

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.*

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**BILLING CODE 3410–02–P**

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 929**

[Doc. No. AMS–SC–18–0012; SC18–929–2 PR]

### **Cranberries Grown in States of Massachusetts, et al.; Establishment of 2018–19 Seasonal Volume Regulation**

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule invites comments on a recommendation to

establish a grower allotment percentage for the 2018–19 crop year under the marketing order for cranberries grown in the production area (Order). This proposed action would limit the quantity of cranberries from the 2018–19 crop a handler may purchase from, or handle on behalf of, growers, and would allow for the diversion of processed products from that year. This proposed action would also specify handlers subject to the regulation, revise the definition of outlets for excess fruit, revise dates by which certain actions are due, and establish exemptions to the proposed action.

**DATES:** Comments must be received by May 29, 2018.

**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:** Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: [Doris.Jamieson@ams.usda.gov](mailto:Doris.Jamieson@ams.usda.gov) or [Christian.Nissen@ams.usda.gov](mailto:Christian.Nissen@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 Email: [Richard.Lower@ams.usda.gov](mailto:Richard.Lower@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, proposes amendments to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposal

is issued under Marketing Agreement and 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." The Cranberry Marketing Committee (Committee) locally administers the Order and is comprised of growers of cranberries operating within the production area, and a public member.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 13563 and 13175. This action 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).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Order provisions provide that the Committee may recommend and implement, subject to USDA approval, volume control regulation which would decrease the available supply of cranberries whenever the Secretary of Agriculture (Secretary) finds that "such regulation will tend to effectuate the declared policy of the Act." Accordingly, this proposed rule would establish a marketable quantity and grower allotment percentage for cranberries produced during the 2018–19 crop year, beginning September 1, 2018, and ending August 31, 2019.

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 proposed rule invites comments on the establishment of a marketable quantity and grower allotment percentage for the 2018–19 crop year. This proposal is the result of the Committee's recommendations made during its August 4, and August 31, 2017, meetings, and a February 18, 2018, email vote. The proposal would establish a marketable quantity of 7.275 million barrels and a grower allotment percentage of 75 percent. This proposed action would also allow handlers to process up to 50 percent of the excess cranberries they receive above their growers' allotment, provided they divert an equivalent amount of 2018–19 cranberry processed products. It would also establish an exemption for organically grown cranberries, specify handlers subject to the regulation, revise the definition of outlets for excess fruit, and revise dates by which certain actions are due.

The Committee also recommended an exemption for organically grown cranberries, and an exemption of 2,500 barrels for each grower. After much consideration, USDA determined the recommended grower exemption of 2,500 barrels should be revised. Consequently, this proposal does not include the exemption of 2,500 barrels for each grower and instead proposes to exempt handlers that processed less than 125,000 barrels during the 2017–18 fiscal year, or handlers that did not have carryover inventory at the end of the 2017–18 fiscal year. Accordingly, growers delivering their fruit to exempt handlers would not be subject to the allotment.

In addition, in a February 18, 2018 vote by email, the Committee voted unanimously to adjust reporting dates associated with the proposed allotment regulation. These changes were previously discussed and supported by the Committee at a meeting on April 22, 2014 as part of the consideration of another volume regulation for which a rule was not issued.

The recommendations included in this proposed rule would adjust supply to more closely meet market demand, improve grower and handler returns, and help reduce inventory.

Sections 929.49 and 929.52 provide, in part, authority to establish a marketable quantity and grower allotment percentage. Section 929.14 defines marketable quantity as the

volume of cranberries needed to meet market demand and provide for an adequate carryover into the next season. The allotment percentage is derived by dividing the marketable quantity by the total of all growers' sales histories. Section 929.48 outlines procedures for computing a grower's sales history.

Section 929.49 also prescribes how the grower allotment percentage is calculated and distributed to growers and handlers. Each grower's allotment volume is calculated by multiplying the individual's sales history by the allotment percentage. A grower's allotment is the total volume a handler may purchase from, or handle on behalf of, that grower during a year of volume regulation. Cranberries received by a handler that exceed the sum of their growers' allotments can be used to fill unused allotment. Any remaining cranberries are defined as excess cranberries as defined in § 929.59, which also outlines the procedures and dates by which excess cranberries are to be diverted. Section 929.61 prescribes outlets for excess cranberries, which are further defined in § 929.104.

In addition, § 929.50 provides authority for the transfer of sales history and annual allotment. Section 929.51 requires the Committee to consider market conditions, including supply and demand, prior to recommending an allotment percentage, and that any recommendation be made by March 1. Section 929.58(a) provides the authority to exempt from any or all requirements the handling of cranberries in such minimum quantities as the Committee, with the approval of the Secretary, may prescribe. Section 929.58(b) provides, in part, the authority to exempt from any or all requirements the handling of cranberries of such forms or types, including organic cranberries, as the Committee, with the approval of the Secretary, may prescribe.

Domestic cranberry production has been increasing over the past few years, up from 8.0 million barrels in 2012 to 9.6 million barrels in 2016. During the last few years, demand has remained relatively flat, and has not kept pace with the increases in supply. This has led to increasing levels of inventories. Ending inventory levels increased from 5.8 million barrels in 2012 to 9.7 million barrels in 2016.

Demand for cranberries is inelastic, meaning changes in consumer price have a minimal effect on total sales. However, grower prices are very sensitive to changes in supply. Consequently, higher inventory levels place downward pressure on grower prices for cranberries and reduce grower returns. Data reviewed by the

Committee indicates that the price per barrel received by some growers has fallen from \$30 a barrel in 2011 to \$10 a barrel in 2016. With the cost of production estimated at approximately \$35 a barrel, for many growers returns have fallen below the cost of production.

The Committee met on August 4, 2017, and again on August 31, 2017, and discussed the estimated levels of supply and demand and how market conditions were impacting the industry. The Committee discussed the approximate levels of production for the 2017–18 season, forecasting production at approximately 9.1 million barrels. Carryover inventory was estimated at approximately 9.9 million barrels and foreign acquired cranberries were expected to provide an additional 2.1 million barrels, for a total available supply of approximately 21.1 million barrels for the year. After accounting for shrinkage, the Committee agreed on an adjusted supply of 20.4 million barrels for the 2017–18 crop year.

Using these numbers, with estimated sales of 9.5 million barrels for 2017–18, the Committee calculated a potential carryover for the 2018–19 season of 10.9 million barrels. This is an approximately one million barrel increase from the carryover inventory for the 2017–18 crop year. Based on these numbers, carryover inventory for the 2018–19 crop year would be approximately 115 percent of annual sales.

In discussing market conditions, the Committee recognized that sales have been relatively flat. The Committee also noted supply has been exceeding demand by about one million barrels a year. Using crop and sales estimates similar to 2017–18, and the estimated carryover from the 2017–18 season of 10.9 million barrels, the potential carryover supply at the end of the 2018–19 crop year could increase by another one million barrels to 11.9 million if no action is taken to regulate supply.

In reviewing these numbers, the Committee agreed the industry is faced with a large inventory that continues to build. To address the problems associated with oversupply and to try to stabilize grower returns, the Committee discussed the need to establish volume regulation. The Committee considered several options, including establishing free and restricted percentages under a handler withholding for the 2017–18 crop year, establishing a grower allotment for the 2018–19 season, or recommending both regulations.

Considering the levels of inventory and low grower returns, the Committee voted to recommend a handler

withholding, setting the free and restricted percentages of 85 percent and 15 percent, respectively, for the 2017–18 season. The proposed rule to establish these percentages was published in the **Federal Register** on January 2, 2018 (83 FR 72). The Committee estimated that the 15 percent restriction would remove approximately one million barrels from inventory, helping to maintain inventories at current levels. While the Committee recognized a small restriction would not immediately balance supply with demand, even a small restriction would remove a portion of the volume from the market and help prevent an additional increase in inventory.

With the proposed handler withholding removing an estimated one million barrels from the market, the industry would still have approximately 10 million barrels remaining in inventory. Given the static demand and anticipated market conditions for the 2018–19 fiscal year, the Committee also recommended establishing a grower allotment percentage for the 2018–19 fiscal year.

The Committee discussed various levels of restriction, being sensitive to the impact volume control could have on small growers and handlers. Some small handlers are able to sell all their production each year and do not maintain an inventory. Several Committee members stated a large restriction would place a hardship on these small handlers. However, the Committee also recognized that volume control measures could help increase grower returns by helping to align supply with demand.

In addition, establishing an allotment regulation can help growers reduce production costs. Growers could choose to take bogs out of production, or reduce inputs such as fertilizer and pesticides in order to reduce their production volume to match their allotment. These and other steps could help growers reduce their costs of production for the 2018–19 crop.

Based on the information available, the Committee recommended establishing a marketable quantity of 7.275 million barrels and an allotment percentage of 75 percent for the 2018–19 crop year. With volume regulation, returns are expected to be higher than without volume regulation. This increase is beneficial to all growers and handlers regardless of size, and enhances total revenues in comparison to no volume regulation. Establishing an allotment percentage allows the industry to help stabilize supplies. This proposal could remove a potential 2 million barrels from supply, reduce

industry inventory, and increase industry returns. This proposed rule would add a new § 929.253 to establish the marketable quantity and grower allotment.

The Committee also recommended that handlers have the option to receive cranberries over their grower allotment and process up to 50 percent of the excess cranberries received rather than divert them in fresh form, as currently required. Handlers that do so would need to divert an amount of 2018–19 cranberry processed products equivalent to the volume of excess cranberries processed.

The Committee made this recommendation recognizing that processing fresh fruit to produce one of its top-selling items, sweetened dried cranberries (SDC), results in juice concentrate as a by-product. A significant amount of current inventory is in the form of juice concentrate. By allowing handlers to process a portion of the excess cranberries they receive, more fresh cranberries would be available to produce products requiring whole cranberries, such as SDC, and the diversion of concentrate would help prevent additional build-up of inventory. Handlers would still have the option to divert fresh berries as excess supply.

To allow for the diversion of processed products, § 929.104(b), which currently prohibits the handling of excess fruit, would be removed. To ensure the diversion of processed products in lieu of fresh cranberries is correctly accounted for, the final rule for volume regulation for the 2017–18 season (83 FR 14350) adds guidance under § 929.107 along with a conversion table. The table recognizes different conversion equivalencies of cranberries to processed product based on the volume of Brix concentrate.

Brix is the method for measuring the amount of sugar contained in the cranberry products, and the industry average for concentrate is 50 Brix. The Committee acknowledged that the Brix level can vary depending on the growing region and farming practices. The proposed table would help ensure that the diversion of processed product in lieu of fresh berries is applied equitably among all handlers.

Using the proposed conversion table, handlers could determine the amount of cranberry concentrate they would need to divert, in lieu of fresh berries, to cover the fresh cranberry equivalent of any excess cranberries processed. Juice concentrate should comprise the vast majority of processed product used for diversion. Should requests be made to use other processed products for

diversion, conversion rates for those products would be provided by the Committee based on information provided by the requesting handler.

For example, a grower with a sales history of 1,000 barrels would have an allotment of 750 barrels ( $1,000 \times .75$ ). If the grower delivered all 1,000 barrels to the handler, the handler would have 250 barrels of excess fruit. Under this proposed rule, the handler could divert 250 barrels of fresh fruit to approved outlets or divert half (125 barrels of fresh fruit) and process half, diverting a 125 barrel equivalent in 2018–19 processed product.

The Committee also recommended changes to date requirements currently specified in the Order. Section 929.59(b) currently states that “{p}rior to January 1, or such other date as recommended by the committee and approved by the Secretary, handlers holding excess cranberries shall submit to the committee a written plan outlining procedures for the systematic disposal of such cranberries in the outlets prescribed in § 929.61.” The Committee agreed the date for submitting disposal plans should be extended in order to give handlers more time to consider how to divert their excess cranberries. Therefore, the Committee recommended changing the deadline prescribed in § 929.59(b) from January 1 to March 1 of the regulated season.

Section 929.59(c) states that “{p}rior to March 1, or such other date as recommended by the committee and approved by the Secretary, all excess cranberries shall be disposed of pursuant to § 929.61.” Given the change in the due date for the diversion plans, the Committee agreed that this date should also be changed to provide handlers with enough time to comply with this requirement. Therefore, the Committee recommended changing the date by which diversion is to be completed from March 1 to August 31. This proposed rule would add a new § 929.159 to make these date changes.

Section 929.62(a) requires each grower to file a report with the Committee by January 15 of each year providing the following information: Total acreage harvested and whether owned or leased; total commercial cranberry sales in barrels from such acreage; the amount of acres either in production but not harvested, or taken out of production, and the reason(s) why; the amount of new or replanted acreage coming into production; the name of the handler(s) to whom commercial cranberry sales were made; and such other information as may be needed for implementation and operation of this section. Growers might

not have all necessary information to complete the report by the current deadline. Therefore, the Committee recommended changing the grower reporting date from January 15 to March 1.

The Committee also recommended organically grown cranberries be exempt from this proposed regulation as they serve a niche market and represent a very small portion of the total crop. All other cranberry production, including fresh cranberries, would be subject to regulation under the grower allotment volume regulation.

To address the burden the volume regulation would have on small growers and handlers, the Committee also recommended providing an exemption of 2,500 barrels for all growers. Under the Committee’s recommendation, the exemption would be applied following the calculation of a grower’s allotment. However, after much consideration, USDA determined the exemption recommendation should be revised. Rather than provide an exemption of 2,500 barrels for each grower, this proposed action would exempt small handlers who processed less than 125,000 barrels from the allotment requirement. Further, handlers who did not have carryover inventory at the end of the 2017–18 fiscal year would also be exempt from the allotment requirement. Accordingly, growers delivering their fruit to exempt handlers would not be subject to the allotment.

These changes would allow handlers who have matched their production with market demand to continue to serve their customer base and maintain their market share. Small growers would also have the option of delivering their fruit to handlers who are not subject to the regulation. Handlers subject to the allotment percentage should be able to meet any market shortfalls by utilizing cranberries or cranberry products available in inventory. The provision allowing handlers to process a portion of their excess cranberries should also help provide some flexibility.

With this proposed action, only those handlers carrying inventory would be subject to meeting the allotment requirement. In reviewing the Committee’s recommendation and other available industry information, USDA has determined that existing inventories in excess of 9 million barrels are putting the most downward pressure on returns to both growers and handlers. Consequently, this proposal would put more focus on reducing the volume in inventory.

Section 929.125 provides authority for a grower to request a review by an appeals subcommittee if the grower is

dissatisfied with his or her sales history calculation provided by the Committee. The grower must request the review within 30 days after receipt of the Committee’s determination of sales history and must submit documentation showing why he or she believes the calculation is inaccurate. Within 15 days after notification of the appeals subcommittee’s decision, if the grower is not satisfied with the decision, the grower may further appeal to the Secretary.

A grower may transfer all or part of their allotment to another grower, provided that the transferred allotment remains assigned to the same handler. Transfers of allotment between growers having different handlers may occur with the consent of both handlers. All such transfers would have to be reported to the Committee. After all allotment transfers have occurred, any unused allotment would be transferred to the Committee. The Committee would then redistribute any unused allotment to handlers having excess cranberries in an amount proportionate to each handler’s total allotment. These provisions help ensure that excess supply is utilized, to the extent possible, through unfilled allotment.

The Committee considered the estimated level of production and anticipated demand, and determined that without some action on the part of the Committee, inventory levels would continue to increase throughout the 2018–19 season. The Committee believes using the volume control authorities in the Order would help stabilize marketing conditions for cranberries by helping to adjust supply to meet market demand and improve grower returns.

Accordingly, this proposal would establish a grower allotment at 75 percent for the 2018–19 season. It would also give handlers the option to process up to 50 percent of the excess cranberries they receive above their growers’ allotment, provided they divert an equivalent amount of 2018–19 cranberry processed products. This proposed rule would also exempt organically grown cranberries, specify handlers subject to the regulation, revise the definition of outlets for excess fruit, and revise dates by which certain actions are due.

#### **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 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 season was \$23.50 per barrel and total sales were approximately 9.5 million barrels. The value for cranberries that 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 provides an average return per grower of \$202,955. Using the average price and utilization information, and assuming a normal distribution, the majority of cranberry growers receive less than \$750,000 annually.

According to USDA's Market News report, the average free on board (f.o.b.) price for cranberries was approximately \$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 producers and handlers of cranberries may be classified as small entities.

While cranberry production has continued to rise, demand has failed to keep pace, and inventories have been increasing. In an industry such as cranberries, product can be stored in inventory for long periods of time. Large inventories are costly to maintain, difficult to market, and have a price-depressing effect. When supply outpaces demand and results in high levels of inventories, grower and

handler returns can be negatively impacted.

Demand for cranberries is inelastic, meaning changes in price have a minimal effect on total sales volume. However, grower prices are very sensitive to changes in supply. A grower allotment program results in a decrease in supply as handlers can only purchase a portion of a grower's production, which is based on the grower's past sales history. Even a small shift in supply can have a positive effect on grower prices. Therefore, using a grower allotment program to reduce supply should increase grower prices and revenues.

This proposed rule would establish a grower allotment of 75 percent for the 2018–19 crop year. It would also allow handlers to process up to 50 percent of the excess cranberries they receive above their growers' allotment, provided they divert an equivalent amount of 2018–19 cranberry processed products. In addition, this proposal would exempt organically grown cranberries, specify handlers subject to the regulation, revise the definition of outlets for excess fruit, and revise dates by which certain actions are due. These actions are designed to help stabilize marketing conditions, reduce burdensome inventories, and improve grower and handler returns. This rule revises §§ 929.104 and 929.105 and establishes new §§ 929.159 and 929.253. The authority for these actions is provided for in §§ 929.48, 929.49, 929.51, 929.52, 929.58, 929.59, 929.61, and 929.62. These changes are based on Committee recommendations from meetings on August 4 and August 31, 2017, and a February 18, 2018, email vote.

While these actions could result in some additional costs to the industry, the benefits are expected to outweigh them. The purpose of establishing an allotment percentage is to address oversupply conditions and to stabilize grower prices. The industry has a significant volume in inventory, and this has had a negative impact on grower and handler returns. Without volume control, inventories would likely continue to increase, further lowering returns.

Inventories have significantly increased since 2011. In 2011, existing inventories were around 4.6 million barrels. By the end of the 2016–17 season, inventories were approximately 9.9 million barrels, and by the end of the 2017–18 season, inventories are projected to be approximately 10.9 million barrels. Inventories as a percentage of total sales have also been increasing from approximately 50 percent in 2010 to approximately 103

percent in 2016, and could reach an anticipated 115 percent after the 2017–18 season. These inventories have had a depressing effect on grower prices, which for many growers have fallen below their cost of production.

Retail demand for cranberries is highly inelastic, which indicates changes in consumer prices do not result in significant changes in the quantity demanded. Consumer prices are also not significantly impacted by minor changes in cranberry supplies. Therefore, this action should have little or no effect on consumer prices and should not result in a reduction in retail sales. However, even a small shift in supply could increase grower and handler returns. The use of allotment percentages would likely have a positive impact on grower and handler returns for this crop year.

This proposal would result in some fruit being taken off the market. However, a sufficient amount of fruit would still be available to supply all aspects of the market. In addition, allowing handlers the option to process up to 50 percent of the excess cranberries they receive above their growers' allotment, provided they divert an equivalent amount of 2018–19 cranberry processed products, would provide handlers some additional flexibility and may help reduce inventories of juice concentrate, one of the largest segments of existing inventory.

There are also secondary outlets available for excess fruit, including foreign markets except Canada, charitable institutions, nonhuman food use, and research and development projects. While these alternatives may provide different levels of return than sales to primary markets, they play an important role for the industry. In addition, if demand is greater than anticipated, there are significant amounts of fruit in inventory that could be utilized to meet demand.

This action would also exempt small handlers who processed less than 125,000 barrels in 2017–18 from the allotment percentage. Consequently, small handlers whose acquired volume is 125,000 barrels or less would be exempt from the allotment volume restriction. This would reduce the burden the volume restriction has on small handlers and their growers.

In addition, handlers who did not have carryover inventory at the end of the 2017–18 fiscal year would also be exempt from the allotment percentage. This would allow handlers that have matched their production with market demand to continue to serve their customer base and maintain their

market share. Handlers subject to the restriction should be able to meet any shortfalls by utilizing cranberries or cranberry products they have in inventory.

Further, making the recommendation to regulate the volume handled under a grower allotment program could result in some cost savings for growers depending upon what actions they may take to adjust supply.

As the allotment represents a percentage of the grower's sales history, the costs, when applicable, are proportionate and should not place an extra burden on small entities as compared to large entities. Likewise, growers and handlers, regardless of size, would benefit from the stabilizing effects of this proposal.

One alternative considered by the Committee was not to impose a volume regulation during the 2018–19 crop year. However, Committee members believed that inventory levels were such that some form of volume control was necessary to help stabilize marketing conditions.

The Committee also considered other allotment percentage levels. However, some members were concerned that setting an allotment percentage that was too restrictive could negatively impact small growers. The Committee also considered not recommending a provision to allow a percentage of excess cranberries to be processed into cranberry products. The Committee determined that allowing handlers to process up to 50 percent of the excess cranberries they receive above their growers' allotment would provide additional volumes of fresh cranberries for processing and would provide handlers some flexibility while not adding additional juice concentrate to the existing inventory levels. Therefore, for the reasons mentioned above, these alternatives were rejected by the Committee.

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 OMB and assigned OMB No. 0581–0189, Generic Fruit Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large cranberry growers or 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. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

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.

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, the August 4, 2017 and August 31, 2017 meetings were public meetings and all entities, both large and small, were able to express views on these issues. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection 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/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.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

#### 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 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.

#### **Subpart B—Administrative Requirements**

■ 2. In § 929.104, revise paragraph (a) and remove and reserve paragraph (b) to read as follows:

(a) In accordance with § 929.61, excess cranberries may be diverted only to the following noncommercial or noncompetitive outlets:

\* \* \* \* \*

■ 3. In § 929.105, add paragraph (c) to read as follows:

\* \* \* \* \*

(c) Beginning with crop year 2018–19, the due date for the grower report required under § 929.62(a) is changed to March 1.

■ 4. Add § 929.159 to read as follows:

#### **§ 929.159 Excess cranberries.**

(a) Beginning with crop year 2018–19, handlers holding excess cranberries shall submit to the Committee a written plan outlining procedures for the systematic disposal of such cranberries as specified in § 929.59(b) by March 1.

(b) Beginning with crop year 2018–19, all excess cranberries shall be diverted as specified in § 929.59(c) prior to August 31.

■ 5. Add § 929.253 to read as follows:

#### **§ 929.253 Marketable quantity and allotment percentage for the 2018–19 crop year.**

(a) The marketable quantity for the 2018–19 crop year is set at 7.275 million barrels and the allotment percentage is designated at 75 percent.

(b) Organically grown fruit shall be exempt from the volume regulation requirements of this section. Small handlers who processed less than 125,000 barrels during the 2017–18 fiscal year are exempt from the volume regulation requirements of this section. Any handler who did not have carryover inventory at the end of the 2017–18 fiscal year is also exempt from the volume regulation requirements of this section.

(c) Handlers have the option to process up to 50 percent of the excess cranberries received over their growers' allotments into dehydrated cranberries or other processed products. Handlers utilizing this option shall divert an amount of 2018–19 processed products equivalent to the volume of excess cranberries processed as provided for in § 929.107. The remaining volume of excess cranberries must be diverted as whole fruit.

Dated: April 19, 2018.

**Bruce Summers,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2018-08528 Filed 4-26-18; 8:45 am]

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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 121

#### Small Business Size Standards: Revised Size Standards Methodology

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notification of availability of white paper; comment request.

**SUMMARY:** The U.S. Small Business Administration (SBA or Agency) advises the public that it has revised its white paper explaining how it establishes, reviews and modifies small business size standards. The revised white paper, entitled “SBA’s Size Standards Methodology (April, 2018),” (Revised Methodology) is available for review and comments. This notification discusses the comments SBA received on the methodology that was applied to the recent review of size standards under the Jobs Act and Agency’s responses, followed by a description of major changes to the methodology and their impacts on size standards.

**DATES:** SBA must receive comments to this revised methodology on or before June 26, 2018.

**ADDRESSES:** The revised “Size Standards Methodology (2017)” (Revised Methodology) White Paper is available on the SBA’s website at <https://www.sba.gov/size-standards-methodology> and on the Federal rulemaking portal at <https://www.regulations.gov>. Comments may be submitted on the Revised Methodology, identified by Docket number SBA–2018–0004, by one of the following methods: (1) Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments, (2) Mail/Hand Delivery/Courier: U.S. Small Business Administration, Khem R. Sharma, Chief, Office of Size Standards, 409 Third Street SW, Mail Code 6530, Washington, DC 20416, or (3) Email at [sizestandards@sba.gov](mailto:sizestandards@sba.gov).

SBA will post all comments on <https://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <https://www.regulations.gov>, please submit the information to Khem R. Sharma, Chief, Office of Size Standards, 409 Third Street SW, Mail

Code 6530, Washington, DC 20416, or send an email to [sizestandards@sba.gov](mailto:sizestandards@sba.gov). Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination of whether it will publish the information or not.

**FOR FURTHER INFORMATION CONTACT:** Khem R. Sharma, Chief, Office of Size Standards, (202) 205–7189 or [sizestandards@sba.gov](mailto:sizestandards@sba.gov).

**SUPPLEMENTARY INFORMATION:** The revised white paper, entitled “SBA’s Size Standards Methodology” describes the SBA’s methodology for establishing, reviewing and adjusting its small business size standards pursuant to the Small Business Act (Act) and related legislative guidelines. Under the Act (Pub. L. 85–536, as amended), the SBA’s Administrator has authority to establish small business size standards for Federal government programs. The white paper provides a detailed description of the size standards methodology. SBA welcomes comments and feedback on the Revised Methodology, which SBA intends to apply to the forthcoming five-year comprehensive review of size standards required by section 1344(a)(2) of the Small Business Jobs Act of 2010 (Jobs Act), Public Law 111–240, Sep. 27, 2010.

To determine eligibility for Federal small business assistance programs, SBA establishes small business definitions (commonly referred to as size standards) for private sector industries in the United States. SBA’s existing size standards use two primary measures of business size: Average annual receipts and number of employees. Financial assets and refining capacity are used as size measures for a few specialized industries. In addition, the SBA’s Small Business Investment Company (SBIC), 7(a), Certified Development Company (CDC/504) Programs determine small business eligibility using either the industry based size standards or net worth and net income based alternative size standards. Presently, there are 28 different industry based size standards, covering 1,031 North American Industry Classification System (NAICS) industries and 14 “exceptions.” Of these, 531 are based on average annual receipts, 509 on number of employees (one of which also includes barrels per day total refining capacity), and five on average assets.

In 2007, SBA initiated a comprehensive review of size standards. Subsequently, Congress passed the

Small Business Jobs Act in 2010 (Jobs Act) (Pub. L. 111–240, 124 Stat. 2504, Sept. 27, 2010) requiring SBA to review, every five years, all size standards and make necessary adjustments to reflect market conditions. SBA recently completed the first five-year review of size standards under the Jobs Act and will start the next five-year review in the near future. Usually, once every five years, SBA adjusts all monetary based size standards for inflation. The SBA’s latest inflation adjustment to size standards became effective on July 14, 2014 (79 FR 33647 (June 12, 2014)). SBA also updates its size standards, also every five years, to adopt the Office of Management and Budget’s (OMB’s) quinquennial NAICS revisions to its table of small business size standards. SBA adopted the OMB’s 2017 NAICS revisions for its size standards, effective October 1, 2017 (82 FR 44886 (September 27, 2017)).

As part of the comprehensive size standards review initiated in 2007, SBA established a detailed methodology explaining how SBA establishes, reviews and adjusts size standards based on industry and Federal contracting factors. In 2009, SBA published a document in the **Federal Register** notifying the public that SBA’s “Size Standards Methodology” White Paper (Methodology) is available on the SBA’s website at [www.sba.gov/size](http://www.sba.gov/size) for review and comments (74 FR 53940 (October 21, 2009)). Specifically, in the notification and in all subsequent proposed rules revising size standards for various NAICS Sectors, SBA sought comments on a number of issues concerning its Methodology, such as whether there are alternative methodologies that SBA should consider; whether there are alternative or additional factors or data sources that SBA should evaluate; whether SBA’s approach to establishing small business size standards makes sense in the current economic environment; whether SBA’s applications of anchor size standards are appropriate in the current economy; whether there are gaps in SBA’s Methodology because of the lack of comprehensive data; and whether there are other facts or issues that SBA should consider. The comment period for the Methodology was open from October 21, 2009 to September 30, 2015.

SBA also sought comments on a number of policy questions that the Agency has to consider when developing a methodology for establishing, evaluating and revising its small business size standards, such as how high a small business size standard should be, should there be a single measure of business size for all