## **Rules and Regulations**

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## DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

## 7 CFR Part 929

[FV94-929-3FR]

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; Establishment of Late Payment Charges and Increase in Interest Charges on Delinquent Assessments

AGENCY: Agricultural Marketing Service, USDA.

## ACTION: Final rule.

SUMMARY: This final rule increases the interest charge from 1 percent to 1<sup>1</sup>/<sub>2</sub> percent per month and adds a late payment charge of 5 percent on delinquent assessments owed by handlers under Marketing Order No. 929 covering cranberries grown in ten states. This rule contributes to the efficient operation of the program by ensuring that adequate funds are available to cover budgeted expenses incurred under the marketing order. EFFECTIVE DATE: This final rule becomes

effective February 2, 1995.

FOR FURTHER INFORMATION CONTACT: Mark Hessel or Patricia Petrella, Marketing Specialists, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2522–S, P.O. Box 96456, Washington, D.C. 20090–6456: telephone: (202) 720–5127.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 929 [7 CFR Part 929], as amended, regulating the handling of cranberries grown in ten states, 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This final 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. A 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 30 handlers of cranberries who are subject to regulation under the order and approximately 1,050 producers of cranberries in the regulated area. Small agricultural service firms have been defined by the Small Business Administration [13 CFR 121.601] 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 handlers and producers of cranberries may be classified as small entities.

The Cranberry Marketing Committee (committee), the agency responsible for local administration of the order, met on August 23, 1994, and unanimously recommended modifying the administrative rules in effect under the order concerning delinquent handler assessments. The modification increases the interest charge from 1 percent to  $1\frac{1}{2}$ percent per month and adds a late payment charge of 5 percent on delinquent handler assessments.

Under section 929.41 of the order, each person who first handles cranberries is required to pay a pro-rata share of the cost of administering the program. This cost is in the form of a uniform assessment rate applied to each handler's acquisitions.

Section 929.41 also provides that if a handler does not pay an assessment within the time prescribed by the committee, the assessment may be subject to an interest or late payment charge, or both.

Section 929.152 of the rules and regulations in effect under the order specifies that delinquent assessments be subject to an interest charge of 1 percent per month on any unpaid assessment balance beginning 30 days from the due date prescribed by the committee. The committee currently schedules two assessment payments during the crop year which begins on September 1. Assessments equal to 100 percent of the prior crop year's assessment obligation are due on October 1. If a handler's October 1 payment is not sufficient to meet the current crop year's assessment obligation then a second payment, making up the difference, is required by April 1. If the October 1 payment exceeds the current crop year's assessment obligation then the committee refunds the difference on or before April 15.

Assessments are the main source of funds to pay committee expenses. The failure of handlers to pay assessment obligations promptly results in added expense and operational problems for the committee. The committee has frequently encountered difficulty in