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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 1½ 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 1½ 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

collecting assessments from some handlers. To attempt to collect, the committee must incur the added expense of sending out additional invoices and contacting each delinquent handler by phone, in person, or by fax. Nonpayment or late payment of assessments hampers the operation of the committee.

The authority to levy late payment and interest charges on delinquent assessments was added in 1973 to address the failure of handlers to pay their assessments promptly. Consequently, in 1978 an informal rulemaking change [43 FR 29764, July 11, 1978] was approved which established a one percent interest charge per month to address this problem.

However, the current interest charge of one percent per month is not sufficient to induce handlers to comply with the assessment provisions. Competition in the cranberry industry has increased. The number of handlers regulated by the order has increased, and many of these additional handlers have been more reluctant to pay assessments in a timely manner. The increase in charges on delinquent assessments encourages these handlers to pay their assessments more promptly.

Charges will not be imposed until the end of the month if handler assessments are invoiced up to the 15th of the month and will be levied at the end of the following month if the handler assessment is invoiced later than the 15th of the month. Handlers have ample time to pay their assessments and avoid incurring the additional charges. Any amount paid by the handler will be credited upon receipt in the committee office. These additional charges apply to any unpaid assessments which become due to the committee after the effective date of this rule change.

A proposed rule concerning this action was published in the **Federal Register** on November 10, 1994 [59 FR 56007], with a 30-day comment period ending December 12, 1994. No comments were received.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations 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.

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:

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

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

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

2. Section 929.152, is revised to read as follows:

§ 929.152 Delinquent assessments.

There shall be a late payment charge of five percent and an interest charge of 1½ percent per month applied to any assessment not received at the committee's office before the end of the month in which such assessment was first invoiced to the handler: *Provided*, That if an assessment is first invoiced later than the 15th of the month, no late payment or interest charge shall be levied if such assessment is received at the committee office by the end of the following month in which the assessment was first invoiced to the handler.

Dated: December 27, 1994.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.
[FR Doc. 94-32287 Filed 12-30-94; 8:45 am]
BILLING CODE 3410-02-P

7 CFR Part 966

[Docket No. FV94-966-2FIR]

Tomatoes Grown in Florida; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorized expenses and established an assessment rate that will generate funds to pay those expenses. Authorization of this budget enables the Florida Tomato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1994, through July 31, 1995.

FOR FURTHER INFORMATION CONTACT:

Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-9918, or Aleck J. Jonas, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883-2276, telephone 813-299-4770.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida. The marketing agreement and order are 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 is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Florida tomatoes are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable tomatoes handled during the 1994-95 fiscal period, which began August 1, 1994, and ends July 31, 1995. 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 requesting 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has