

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Doc. No. AMS-FV-09-0073; FV10-929-1 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; Changes to Reporting Dates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on proposed changes to the reporting dates 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. The order is administered locally by the Cranberry Marketing Committee (Committee). This rule would revise the due dates of handler reports to provide more time for handlers to file their reports with the Committee, and would improve handler compliance with the order's reporting regulations.

DATES: Comments must be received by March 8, 2010.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. 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 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:

Patricia A. Petrella, Marketing Specialist or Kenneth G. Johnson, Regional Manager, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (301) 734-5243, Fax: (301) 734-5275, or E-mail: Patricia.Petrella@ams.usda.gov or Kenneth.Johnson@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, 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: Antoinette.Carter@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposal 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 proposal 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 proposal invites comments on revising the due dates of handler reports from January 5, May 5, and August 5 of each fiscal period and September 5 of the succeeding fiscal period to January 20, May 20, and August 20 of each fiscal period and September 20 of the succeeding period, respectively. The proposed dates would provide more time for handlers to file their reports. It has become more difficult for handlers to meet the current filing deadlines due to the demands of growing domestic and international markets and the larger volumes of cranberries handled.

Currently, § 929.62(d) of the order provides that each handler shall, upon request of the Committee, file promptly with the Committee a certified report as to the quantity of cranberries handled during any designated period or periods. Further, § 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 5, May 5, and August 5 of each fiscal period and by September 5 of the succeeding fiscal period. These reports must show the total quantity of cranberries 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, July 31, and August 31, respectively. The reports 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. Information to be submitted to the Committee on the handler reports would not be changed by this action.

The Committee recommended that the order's reporting regulations be changed

to allow handlers additional time to submit these reports. Over time, the amount of cranberries being grown and handled has increased, and the greater demands associated with expanding markets have made it increasingly difficult for handlers to gather the information required for the reports before the filing deadline.

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 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 80 handlers of cranberries who are subject to regulation under the marketing order and approximately 1,200 cranberry growers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) 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. Based on information maintained by the Committee, the majority of growers and handlers of cranberries under the order would be considered small entities under SBA's standards.

Under the order, handlers are required to submit acquisition, handling, and inventory reports to the Committee four times per year. Such information is used by the Committee in the administration of the order. The currently prescribed due dates follow the end of each respective reporting period by five days. Handlers indicated that it has become difficult to comply with the current reporting deadlines because five days is not enough time to compile the information required for the reports.

This proposal invites comments on revising the due dates of mandatory handler reports from January 5, May 5, and August 5 of each fiscal period; and September 5 of the succeeding fiscal period to January 20, May 20, and August 20 of each fiscal period; and September 20 of the succeeding period,

respectively. The proposed dates would provide more time for handlers to file their reports.

At its August 21, 2009, meeting, the Committee discussed whether the current due dates needed to be changed to allow more time for handlers to comply with the reporting requirements. The Committee staff indicated that compliance with the order's reporting requirements would improve if handlers were given additional time to file the reports.

The Committee discussed alternatives to this change, including not making the change at all. However, the Committee believes that this change is necessary to ensure that handlers have adequate time to comply with the order's requirements.

This rule is not expected to have any economic impact on growers or handlers of any size. The benefits of this rule are not expected to be disproportionately greater or less for small handlers or growers than for larger entities.

This proposed rule would 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.

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

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 August 21, 2009, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed 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: <http://www.ams.usda.gov>. Any questions about the compliance guide should be sent to Antoinette Carter 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 proposal. Thirty days is deemed appropriate because this rule, if adopted, should be in place as soon as possible to inform handlers of the new reporting deadline in May of 2010. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 987

Marketing agreements, Reporting and recordkeeping requirements, Cranberries.

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. In § 929.105, the introductory text of paragraph (b) is revised 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 August 20 of each fiscal period and by September 20 of the succeeding fiscal period showing:

* * * * *

Dated: February 2, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–2546 Filed 2–4–10; 8:45 am]

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