are exempt from paying assessments on market promotion activities. However, handlers not regulated under the marketing order (such as those handlers in Canada or Chile) are not subject to its provisions and thus, do not have to pay assessments.

Lastly, in regards to the commenter who already pays for branded advertising, we note that those advertisements promote a specific brand of cranberries and cranberry products. The Committee's domestic and export promotion programs are generic and were developed to promote the qualities of cranberries and cranberry products for the entire cranberry industry. Both the generic and branded promotion of cranberries and cranberry products reach new markets/customers and increase demand for cranberries. Under the marketing order, the assessment obligation is 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, we believe that these costs are offset by the benefits derived by the operation of the marketing order.

Accordingly, no changes will be made to this rule based on the comments received.

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.

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 and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2006–2007 fiscal period began September 1, 2006, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable cranberries handled during such fiscal period. Further, handlers are aware of this action which was recommended by the Committee at a public meeting. Also, a 30-day comment period was provided for in the proposed 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. 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: March 23, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–5791 Filed 3–28–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. AMS–FV–06–0181; FV06–948–2 FIR]

Irish Potatoes Grown in Colorado; Modification of the Handling Regulation for Area No. 2

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule modifying the grade and maturity requirements for potatoes handled under the Colorado potato marketing order, Area No. 2. The marketing order regulates the handling of Irish potatoes grown in Colorado and is administered locally by the Colorado Potato Administrative Committee, Area No. 2 (Committee). This rule continues in effect the action that relaxed the minimum grade requirement from U.S. No. 1 grade to U.S. Commercial grade for all Area No. 2 potato varieties, other than round, red-skinned varieties, measuring from 1½-inch minimum diameter to 2¼-inch maximum diameter (size B), and 1-inch minimum diameter to 1¾-inch maximum diameter. This rule also continues in effect the action that changed the date minimum maturity requirements are implemented from August 25 to August 1 of each year. These changes are intended to facilitate the handling and marketing of Colorado Area No. 2 potatoes.

DATES: *Effective Date:* April 30, 2007.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: *Teresa.Hutchinson@usda.gov* or *GaryD.Olson@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.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948,