

# 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

[Docket No. FV00-929-5 PR]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate established for the Cranberry Marketing Committee (Committee) for the 2000-2001 and subsequent fiscal periods from \$0.06 to \$0.08 per barrel of cranberries acquired by handlers. The Committee locally administers the Federal marketing order which regulates the handling of cranberries grown in the production area. 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 and ends August 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by November 17, 2000.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698; or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**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 of Agriculture (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 would be applicable to all assessable cranberries beginning September 1, 2000, 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 would increase the assessment rate established for the Committee for the 2000-2001 and subsequent fiscal periods for cranberries from \$0.06 to \$0.08 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 1999-2000 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.

The assessment rate for the 1999-2000 fiscal period was increased from \$0.04 to \$0.06 cents per barrel to generate enough funds to cover increased costs due to the industry's oversupply situation. Committee expenses in 1999-2000 were initially estimated at \$548,231, but had to be increased to \$675,339 to cover additional meeting and other expenses

related to the development of volume regulation for the 2000–2001 season.

At its June 6, 2000, meeting the Committee developed its 2000–2001 budget and assessment rate. In July, the Committee conducted a mail vote and unanimously recommended expenditures of \$778,840 and an assessment rate of \$.08 per barrel of cranberries. The expenditures and assessment rate were discussed and unanimously reaffirmed at the Committee's August 28, 2000, meeting. A further increase in the assessment rate for 2000–2001 was recommended because the Committee needs additional funds to implement volume regulation and further address the industry's oversupply situation.

The major expenditures recommended by the Committee for the 2000–2001 fiscal period include \$223,647 for administration costs, \$119,464 for personnel, and \$67,500 for Committee meetings. Budgeted expenses for these items in the 1999–2000 budget were \$130,358 for administration, \$119,807 for personnel, and \$81,700 for Committee meetings.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected barrels of cranberries acquired by handlers. Acquisitions for the year are estimated at 6,400,000 barrels which should provide \$512,000 in assessment income. Income derived from handler assessments, along with interest income, operating reserves, and funds from the Foreign Agricultural Service for export marketing programs would be adequate to cover budgeted expenses. Any excess funds would be used by the Committee to build up its operating reserve. Funds in the reserve, currently \$45,000, would be kept within the approximately one year's operational expenses permitted by the order (§ 929.42(a)).

The proposed assessment rate would 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 would be effective for an indefinite period, the Committee would 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 would evaluate Committee recommendations

and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2000–2001 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the Department.

#### **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 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 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 entities.

The assessment rate for the 1999–2000 fiscal period was increased from \$0.04 to \$0.06 cents per barrel to generate funds to cover additional expenses resulting from the industry's oversupply situation. Committee expenses in 1999–2000 were initially estimated at \$548,231, but had to be increased to \$675,339 to cover additional meeting and other expenses related to the development of volume regulation for the 2000–2001 season.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2000–2001 and subsequent fiscal periods from \$0.06 to \$0.08 per barrel of cranberries acquired by handlers. The Committee unanimously recommended 2000–2001 expenses of \$778,840. The major expenditures recommended by the Committee include \$223,647 for administration costs, \$119,464 for

personnel, and \$67,500 for Committee meetings. Budgeted expenses for these items in 1999–2000 were \$130,358, \$119,807, and \$81,700, respectively.

The increased assessment rate was recommended by the Committee because the Department has approved a volume regulation for the 2000–2001 season to help stabilize marketing conditions. The Committee needs additional funds to administer the volume regulation and further address the industry's oversupply situation.

The Committee discussed the alternative of continuing the existing \$0.06 per barrel assessment rate, but concluded that the Committee could run out of funds with the implementation of a volume regulation program. The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected barrels of cranberries acquired by handlers. Acquisitions for the year are estimated at 6,400,000 barrels which should provide \$512,000 in assessment income. Income derived from handler assessments, along with interest income, operating reserves, and funds from the Foreign Agricultural Service for export marketing programs would be adequate to cover budgeted expenses. Any excess funds would be used by the Committee to build up its operating reserve. Funds in the reserve, currently \$45,000, would be kept within the approximately one year's operational expenses permitted by the order (§ 929.42(a)).

This action would increase the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. In addition, the Committee's meetings were widely publicized throughout the cranberry industry and all interested persons were invited to attend the meetings 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 action 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 Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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

A 15-day comment period is provided to allow interested persons the opportunity to respond to this request for information and comments. Fifteen days is deemed appropriate because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 2000–2001 fiscal period began on September 1, 2000, and the order requires that the rate of assessment for each fiscal period apply to all assessable cranberries acquired during such fiscal period; and (3) handlers are aware of this action which was unanimously recommended by the Committee in a mail vote and discussed at a public meeting and is similar to other assessment rate actions issued in past years.

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

Marketing agreements, Cranberries, 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. Section 929.236 is revised to read as follows:

#### **§ 929.236 Assessment rate.**

On and after September 1, 2000, an assessment rate of \$0.08 per barrel is established for cranberries.

Dated: October 27, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–28141 Filed 11–1–00; 8:45 am]

**BILLING CODE 3410–02–P**

## **DEPARTMENT OF AGRICULTURE**

### **Rural Housing Service**

### **Rural Business-Cooperative Service**

### **Rural Utilities Service**

### **Farm Service Agency**

### **7 CFR Parts 1930 and 1944**

**RIN 0575–AC24**

#### **Operating Assistance for Off-Farm Migrant Farmworker Projects**

**AGENCIES:** Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Rural Housing Service (RHS), formerly Rural Housing and Community Development Service (RHCD), a successor Agency to the Farmers Home Administration (FmHA), proposes to amend its regulations for the Farm Labor Housing (LH) program for off-farm migrant housing projects. This action is taken to implement section 599C(e) of Pub. L. 105–276, enacted October 21, 1998, which amends the Housing Act of 1949 to permit section 521 rental assistance funds to be used as operating assistance in migrant farmworker projects financed under sections 514 or 516. The intended result is to reduce operating costs so that rents may be set at rates that are affordable to low-income migrant farmworkers.

**DATES:** Written or e-mail comments on this Proposed Rule must be received on or before January 2, 2001 to be assured of consideration.

**ADDRESSES:** Written comments may be submitted, in duplicate, to the Regulations and Paperwork Management Branch, Attention: Jean Mosley, Rural Development, U.S. Department of Agriculture, Stop 0742, 1400 Independence Avenue SW, Washington, DC 20250–0742. Comments may be submitted via the Internet by addressing them to “comments@rus.usda.gov” and must contain the word “migrant” in the subject. All written comments will be available for public inspection during normal working hours at 300 E Street, SW, Washington, DC.

#### **FOR FURTHER INFORMATION CONTACT:**

Linda Armour, Senior Loan Specialist, Multi-Family Housing Processing Division, Rural Housing Service, U.S. Department of Agriculture, Room 5349–South Building, Stop 0781, 1400

Independence Avenue, SW, Washington, DC 20250–0781, telephone (202) 720–1608.

#### **SUPPLEMENTARY INFORMATION:**

##### **Classification**

This proposed rule has been determined to be not significant for purposes of Executive Order 12886 and, therefore, has not been reviewed by the Office of Management and Budget.

##### **Paperwork Reduction Act**

The information collection requirements contained in this regulation have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575–0045, in accordance with the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB number. The valid OMB control number assigned to the collection of information in these regulations is displayed at the end of the affected section of the regulation. This rule does not impose any new information collection requirements from those approved by OMB.

##### **Civil Justice Reform**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule.

##### **Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RHS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RHS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome