

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 929**

[Docket No. FV01-929-3 FR]

Cranberries Grown in the States of Massachusetts, et al.; Increased Assessment Rate**AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

SUMMARY: This rule increases the assessment rate established under the cranberry marketing order for the 2001-2002 and subsequent fiscal years from \$.08 to \$.18 per barrel of cranberries handled. Currently, funds derived from assessments are used to cover expenses incurred by the Cranberry Marketing Committee (Committee) in the performance of its duties and functions under the order and to fund an export market development program. The Committee is responsible for local administration of the marketing order which regulates the handling of cranberries grown in the production area. The proposed \$.10 increase will be used to fund a domestic market development program. The fiscal year began September 1 and ends August 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: February 15, 2002.**FOR FURTHER INFORMATION CONTACT:**

Patricia A. Petrella or Kenneth G. Johnson, DC Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, Maryland 20737; telephone: (301) 734-5243, Fax: (301) 734-5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or e-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 929, as amended (7 CFR part 929), regulating the handling of cranberries grown in 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 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 (USDA) 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, 2001, and continue 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 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. Such 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 rule increases the assessment rate established for the Committee for the 2001-2002 and subsequent fiscal years for cranberries from \$0.08 to \$0.18 per barrel of cranberries.

The cranberry marketing order provides that one of the duties of the Committee is to formulate an annual budget of expenses and to recommend a rate of assessment necessary to administer the provisions of the order. The members of the Committee are producers 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.

Authority to fix the rate of assessment to be paid by each handler and to collect such assessment appears in § 928.41 of the order. In addition, § 929.45 of the order provides that the Committee, with the approval of USDA, may establish or provide for the establishment of production research, marketing research, and market development projects designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of cranberries. The expense of such projects is paid from funds collected pursuant to § 929.41 (Assessments), or from such other funds as approved by USDA.

For the 2000-2001 fiscal year, the Committee recommended, and the Department approved, an assessment rate of \$.08 per barrel of cranberries handled that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee voted by mail and recommended 2001-2002 expenditures of \$1,206,772 and an assessment rate of \$.18 per barrel of cranberries. Six of the eight committee members voted in support of the \$.10 per barrel increase. Two members did not return their mail ballots to the Committee. The assessment rate increase was considered by the Committee at an earlier public meeting. The budget for 2001-2002 was recommended to the full Committee by the Executive Committee. The major expenditures recommended by the Committee for the 2001-2002 fiscal period include \$846,953 for market development (including \$490,000 for domestic market development, \$273,953 for export market development, and \$83,000 for export market consulting services), \$123,952 for administration costs, \$129,500 for personnel, \$75,000 for Committee meetings, and \$31,367 for payroll taxes and benefits. Included in the budget calculations is about \$6,000 interest and \$213,953 Market Access Program (MAP) funds from USDA's Foreign Agricultural Service (FAS) for export market development. Budgeted expenses in the Committee's amended 2000-2001 budget were \$223,647 for administration costs, \$270,407 for export market development, \$71,000 for export market consulting services, \$119,464 for personnel, and \$67,500 for Committee meetings. There was no

domestic market development program for the 2000–2001 fiscal year.

The Committee recommended the \$.10 per barrel increase to fund a domestic market development program to increase demand for cranberries and cranberry products and thus expand cranberry shipments. Currently, supplies are outpacing demand. The Committee believes that a domestic market development program is needed to increase consumer awareness of the health benefits of cranberries and cranberry products. Currently, the Committee funds an export market development program with MAP money from FAS.

Over the past several years, per capita consumption of cranberries has averaged 1.68 pounds. Per capita consumption peaked in 1994 at 1.80 pounds and began trending downward. In 1998, per capita consumption was 1.67 pounds. Associated with these per capita consumption figures is the fact that total domestic sales also peaked in 1994 at 4,692,507 barrels and declined to 4,506,632 barrels in 1998. However, cranberry production reached an all-time high of 6,389,000 barrels in 1999. This is a 17 percent increase over 1998 production of approximately 5.4 million barrels. Available cranberry supplies continue to outpace demand, resulting in high levels of carryin inventories and low grower prices. Grower returns have fallen 73 percent from 1997 to 2000, dropping from \$65.90 to \$15–\$20 per barrel.

The assessment rate recommended by the Committee was derived by estimating the cost of a viable domestic market development program (\$490,000) and then increasing the assessment rate to cover such costs. Cranberry shipments are projected at 4.9 million barrels which will provide \$882,000 in assessment income. Income derived from handler assessments, along with interest income, FAS market access program funds for export market development, and funds from the Committee's authorized reserve will be adequate to cover budgeted expenses expected to total \$1,206,772 in 2001–2002. Funds in the reserve (currently \$115,000) will be kept within the approximately one year's operational expenses permitted by the order (§ 929.42(a)).

The assessment rate 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 the assessment rate will be 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 evaluates Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2001–2002 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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 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 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 20 handlers of cranberries who are subject to regulation under the order and approximately 1,100 producers of cranberries in the regulated area. Small agricultural service firms, which includes handlers, are defined by the Small Business Administration (13 CFR 121.201) 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 \$750,000. The majority of cranberry handlers and producers may be classified as small businesses.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2001–2002 and subsequent fiscal periods from \$.08 to \$.18 per barrel of cranberries. One barrel equals 100 pounds of cranberries.

The Committee discussed the alternative of continuing the existing assessment rate, but concluded that it needed to implement a domestic market development program funded through assessments. The assessment rate

recommended by the Committee was derived by determining the cost of a viable domestic market development program (\$490,000), and then increasing the assessment rate to cover the additional costs. Cranberry shipments are projected at 4.9 million barrels which would provide \$882,000 assessment income. Income derived from handler assessments, along with interest income, FAS market access program funds, and funds from the Committee's authorized reserve will be adequate to cover budgeted expenses. Funds in the reserve (currently \$115,000) would be kept within the approximately one year's operational expenses permitted by the order (§ 929.42(a)).

The major expenditures recommended by the Committee for the 2001–2002 fiscal period include \$846,953 for market development (including \$490,000 for domestic market development, \$273,953 for export market development, and \$83,000 for export market development consulting services), \$123,952 for administration costs, \$129,500 for personnel, \$75,000 for Committee meetings, and \$31,367 for payroll taxes and benefits. Included in the budget calculations is approximately \$6,000 interest and \$213,953 MAP funds from FAS for export market development. Budgeted expenses in the Committee's amended 2000–2001 budget were \$223,647 for administration costs, \$270,407 for export market development, \$119,464 for personnel, and \$67,500 for Committee meetings. There was no domestic market development program for the 2000–2001 fiscal period.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform 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. In addition, the Committee's meeting was widely publicized throughout the cranberry industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, all entities, both large and small, were able to express views on this issue.

This rule will impose no additional reporting or recordkeeping requirements on either small or large cranberry 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 rule.

A proposed rule concerning this action was published in the **Federal Register** on September 21, 2001 (66 FR 48626). Copies of the rule were mailed by the Committee's staff to all Committee members and handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 15-day comment period ending October 9, 2001, was provided to allow interested persons to respond to the proposal.

Eighteen comments were received during the comment period in response to the proposal. Nine were received in favor of the proposal and nine were in opposition. Most of the comments were received from cranberry growers. Comments also were received from the Committee, two handlers, and an institute that supports research on the health benefits of cranberries.

Those in support favored the assessment rate increase because the funds will be the major source of funding for domestic market development activities, needed to increase shipments. The cranberry industry is faced with low prices primarily due to large surpluses. Industry-wide market development activities are needed to expand domestic markets and the consumption of cranberries and cranberry products. The initiation of these activities is expected to bring demand closer into balance with supply over the long term, and, in turn, help bring returns to growers back to acceptable levels.

The main comments in opposition to the proposal were: The funds would be wasted because the Committee's marketing efforts have not been successful in the past and the Committee does not have the public relations/marketing development expertise of well known public relations firms; growers do not have a means of holding the Committee accountable for its results; other State organizations can work with the Cranberry Institute (an organization that funds research on the potential health benefits of cranberries and cranberry products) to accomplish the same goal; growers have not been informed of the domestic marketing plan, and, thus, do not know how the increased assessments will be spent; and farm gate prices are extremely low at this time to fund such an endeavor.

Any market development program initiated by the Committee to expand domestic markets would be approved and overseen by USDA. In the

development stages, USDA would provide general guidance on the conduct of market development. USDA also would review the program goals and the program activities, methods, and techniques to be employed in meeting the goals. The Committee and USDA would monitor any program implemented to determine that the program goals have or have not been met, and if not, the reason for the failure, that the assessment funds used for the program have been properly spent, and to determine whether the program should be continued unchanged, changed, or discontinued. Also, upon conclusion of any program, but at least annually, the Committee would report on the program status and accomplishments to the industry and the USDA.

With respect to the comment that the Wisconsin Cranberry Board already collects funds for generic promotion and health related research and that the growers do not need to fund similar Committee activities, it should be noted that the Committee's anticipated domestic market development effort is intended to be industry-wide and not regional in scope. A broader based effort is needed to foster the domestic market growth needed to absorb production. The Committee commented that it surveyed growers in the industry and they overwhelmingly favored (449 out of 496 respondents) an industry-wide market development program. The Committee also stated that the market development program will be designed to complement ongoing promotion programs within the industry and to take advantage of the Cranberry Institute's health related research.

With respect to the type of promotion that would be funded, the Committee's comments describe its initial plans for a promotion program. The Committee comprised of members from the different growing areas would decide what type of program would be implemented. Preliminary discussions on a domestic market development effort have begun, but have not been finalized by the Committee. The Committee commented that the initial focus of any market development effort undertaken would be to inform buyers of the health benefits of cranberries and cranberry products. Once the final plan is developed and recommended by the Committee, the plan would have to be approved by USDA before it could be implemented.

Commenters in favor of the increased assessment rate stated that the goal of a domestic market development program implemented under the order would be to build markets and that this should

help bring demand closer to the productive capacity of the industry. The ultimate goal, of course, is to help the industry return to profitability over time.

Finally, those in opposition commented that prices are at an all time low and the Committee should not be raising assessments while farmers are going broke. One commenter in favor of the proposed assessment rate increase stated that the additional \$.10 per barrel assessment is insignificant to the lost income growers are enduring as a result of the surplus situation currently being faced by the industry because of overproduction and reduced demand. The Committee expects such a program to stimulate growth in demand for cranberries and cranberry products and increase grower returns to a more acceptable level. Another commenter in favor of the increase noted that growers need to recognize that building demand for cranberries is the only long-term sustainable solution to the oversupply problem.

One commenter did not approve of the increase because Ocean Spray members would pay a disproportionate share of the cost. Ocean Spray management submitted a comment in favor of the increase.

Two commenters stated that growers have not been allowed to vote for some time on the continuation of the marketing order. They said that growers should be allowed to vote on whether they want to continue the order before raising the assessment rate. The issue of holding a continuance referendum was not part of the notice concerning this rulemaking action, but such referenda are periodically conducted by USDA.

Accordingly, no changes will be made to the rule as proposed, based on the comments received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter 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.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5

U.S.C. 553) because the 2001–2002 fiscal period began on September 1, 2001, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable cranberries handled during such fiscal period, and the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. Further, handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years. Also, a 15-day comment period was provided for in the proposed rule, and all comments received have been addressed.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

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

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.

2. Section 929.239 is revised to read as follows:

§ 929.239 Assessment rate.

On and after September 1, 2001, an assessment rate of \$0.18 per barrel is established for cranberries.

Dated: February 8, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–3635 Filed 2–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–58–AD; Amendment 39–12643; AD 2002–03–02]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, and Jetstream Series 3101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 98–13–03, which currently requires repetitive inspections of the main landing gear (MLG) hinge fittings, support angles, and attachment bolts on British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, and Jetstream Series 3101 airplanes. AD 98–13–03 also requires eventual installation of improved design MLG hinge fittings as terminating action for the repetitive inspections of the hinge fittings and attachment bolts. AD 98–13–03 specifies repetitive inspections of the support angles for those airplanes with the improved design MLG hinge fittings installed and exempts from the applicability those airplanes with the improved design MLG hinge fittings installed. This AD retains the requirements of AD 98–13–03 and removes the applicability exemption of those Model HP.137 Jetstream Mk.1 and Jetstream Series 200 airplanes with the improved design MLG hinge fittings installed. The actions specified by this AD are intended to detect, correct, and prevent future fatigue cracking of the MLG, which could result in structural failure of the MLG and consequent loss of airplane control during takeoff, landing, or taxi operations.

DATES: This AD becomes effective on April 2, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of April 2, 2002.

ADDRESSES: You may get the service information referenced in this AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. You may view this

information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–58–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA Taken any Action on the Main Landing Gear (MLG) Hinge Fittings, Support Angles, and Attachment Bolts on British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, and Jetstream Series 3101 Airplanes to This Point?

On June 8, 1998, FAA issued AD 98–13–03, Amendment 39–10591 (63 FR 33532, June 19, 1998). This AD currently requires the following on the above-referenced airplanes:

- Repetitive inspections of the MLG hinge fitting, support angles, and attachment bolts, and repairing or replacing any part that is cracked; and
- Eventual installation of improved design MLG hinge fittings, part number (P/N) 1379133B1 and 1379133B2 (Modification 5218), as terminating action for the repetitive inspections of the hinge fittings and attachment bolts. This AD specifies repetitive inspections of the support angles for those airplanes with the improved design MLG hinge fittings installed. However, the applicability of AD 98–13–03 exempts those airplanes with the improved design MLG hinge fittings installed from the actions of the AD.

Accomplishment of these actions is required in accordance with the following service information:

- British Aerospace Jetstream Mandatory Service Bulletin (MSB) No. 7/5, which includes procedures for inspecting the left and right main landing gear hinge attachment nuts to the auxiliary and aft spars for signs of relative movement between the nuts and hinge fitting on Model HP.137 Jetstream Mk.1 and Jetstream Series 200 airplanes. This MSB incorporates the following effective pages:

Pages	Revision Level	Date
2 and 4	Original Issue	March 31, 1982.