

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 926

[Docket No. FV01-926-1 PR]

#### Proposed Data Collection, Reporting, and Recordkeeping Requirements Applicable to Cranberries Not Subject to the Cranberry Marketing Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would establish a new part 926 in the Code of Federal Regulations which would require persons engaged in the handling or importation of fresh cranberries or cranberry products (including handlers, producer-handlers, processors, brokers, and importers) not subject to the reporting requirements of the Federal cranberry marketing order (order) to report sales, acquisition, and inventory information to the Cranberry Marketing Committee (Committee), and to maintain adequate records on such activities. The establishment of the proposed data collection, reporting, and recordkeeping requirements for entities not subject to the order is authorized under an amendment to section 8(d) of the Agricultural Marketing Agreement Act of 1937. The additional information is needed by the Committee to make more informed recommendations to USDA for regulations authorized under the cranberry marketing order. This rule also announces the Agricultural Marketing Service's intention to request approval of the new data collection and reporting requirements by the Office of Management and Budget.

**DATES:** Comments must be received by June 11, 2004. Pursuant to the Paperwork Reduction Act, comments on the information collection burden must be received by June 11, 2004.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments

must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, or E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov) or [www.regulations.gov](http://www.regulations.gov). Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

#### FOR FURTHER INFORMATION CONTACT:

Patricia A. Petrella or Kenneth G. Johnson, DC Marketing Field Office, Marketing Order Administration Branch, 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](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is proposed pursuant to the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], and as further amended October 22, 1999, by Public Law 106-78, 113 Stat. 1171, hereinafter referred to as the "Act".

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted

prior to any judicial challenge to the provisions of this rule.

This proposed action is necessary to implement authority on cranberry data collection consistent with a 1999 amendment to section 8(d) of the Act. If a cranberry order is in effect, the amendment authorizes the Secretary to require persons engaged in the handling or importation of fresh cranberries or cranberry products (including producer-handlers, second handlers, processors, brokers and importers) to provide to the USDA certain information including information on sales, acquisitions, and inventories of fresh cranberries or cranberry products. Under the provisions of proposed Part 926, such persons would include handlers, producer-handlers, processors, brokers, and importers. Under the proposal, the Committee would collect such information.

According to the Committee, the number of end users of cranberries and cranberry products has increased in recent years. This has increased the number of entities in the marketing chain acquiring, selling, and maintaining inventories of cranberries and cranberry products produced domestically and outside the United States. Significant quantities of cranberries and cranberry products are now being marketed by handlers, producer-handlers, processors, importers, brokers, and others not subject to the reporting requirements of the cranberry marketing order (7 CFR Part 929). The cranberry marketing order authorizes the Committee to obtain information on sales, acquisitions, and inventories of cranberries and cranberry products from handlers regulated under the order. Such handlers are those who can, freeze, or dehydrate cranberries produced within the production area, or who sell, consign, deliver, transport (except as a common or contract carrier of cranberries owned by another person) fresh cranberries or in any other way place fresh cranberries in the current of commerce within the production area or between the production area and any point outside thereof in the United States and Canada.

Prior to the 1999 amendment of the Act, the Committee and USDA did not have the authority to obtain information from entities not subject to the reporting requirements of the order. The 1999

amendment provides authority for USDA to expand the Committee's information gathering capability. With more complete information, the Committee would be able to make better-informed regulation recommendations to USDA. The Committee would also publish periodic reports aggregating the data on cranberry and cranberry products for use by all members of the industry.

Prior to the mid-1990's, the majority of cranberry inventories were held by handlers subject to the order, and the Committee was able to account for practically all of the cranberry and cranberry product inventory under the order. Under § 929.9 of the order, the term handler is defined as any person who handles cranberries. Handle means to sell, consign, deliver or transport (except as a common or contract carrier of cranberries owned by another person) fresh cranberries or in any other way to place fresh cranberries in the current of commerce within the production area and any point outside thereof in the United States or Canada (7 CFR 929.10). However, with increased domestic production and imports of cranberries, the number of entities not regulated under the Federal cranberry marketing order has expanded to include handlers, producer-handlers, processors, brokers, and importers who are not subject to the mandatory reporting requirements of the cranberry marketing order. Therefore, the Committee does not have complete information on sales, acquisitions and inventories of cranberries. Allowing the Committee to collect this information will help it make better informed regulation recommendations to USDA.

Section 929.46 of the cranberry marketing order requires the Committee to develop a marketing policy each year prior to May 1. Currently, in its marketing policy discussions, the Committee projects expected supply and market conditions for an upcoming season, based on information provided by growers and, particularly, handlers who are regulated under the order. These projections include an estimate of the marketable quantity (defined as the number of pounds of cranberries needed to meet total market demand and to provide for an adequate carryover into the next season). The Committee believes that its marketing policy is limited in some respects because it does not have the ability to include sales, acquisitions, and inventory reports from all segments of the cranberry industry.

Increased production, stagnant demand, and high inventory levels have compounded the problem of unreported inventories. With increased production and stagnant markets, the industry is

producing far more cranberries than needed for current market needs. This situation has led to higher inventory levels. However, the Committee's inability to obtain needed information on cranberry sales, acquisitions, and inventories from entities not regulated under the marketing order has prevented it from obtaining complete information from all segments of the industry. With understated sales, acquisition, and inventory information, the Committee has been limited somewhat in making recommendations under the marketing order.

The ability to closely monitor levels of sales, acquisitions, and inventory is critical to the Committee in making more thorough recommendations. The 1999 amendment to the Act provides a means for collecting this information.

Section 8(d)(3) of the amended Act specifies that if an order is in effect with respect to cranberries, USDA may require persons engaged in the handling or importation of cranberries or cranberry products (including handlers, producer-handlers, processors, brokers, and importers) to provide such information as USDA considers necessary to effectuate the declared policy of the Act (which is to promote orderly marketing conditions and improve returns to producers), including information on acquisitions, inventories, and dispositions of cranberries and cranberry products. The amendment allows USDA to delegate to the Committee the authority to collect sales, acquisition, and inventory data from persons, other than regulated handlers under the marketing order, engaged in the handling or importation of cranberries. Under this proposal, the Committee would collect such information. Typically, marketing order committees collect information and require record keeping to ensure that USDA can verify handler reports. Additionally, the Committee also compiles collected information in its aggregate form to use when discussing cranberry supplies, inventories, and market strategies during its marketing policy discussions. This proposed rule would assist the Committee in making more informed marketing recommendations.

A new part 926 would be added to the regulations to authorize the Committee to collect data from such entities. New part 926 would define terms and establish rules and regulations relative to the reporting and recordkeeping requirements necessary to effectuate the declared policy of the Act.

Several examples are listed below as to how data collection currently is conducted under the marketing order

and how it would operate under the new data collection process. For instance, a grower harvests and delivers cranberries to a handler regulated under the cranberry marketing order. The regulated handler sells the cranberries to a processor. The regulated handler reports to the Committee the name, address, and amount of cranberries sold to the processor on a Handler Inventory Report—Supplement Form (HIR-SUP), and that completes the current marketing order data collection process. Under the proposed new data collection process, the Committee, noting information used from marketing order reports to identify newly regulated entities, would send a report form (Handler/Processor Cranberry Inventory Report Form; HPCIR A-D) to the processor. The processor would complete the form by indicating names, sources, and amounts of domestic/foreign barrels of cranberries acquired, domestic/foreign sales, and beginning and ending inventories of cranberries (in freezers and in processed form, including concentrate) and submit the report form to the Committee.

In another example, a regulated handler sells cranberries to a broker. The broker sells the cranberries to three processors. The Committee would receive the initial information (barrels acquired, sold, and in inventory) from the regulated handler and that ends the current marketing order data collection process. Under the proposed data collection process, the Committee would also contact and send a report form (Importer Cranberry Inventory Report; Form ICIR A-D) to the broker to track the cranberries to the three processors. This form would be filed by a broker and provide the Committee with names, sources, and amounts of cranberry barrels acquired, amount sold to and received by the broker, processor and handler, and the beginning and ending inventories of cranberries (in freezers and in processed form, including concentrate) held by the broker. After receiving the broker's report, the Committee would send a Handler/Processor Cranberry Inventory Report Form to each of the three processors to complete and return to the Committee.

In a third example, a non-regulated handler acquires cranberries (imports or domestically produced cranberries from a non-marketing order production area). The non-regulated handler is outside the scope of the marketing order and thus, not required to report to the Committee under the current marketing order reporting process. However, through the information supplied from other producer-handlers, importers,

processors and brokers, the Committee might be able to identify the non-regulated handler and send him/her a Handler/Processor Cranberry Inventory Report Form. The non-regulated handler would complete the form by indicating names, sources, and amounts of domestic/foreign barrels of cranberries acquired, foreign/domestic sales, and beginning and ending inventories of cranberries (in freezers and in processed form, including concentrate) and submit the report form to the Committee.

In the last example, a broker imports cranberries into the United States. The broker is outside the scope of the marketing order and not a regulated handler. Thus, there is no mandatory reporting or recordkeeping requirements that he/she would have to meet. Under the proposed data collection requirements, the importer would be required to submit quarterly reports (on an Importer Cranberry Inventory Report Form CIR A–D) to the Committee. This form is to be filed by an importer to provide the Committee with names, sources and amounts of cranberry barrels imported, amounts sold to and received by the broker, processor and handler, and the beginning and ending inventories of cranberries (in freezers and in processed form, including concentrate) held by the importer. Once that information is obtained, the Committee can contact the individuals/firms receiving the imported cranberries and have them report on the distribution.

All of these reports would be on the same reporting cycle (4 times a year or quarterly) as regulated handlers under the marketing order. Handlers, producer-handlers, processors, brokers, and importers would report any/all cranberry transactions that occurred during each of the reporting cycles. The purpose of this action is to provide the Committee with the ability to account for cranberries in the marketing pipeline after they have been sold by the regulated handler or if imported, brought into the United States.

All cranberries and cranberry products would be covered. This would include fresh cranberries, frozen cranberries, and cranberry concentrate. Currently, if a handler regulated under the order has juice, sauce or other finished cranberry products in inventory, the handler is required to determine the barrel equivalency of cranberries contained in those products and report this as inventory. Handlers, producer-handlers, processors, brokers, and importers would be required to do the same.

Data collection requirements would not apply once fresh cranberries or

cranberry products reached retail markets. For example, a regulated handler (handler A), sells concentrate to processor B. Processor B uses the concentrate to bottle private label juice. The product is shipped to a wholesale/retail distribution center. The Committee would receive an initial report from handler A and subsequently from processor B. Processor B would continue to file reports for each cycle that the concentrate and cranberry products remained in his/her possession. The reporting requirement would extend up to, but not include, the retailer level.

Failure on the part of handlers, producer-handlers, processors, brokers, and importers to comply with the proposed data collection and recordkeeping requirements could lead to enforcement action, including the levying of penalties provided under 8c(14) of Act against the violating person or entity. False representation to an agency of the United States in any matter, knowing it to be false, is a violation of 18 U.S.C. 1001 which provides for a fine or imprisonment or both.

#### **Initial 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 proposed rule on small entities. Accordingly, AMS has prepared this initial 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.

Small agricultural service firms have been defined by the Small Business Administration [13 CFR 121.201] as those having annual receipts less than \$5,000,000, and small agricultural producers are those with annual receipts of less than \$750,000. There are about 20 handlers currently regulated under marketing order No. 929. In addition, there are about 1,250 producers of cranberries in the production area. Based on recent years' price and sales levels, AMS finds that nearly all of the cranberry producers and some of the handlers are considered small under the SBA definition.

In 2003, a total of 39,400 acres were harvested with an average U.S. yield per acre of 155.1 barrels. Grower prices in 2003 averaged \$31.80 per barrel. Average total annual grower receipts for 2003 are estimated at \$155,203 per grower. Of the 1,250 cranberry producers in the marketing order production area, between 86 and 95

percent are estimated to have sales equal to or less than \$750,000. Few growers are estimated to have sales that would have exceeded this threshold in recent years.

Under the marketing order, five handlers handle over 97 percent of the cranberry crop. Using Committee data on volumes handled, AMS has determined that none of these handlers qualify as small businesses under SBA's definition. The remainder of the crop in the marketing order production area is marketed by about a dozen producer-handlers who handle their own crops. Dividing the remaining 3 percent of the crop by these producer-handlers, all would be considered small businesses.

Cranberries are produced in 10 States under Marketing Order No. 929, but the vast majority of farms and production is concentrated in Massachusetts, New Jersey, Oregon, Washington, and Wisconsin. Average farm size for cranberry production is very small. The average across all producing States is about 33 acres. Wisconsin's average is twice the U.S. average at 66.5 acres, and New Jersey averages 83 acres. Average farm size is below the U.S. average for Massachusetts (25 acres), Oregon (17 acres) and Washington (14 acres).

Small cranberry growers dominate in all States: 84 percent of growers in Massachusetts harvest 10,000 or fewer barrels of cranberries, while another 3.8 percent harvest fewer than 25,000 barrels. In New Jersey, 62 percent of growers harvest less than 10,000 barrels, and 10 percent harvest between 10,000 and 25,000 barrels. More than half of Wisconsin growers raise less than 10,000 barrels, while another 29 percent produce between 10,000 and 25,000 barrels. Similar production patterns exist in Washington and Oregon. Over 90 percent of the cranberry crop is processed, with the remainder sold as fresh fruit.

According to the National Agricultural Statistics Service (NASS), the 2003 overall U.S. cranberry crop totaled 6.1 million barrels (1 barrel equals 100 pounds of cranberries). Total barrels of cranberry imports acquired were 1.06 million pounds. The U.S. 2003 preliminary price for fresh and processed cranberries was \$50.90 and \$30.60 per barrel respectively.

Under Part 926, as proposed, the Committee estimates that there are approximately 130 handlers, producer-handlers, processors, brokers, and importers who would be subject to the data collection requirements. Taking into account the profile of the size of the industry under the marketing order, we estimate that most of these entities would be considered small under the

SBA criteria. In order to gather the most accurate information possible, this proposal specifically invites comments on the number and size of those entities. Comments should be sent to USDA in care of the Docket Clerk at the previously mentioned address.

Public Law 106-78, enacted October 22, 1999, amended section 608(d) of the Act to authorize USDA to require persons engaged in the handling of cranberries or cranberry products (including handlers, producer-handlers, processors, brokers, and importers) not subject to the order to maintain adequate records and report sales, acquisitions, and inventory information. The data collection and reporting requirements would help the Committee make more informed recommendations to USDA for regulations authorized under the cranberry marketing order.

This proposed rule would implement the reporting and recordkeeping requirements authorized by the amendment to the Act. Under the regulations, handlers, producer-handlers, processors, brokers, and importers would be required to submit reports four times annually regarding sales, acquisitions, movement for further processing and disposition of cranberries and cranberry products. It is estimated that it would take each person or entity approximately 20 minutes to complete each form. One of these forms, (Importer Cranberry Inventory Report Form; Form ICIR A-D) directs importers and brokers to indicate the name, address, variety acquired, amount sold to and received by brokers, processors, and handlers, and the beginning and ending inventories of cranberries held by the importer. The second form, (Handler/Processor Cranberry Inventory Report Form; Form HPCIR A-D) directs handlers, producer-handlers, and processors to indicate the name, address, variety acquired, domestic/foreign sales, acquisitions, and beginning and ending inventories.

These forms were designed to capture the type of information the Committee needs on inventory and sales data for the entire cranberry industry. If all of the entities complete each form, it is estimated that the total annual burden on the respondents would be 1 hour and 20 minutes or a total of 174.66 hours. The regulations would also require the retention of information for a total of three years. Such reporting and recordkeeping requirements, including the two new forms, will be submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35] and will not be

implemented until they have been approved.

For the purposes of checking and verifying reports filed under the regulations hereinafter proposed, provisions are included which would allow USDA or the Committee, through duly authorized agents, to have access to any premises where cranberries and cranberry products may be held. Authorized agents, at any time during regular business hours, would be permitted to inspect any cranberries and cranberry products held and any and all records with respect to the acquisition, holding or disposition of any cranberries and cranberry products which may be held or which may have been disposed of by that entity. All reports and records furnished or submitted by handlers, producer-handlers, processors, brokers, and importers to the Committee which include data or information constituting a trade secret or disclosing the trade position or financial condition, or business operations from whom received, would be in the custody and control of the authorized agents of the Committee, who would disclose such information to no person other than USDA.

Failure on the part of handlers, producer-handlers, processors, brokers, and importers to comply with the proposed data collection and recordkeeping requirements could lead to enforcement action, including the levying of fines against the violating person or entity. Any violation of this regulation would be subject to a penalty levied under 8c(14) of the Act. False representation to an agency of the United States in any matter, knowing it to be false, is a violation of 18 U.S.C. 1001 which provides for a fine or imprisonment or both.

The proposed reporting requirements should help the entire cranberry industry. While this proposed rule would increase reporting and recordkeeping requirements on affected entities, the benefits of this proposal, however, could be substantial. By implementing this proposed rule, the Committee would have access to more complete acquisition, sales, and inventory data and be able to make recommendations based on more detailed information. This, in turn, could lead to more effective marketing decisions and higher returns for producers and non-regulated entities.

The Committee discussed alternatives to this action, including continuing to ask those entities not subject to the marketing order to voluntarily submit inventory data to the Committee. This has not been successful. To make well

informed regulatory decisions, the Committee needs complete inventory, sales and acquisition information from handlers, producer-handlers, processors, brokers, and importers who handle cranberries and cranberry products produced in the United States and outside the United States. This proposed rule would establish reporting and recordkeeping requirements.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. While the proposed data collection and reporting requirements are similar to those reporting requirements regulated handlers must comply with under the cranberry marketing order, this action is necessary to assist the Committee in its volume regulation recommendations.

Finally, interested persons are invited to submit information on the economic and informational impacts of this action on small and large businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <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.

A 60-day comment period is provided to allow interested persons the opportunity to respond to this proposal. All written comments timely received will be considered before a final rule is issued on this matter.

This action requires a collection of information. These information collection requirements are discussed in the following section.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that AMS is seeking approval for a new information collection request for proposed data collection and reporting requirements applicable to cranberries not subject to the cranberry marketing order. The new requirements would be established in 7 CFR Part 926.

*Title:* Data Collection Requirements Applicable to Cranberries Not Subject to the Cranberry Marketing Order, 7 CFR Part 926.

*OMB Number:* 0581-New.

*Type of Request:* New collection.

*Abstract:* A Federal marketing order for cranberries (M.O. 929) regulates the handling of cranberries grown in 10 States and is applicable to regulated handlers under the order. Public Law 106-78, enacted October 22, 1999, amended section 8(d) of the Act. If a cranberry order is in effect, the

amendment authorizes the Secretary to require persons engaged in the handling or importation of cranberries and cranberry products not subject to the reporting requirements of the Federal cranberry marketing order to maintain adequate records and report information on sales, acquisitions, and inventory information to USDA or the Committee. Such persons would include handlers, producer-handlers, processors, brokers, and importers. The Cranberry Marketing Order Committee would collect this information. The data collection and reporting requirements would help the Committee make more informed recommendations to USDA for regulations authorized under the cranberry marketing order. The forms for OMB No. 0581-NEW proposed in the information collection rulemaking are as follows:

#### **Importer Cranberry Inventory Report Form, (ICIR A-D)**

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 20 minutes per response.

*Respondents:* Cranberry importers and brokers who acquire and sell cranberries and cranberry products, and maintain inventories of cranberries and products. The information would cover the 12-month period beginning September 1 and ending August 31.

*Estimated Number of Respondents:* 6.  
*Estimated Number of Responses per Respondent:* 4.

*Estimated Total Annual Burden on Respondents:* 8 hours.

#### **Handler/Processor Cranberry Inventory Report Form (HPCIR A-D)**

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 20 minutes per response.

*Respondents:* Handlers, producer-handlers, and processors not subject to the cranberry marketing order who produce, handle, acquire, sell and maintain beginning and ending inventories of cranberries and cranberry products. The information would cover the 12-month period beginning September 1 and ending August 31.

*Estimated Number of Respondents:* 125.  
*Estimated Number of Responses per Respondent:* 4.

*Estimated Total Annual Burden on Respondents:* 166.66 hours.

*Comments:* Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden collection of the information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581-NEW and the proposed data collection and reporting requirements applicable to cranberries not subject to the cranberry marketing order, and be sent to USDA in care of the Docket Clerk at the previously mentioned address. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

A 60-day comment period is provided to allow interested persons to respond to this proposal.

#### **List of Subjects in 7 CFR Part 926**

Cranberries and cranberry products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Chapter IX of Title 7 of the Code of Federal Regulations be amended by adding Part 926 to read as follows:

#### **PART 926—DATA COLLECTION REQUIREMENTS APPLICABLE TO CRANBERRIES NOT SUBJECT TO THE CRANBERRY MARKETING ORDER [7 CFR PART 929]**

Sec.	
926.1	Secretary.
926.2	Act.
926.3	Person.
926.4	Cranberries.
926.5	Fiscal period.
926.6	Committee.
926.7	Producer.
926.8	Handler.
926.9	Handle.
926.10	Acquire.
926.11	Processed cranberries or cranberry products.
926.12	Producer-handler.
926.13	Processor.
926.14	Broker.
926.15	Importer.
926.16	Reports.
926.17	Reporting requirements.
926.18	Records.
926.19	Confidential information.
926.20	Verification of reports and records.
926.21	Suspension or termination.

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

#### **§ 926.1 Secretary.**

*Secretary* means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture who is, or who may hereafter be authorized to act in her/his stead.

#### **§ 926.2 Act.**

*Act* means Public Act No. 10, 73d Congress [May 12, 1933], as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Secs.1-19, 48 Stat.31, as amended; 7 U.S.C. 601 *et seq.*).

#### **§ 926.3 Person.**

*Person* means an individual, partnership, corporation, association, or any other business unit.

#### **§ 926.4 Cranberries.**

*Cranberries* means all varieties of the fruit *Vaccinium Macrocarpon* and *Vaccinium oxycoccus*, known as cranberries.

#### **§ 926.5 Fiscal period.**

*Fiscal period* is synonymous with fiscal year and crop year and means the 12-month period beginning September 1 and ending August 31 of the following year.

#### **§ 926.6 Committee.**

*Committee* means the Cranberry Marketing Committee, which is hereby authorized by USDA to collect information on sales, acquisitions, and inventories of cranberries and cranberry products under this part. The Committee is established pursuant to the Federal cranberry marketing 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 (7 CFR part 929).

#### **§ 926.7 Producer.**

*Producer* is synonymous with grower and means any person who produces cranberries for market and has a proprietary interest therein.

#### **§ 926.8 Handler.**

*Handler* means any person who handles cranberries and is not subject to the reporting requirements of 7 CFR part 929.

#### **§ 926.9 Handle.**

*Handle* means to can, freeze, dehydrate, acquire, sell, consign, deliver, or transport (except as a common or contract carrier of cranberries owned by another person) fresh or processed cranberries produced

within or outside the United States or in any other way to place fresh or processed cranberries into the current of commerce within or outside the United States. This term includes all initial and subsequent handling of cranberries or processed cranberries up to, but not including, the retail level.

**§ 926.10 Acquire.**

*Acquire* means to obtain cranberries by any means whatsoever for the purpose of handling cranberries.

**§ 926.11 Processed cranberries or cranberry products.**

*Processed cranberries or cranberry products* means cranberries which have been converted from fresh cranberries into canned, frozen, or dehydrated cranberries or other cranberry products by any commercial process.

**§ 926.12 Producer-handler.**

*Producer-handler* means any person who is a producer of cranberries for market and handles such cranberries.

**§ 926.13 Processor.**

*Processor* means any person who receives or acquires fresh or frozen cranberries or cranberries in the form of concentrate from handlers, producer-handlers, importers, brokers or other processors and uses such cranberries or concentrate, with or without other ingredients, in the production of a product for market.

**§ 926.14 Broker.**

*Broker* means any person who acts as an agent of the buyer or seller and negotiates the sale or purchase of cranberries or cranberry products.

**§ 926.15 Importer.**

*Importer* means any person who causes cranberries or cranberry products produced outside the United States to be brought into the United States with the intent of entering the cranberries or cranberry products into the current of commerce.

**§ 926.16 Reports.**

(a) Each handler, producer-handler, processor, broker, and importer engaged in handling or importing cranberries or cranberry products who is not subject to the reporting requirements of the Federal cranberry marketing order, (7 CFR part 926) shall, in accordance with § 926.17, file promptly with the Committee reports of sales, acquisitions, and inventory information on fresh cranberries and cranberry products using forms supplied by the Committee.

(b) Upon the request of the Committee, with the approval of the Secretary, each handler, producer-

handler, processor, broker, and importer engaged in handling or importing cranberries or cranberry products who is not subject to the Federal cranberry marketing order (7 CFR part 926) shall furnish to the Committee such other information with respect to fresh cranberries and cranberry products acquired and disposed of by such entity as may be necessary to meet the objectives of the Act.

**§ 926.17 Reporting requirements.**

Handlers, producer-handlers, importers, processors, and brokers not subject to the Federal cranberry marketing order (7 CFR part 926) shall be required to submit four times annually, for each fiscal period reports regarding sales, acquisitions, movement for further processing, and dispositions of fresh cranberries and cranberry products using forms supplied by the Committee. An Importer Cranberry Inventory Report Form shall be required to be completed by importers and brokers. This report shall indicate the name, address, variety acquired, the amount sold to and received by brokers, processors, and handlers, and the beginning and ending inventories of cranberries held by the importer for each applicable fiscal period. A Handler/Processor Cranberry Inventory Report Form shall be completed by handlers, producer-handlers, and processors and shall indicate the name, address, variety acquired, domestic/foreign sales, acquisitions, and beginning and ending inventories.

**§ 926.18 Records.**

Each handler, producer-handler, processor, broker, and importer shall maintain such records of all fresh cranberries and cranberry products acquired, imported, handled, withheld from handling, and otherwise disposed of during the fiscal period to substantiate the required reports. All such records shall be maintained for not less than three years after the termination of the fiscal year in which the transactions occurred or for such lesser period as the Committee may direct.

**§ 926.19 Confidential information.**

All reports and records furnished or submitted pursuant to this part which include data or information constituting a trade secret or disclosing the trade position or financial condition, or business operations from whom received, shall be in the custody and control of the authorized agents of the Committee, who shall disclose such information to no person other than the Secretary.

**§ 926.20 Verification of reports and records.**

For the purpose of assuring compliance and checking and verifying records and reports required to be filed by handlers, producer-handlers, processors, brokers, and importers, USDA or the Committee, through its duly authorized agents, shall have access to any premises where applicable records are maintained, where cranberries and cranberry products are received, acquired, stored, handled, and otherwise disposed of and, at any time during reasonable business hours, shall be permitted to inspect such handler, producer-handler, processor, broker, and importer premises, and any and all records of such handlers, producer-handlers, processors, brokers, and importers. The Committee's authorized agents shall be the manager of the Committee and other staff under the supervision of the Committee manager.

**§ 926.21 Suspension or termination.**

The provisions of this part shall be suspended or terminated whenever there is no longer a Federal cranberry marketing order in effect.

Dated: April 6, 2004.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

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**FEDERAL RESERVE SYSTEM**

**12 CFR Part 222**

[Regulation V; Docket No. R-1187]

**Fair Credit Reporting**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed rule.

**SUMMARY:** The Board is proposing to amend Regulation V that implements the Fair Credit Reporting Act (FCRA or Act), 15 U.S.C. 1681 *et seq.* The Board would add a model form to Regulation V that financial institutions may use to comply with the notice requirement relating to furnishing negative information contained in section 217 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). Section 217 of the FACT Act amends the FCRA to provide that if any financial institution (1) extends credit and regularly and in the ordinary course of business furnishes information to a nationwide consumer reporting agency, and (2) furnishes negative information to such an agency regarding credit