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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket No. FV96-929-3 IFR]

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; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the Cranberry Marketing Committee (Committee) under Marketing Order No. 929 for the 1996-97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which 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. Authorization to assess cranberry handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective on September 1, 1996. Comments received by September 11, 1996, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, FAX (202) 720-5698. 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.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone (202) 720-1509, Fax# (202) 720-5698, or Tershirra Yeager, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone (202) 720-5127, Fax# (202) 720-5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, D.C. 20090-6456; telephone: (202) 720-2491, Fax# (202) 720-5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 929 (7 CFR part 929), as amended, 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, 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 will be applicable to all assessable cranberries beginning September 1, 1996, and continuing 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.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule 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 the 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 1,050 producers of cranberries in the production area and approximately 30 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of cranberry producers and handlers may be classified as small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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 and handlers 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.

The Committee met on March 4, 1996, and recommended by a 7-to-1 vote an assessment rate of \$0.04 per barrel of cranberries. A mail vote was conducted by the Committee regarding the budget, requiring responses by June 20, 1996. Seven out of eight responses were received in favor of the proposed budget. The 1996-97 recommended expenditures are \$192,980. In comparison, last year's budgeted expenditures were \$201,336. The assessment rate of \$0.04 is \$0.01 higher than last year's established rate. Major expenditures recommended by the Committee for the 1996-97 year include \$63,764 for administrative expenses, and \$66,732 for compensation.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of cranberries. Cranberry shipments for the year are estimated at 4,737,000 barrels which should provide \$189,480 in assessment income. Income derived from handler assessments, along with interest income, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rate established in this rule will 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 this assessment rate is effective for an indefinite period, the Committee will 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 will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1996-97 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996-97 fiscal period begins on September 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable cranberries handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

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 amended as follows:

PART 929—CRANBERRY MARKETING COMMITTEE

1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. A new subpart—Assessment Rates and a new § 929.236 are added to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Assessment Rate

§ 929.236 Assessment rate.

On and after September 1, 1996, an assessment rate of \$0.04 per barrel is established for cranberries.

Dated: August 6, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96-20411 Filed 8-9-96; 8:45 am]

BILLING CODE 3410-02-P

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 96-015-2]

Brucellosis; Approved Brucella Vaccines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as a final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations to remove the requirement that an approved brucella vaccine be, among other things, a *Brucella abortus* Strain 19 product. The interim rule allowed for the use of vaccines that have been developed using strains of *Brucella* other than *Brucella abortus* Strain 19. Specifically, the interim rule allowed the RB51 brucella vaccine, which was licensed for use in cattle by the U.S. Department of Agriculture in February 1996, to be used in the cooperative State/Federal brucellosis eradication program.

EFFECTIVE DATE: The interim rule was effective on March 26, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. M.J. Gilsdorf, National Brucellosis Epidemiologist, Cattle Diseases and Surveillance Staff, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737-1228, (301) 734-7708; E-mail: mgilsdorf@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective March 26, 1996, and published in the Federal Register on April 1, 1996 (61 FR 14237-14239, Docket No. 96-015-1), we amended the brucellosis regulations in 9 CFR part 78 by revising the definition of *approved brucella vaccine* and amending the definitions of *official adult vaccinate*, *official calthood vaccinate*, and *official test* to provide for the use of approved brucella vaccines that have been developed using strains