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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 926 and 929

[Doc. No. AMS–SC–23–0047]

Cranberries Grown in Massachusetts, et al.; Termination of Marketing Order and Data Collection Requirements for Cranberries Not Subject to the Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; termination of order.

SUMMARY: This rulemaking terminates Federal Marketing Order No. 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, and the rules and regulations issued thereunder. The data collection, reporting and recordkeeping requirements applicable to cranberries not subject to the marketing order are also terminated (7 CFR part 926). This rulemaking also removes the marketing order from the Code of Federal Regulations.

DATES: *Effective Date:* July 31, 2024.

FOR FURTHER INFORMATION CONTACT: Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Chief, Southeast Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375 or Email: Jennie.Varela@usda.gov or Christian.Nissen@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085 or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, terminates regulations issued to carry out a marketing order as defined in 7 CFR part 900.2(j). This rulemaking is issued under Marketing 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 producers operating within the production area and a public member.

This rulemaking is also issued under section 8d of the Act (7 U.S.C. 608d(3)), which authorizes the collection of cranberry and cranberry product information from producer-handlers, second handlers, processors, brokers, and importers including those not subject to regulation under the Order.

The Agricultural Marketing Service (AMS) is issuing this rulemaking in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866, 13563, and 14094 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

In addition, this rulemaking has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether

their rulemaking actions would have Tribal implications. AMS has determined this rulemaking is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This rulemaking has been reviewed under Executive Order 12988, Civil Justice Reform. This rulemaking 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 (7 U.S.C. 608c(15)(A)), any handler subject to a marketing order may file with USDA a petition stating that the marketing order, any provision of the marketing order, or any obligation imposed in connection with the marketing order is not in accordance with law and request a modification of the marketing 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 rulemaking terminates the Order 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, and removes the Order from the Code of Federal Regulations. Section 929.69 of the Order states AMS shall conduct a referendum during the month of May 1975 and every fourth year thereafter to ascertain whether continuance is favored by producers. Under this section, the Secretary shall terminate the Order if termination is favored by a majority of the growers, and that this majority has, during the current fiscal year, produced more than 50 percent of the cranberries produced in the production area.

As required by the Order, AMS held a continuance referendum among cranberry producers from June 9 through June 30, 2023, to determine if

they favored continuation of the program. AMS mailed ballots to 944 producers in the production area. Those producers cast 366 valid ballots. The results indicate 73.5 percent of cranberry growers, who produced 79.9 percent of the production volume, voted in favor of terminating the program. Consequently, the vote met the Order's criteria for termination, demonstrating a lack of the producer support needed to carry out the objectives of the Act.

Section 608d(3) of the Act authorizes the collection of cranberry and cranberry product information from producer-handlers, second handlers, processors, brokers, and importers. This data collection is codified in 7 CFR part 926, Data Collection, Reporting and Recordkeeping Requirements Applicable to Cranberries Not Subject to the Cranberry Marketing Order, establishing reporting requirements for cranberry and cranberry products not subject to the Order and how they were to be reported to the Committee. Section 926.21 states this part shall be suspended or terminated whenever there is no longer a Federal cranberry marketing order in effect. This rulemaking also terminates 7 CFR part 926 which has been suspended since December 29, 2006.

In addition, section 608c(16)(A) of the Act provides that the Secretary shall terminate or suspend the operation of any order whenever the Order or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act. Based on the foregoing, and pursuant to § 608c(16)(A) of the Act and § 929.69 of the Order, the Secretary is terminating the Order.

The Order has been in effect since 1962 and provided the cranberry industry with authority for production research, marketing promotion and development, paid advertising, authority for volume regulation through producer allotments or handler withholding, and reporting and recordkeeping functions needed to operate the program. The Committee, which locally administered the Order, was funded by assessments imposed on handlers. Although marketing order requirements are applied to handlers, the costs of such requirements are often passed on to producers.

Terminating the Order and all the rules and regulations issued thereunder, means the perceived benefits correlated with the Order are also lost. An alternative to this action would be to maintain the Order and its current provisions. However, a review of the continuance referendum results showed producers believe the benefits of the program no longer outweigh the costs to

handlers and producers. In addition, termination of the Order and the resulting regulatory relaxation is expected to reduce costs for both producers and handlers. Therefore, this alternative was rejected.

This rulemaking terminates the Order and the rules and regulations issued thereunder and removes the suspended data collection requirements in 7 CFR part 926.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this rulemaking 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 businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 950 cranberry growers in the regulated area and approximately 45 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 \$3,750,000, (North American Industry Classification System (NAICS) code 111334, Berry (except Strawberry) Farming) and small agricultural service firms are defined as those whose annual receipts are less than \$34,000,000 (NAICS code 115114, Postharvest Crop Activities) (13 CFR part 121.201).

According to the National Agricultural Statistics Service (NASS), the average grower price for U.S. cranberries during the 2022–23 season was \$36.60 per barrel and utilized production was 8,010,070 barrels. The value for cranberries that year totaled \$293,168,562, (\$36.60 per barrel multiplied by 8,010,070 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 \$308,598. Using the average price and utilization information, and assuming a normal distribution, the majority of cranberry growers receive less than \$3,750,000 annually.

According to USDA's Market News retail averages report, the price per pound of fresh cranberries on average was \$1.64 in December of 2022. On average, NASS reports that grower

prices for fresh cranberries are almost double (199 percent) grower prices for processed cranberries. Dividing the average fresh retail price as reported by Market News (\$1.64) by 1.99 calculates to an estimated average retail processed price of \$0.82 per pound. There are 100 pounds of cranberries per barrel so the average retail price for a barrel of cranberries would be \$82. Multiplying the average retail price by total utilization of 8 million barrels results in an estimated cranberry retail value of \$656 million. Dividing this figure by the number of handlers (45) yields an estimated average of annual handler receipts of \$14.6 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.

This rulemaking terminates the Order, and the rules and regulations issued thereunder and will remove the Order from the Code of Federal Regulations. Section 929.69 states the Secretary shall terminate the Order if termination is favored by a majority of the growers, and if that majority has, during the current fiscal year, produced more than 50 percent of the cranberries produced in the production area. This rulemaking also removes the requirements of 7 CFR part 926, which required the data collection of cranberries not covered under the Order. In addition, section 608c(16)(A) of the Act provides that the Secretary terminate or suspend the operation of any order whenever the order or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act. An additional provision requires that Congress be notified no later than 60 days before the date the Order is terminated.

Marketing orders provide industries with tools to assist producers and handlers in addressing challenges facing the industry. These tools include establishing minimum grade, size, quality, and maturity requirements, setting size, capacity, weight, dimensions or pack of the containers, collecting and publishing market information useful to producers and handlers, conducting research and promotions, and establishing volume control requirements. Each marketing order is different, with the industries deciding the authorities needed and the scope of their marketing order. Marketing orders are approved by producers through referenda and regulate handlers to ensure compliance with all requirements. The authority of a marketing order allows each industry to create a local administrative

committee that is made up of growers and/or handlers that work collectively to solve industry problems. After considering the alternative, the Committee concluded that regulating the handling of cranberries under the Order is no longer necessary to ensure orderly marketing of cranberries. The costs associated with the administration of the Order outweigh the benefits, and that termination of the Order would not have a negative impact on industry.

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 Fruit Crops. After finalizing termination, AMS will extract the remaining cranberry marketing order-related forms from the forms package during the next three-year renewal process. OMB's three-year expiration date for the package containing cranberry marketing order forms is January 31, 2027.

This rule effectuates the removal of reporting and recordkeeping requirements on cranberry handlers, both small and large. 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. In addition, AMS has not identified any relevant Federal rules that duplicate, overlap or conflict with this rulemaking.

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.

The producer referendum was well publicized in the production area, and referendum ballots were provided to all known producers. As such, producers of U.S. cranberries had an opportunity to indicate their continued support for the Order.

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.

A proposed rule inviting comments on the termination of the Order was published in the **Federal Register** on December 7, 2023 (88 FR 85130). A 60-day comment period was provided to allow interested persons an opportunity to respond to the proposed termination

of the Order. In addition, AMS published on its website and distributed to industry stakeholders a notice to trade announcing the proposed termination of the Order. Five total comments were received. One comment supported the termination, and one comment was not relevant to the proposal. Three non-substantive comments opposed the termination of the Order, expressing the program is a value to small businesses. Producers of both large and small businesses were provided the opportunity to show support for the Order during the continuance referendum. Further, producers who voted in the referendum elected to terminate the Order indicating the costs associated with the administration of the Order outweigh the benefits and, therefore, the Order is no longer meeting the needs of the industry. Those producers also believe that terminating the Order will not have a negative impact on the industry. Accordingly, after reviewing and considering all comments received during the comment period, the Secretary determined that termination of the Order was appropriate. All the comments may be viewed at <https://www.regulations.gov>.

Based on the foregoing, and pursuant to section 608c(16)(A) of the Act and § 929.69 of the Order, it is hereby found that Federal Marketing Order No. 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 does not tend to effectuate the declared policy of the Act and is therefore terminated.

Following termination, trustees will be appointed to conclude and liquidate the Committee affairs and will continue in that capacity until discharged by the Secretary. In addition, pursuant to 608c(16)(A) of the Act, USDA is required to notify Congress 60 days in advance of termination. Congress was so notified on April 11, 2024.

List of Subjects

7 CFR Part 926

Cranberries, Reporting and recordkeeping requirements.

7 CFR Part 929

Acreage allotments, Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

PARTS 926 AND 929—[REMOVED]

■ For the reasons set forth in the preamble, and under the authority of 7 U.S.C. 601-674, the Agricultural

Marketing Service amends title 7, chapter IX of the Code of Federal Regulations by removing parts 926 and 929.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Doc. No. AMS-SC-23-0087]

Olives Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action decreases the assessment rate established for the 2024 fiscal year and subsequent fiscal years for California olives as recommended by the California Olive Committee. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective August 12, 2024.

FOR FURTHER INFORMATION CONTACT:

Jeremy Sasselli, Marketing Specialist, or Barry Broadbent, Chief, West Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487-5901, or Email: Jeremy.Sasselli@usda.gov or Barry.Broadbent@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-8085, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California. Part 932 (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 Committee locally administers the Order and is comprised of producers and handlers of olives operating within the area of production.