

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

[Doc. No. AMS-FV-09-0070; FV09-929-1 PR]

**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; Revised Nomination and Balloting Procedures**

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on revisions to the nomination and balloting procedures for independent growers on the Cranberry Marketing Committee (Committee). The order regulates the handling of cranberries produced in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, and is administered locally by the Committee. This rule would revise the nomination and balloting procedures for independent growers to allow them to participate in the election process for either a member or alternate member on the Committee. The current procedures do not provide for an election process for each position separately.

**DATES:** Comments must be received by March 8, 2010.

**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 Internet: <http://www.regulations.gov>. All comments should reference the document 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.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:**

Patricia A. Petrella, Marketing Specialist

or Kenneth G. Johnson, Regional Manager, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (301) 734-5243, Fax: (301) 734-5275, or E-mail: [Patricia.Petrella@ams.usda.gov](mailto:Patricia.Petrella@ams.usda.gov) or [Kenneth.Johnson@ams.usda.gov](mailto:Kenneth.Johnson@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, 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: [Antoinette.Carter@ams.usda.gov](mailto:Antoinette.Carter@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This proposal is issued under Marketing Agreement and Order No. 929, both as amended (7 CFR part 929), regulating the handling of cranberries produced 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 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 proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

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. A 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 proposal invites comments on revisions to the nomination and balloting procedures for independent growers on the Committee. This rule would revise the procedures for

independent growers to allow them to participate in the election process for either a member or alternate member on the Committee. The current procedures do not provide for an election process for each position separately.

Section 929.22(e) of the order specifies the nomination procedures for nominees representing entities other than the major cooperative marketing organization (independent growers). That section specifies that the names of all eligible nominees from each district received by the Committee, by such date and in such form as recommended by the Committee and approved by the Secretary, will appear on the nomination ballot for that district. It also specifies that the nominee that receives the highest number of votes cast shall be the member and the nominee receiving the second highest number votes cast shall be the alternate. Section 929.22(i) provides that the Committee, with the approval of the Secretary, may issue rules and regulations to carry out the provisions or to change the procedures of this section.

The Committee recommended that rules and regulations be established to change the procedures for independent grower nominations. The Committee recommended these changes because candidates are less willing to participate in the nomination process when they are not able to specify whether they are seeking a member or alternate member position on the Committee. Candidates considering to be nominated to the Committee have indicated that they would be more willing to serve if they could initially be nominated as the alternate member. Becoming an alternate member first allows them to gain knowledge of the marketing order and Committee operations without having the responsibility of casting votes. After gaining this knowledge, alternate members can then be nominated to run as the member on the Committee if they so desire.

This action would require a slight change in the nomination and balloting process. It would provide candidates the opportunity to indicate what position (member or alternate) they are seeking. Following the deadline for filing nomination petitions the names of those candidates running for member and the names of those candidates running for alternate member would be placed on the ballot and sent, via U.S. Postal Service, to qualified growers in the marketing order districts.

The candidate receiving the highest number of votes in the member category and the candidate receiving the highest number of votes in the alternate member

category in each marketing order district would be declared nominees and their names forwarded to the Secretary for selection.

This change to the nomination procedures would only effect the independent grower nominations for the Committee. The major cooperative marketing organization nominees are selected by that organization and submitted to the Secretary for consideration.

#### Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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. 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.

There are approximately 80 handlers of cranberries who are subject to regulation under the marketing order and approximately 1,200 cranberry producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. Based on information maintained by the Committee, the majority of producers and handlers of cranberries under the order are considered small entities under SBA's standards.

This rule would revise the nomination procedures for independent growers to allow them to participate in the election process for either a member or alternate member on the Committee. The current nomination process does not permit an election process for each position. Authority for this action is provided in § 929.22(i).

At the meeting where this issue was considered, the Committee discussed that the nomination procedures needed to be changed to encourage more participation in the nomination process and to encourage more diverse candidates on the Committee. The independent grower members and alternate members on the Committee indicated that this change would

improve the nomination process by generating participation and providing the opportunity for more diverse candidates to run for a position on the Committee.

There are no anticipated economic impacts on either small or large producers or handlers that would result from this rule, as it pertains only to Committee nomination and balloting procedures.

The benefits for this rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

The Committee discussed alternatives to this change, including not making the change at all. If this change is not made the Committee believes that the number of new candidates who want to be considered for nomination on the Committee will continue to decline.

This proposed rule would not impose any 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.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

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, the August 21, 2009, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small 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>. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed

appropriate because this rule would need to be in place prior to the next nomination process which begins in June 2010. The term of office begins on August 1 of each even numbered year. All written comments timely received will be considered before a final determination is made on this matter.

#### List of Subjects in 7 CFR Part 987

Marketing agreements, Reporting and recordkeeping requirements, Cranberries.

For the reasons set forth in the preamble, 7 CFR part 929 is proposed to be amended as follows:

#### **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**

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

**Authority:** 7 U.S.C. 601–674.

2. A new section 929.161 is added to read as follows:

#### **§ 929.161 Nomination and balloting procedures for candidates other than the major cooperative marketing organization.**

(a) During the nomination process, each eligible candidate shall indicate if he/she is seeking a position on the Committee as a member or alternate member.

(b) Ballots provided by the Committee shall include the names of those candidates seeking member positions on the Committee and those seeking alternate member positions.

(c) All ballots shall be received by a date designated by the Committee office staff. Votes for member positions and alternate member positions shall be tabulated separately. In districts entitled to one member, the successful candidate shall be the person receiving the highest number of votes as a member or alternate member. In districts entitled to two members, the successful candidates shall be those receiving the highest and second highest number of votes as members or alternate members. Those names shall then be forwarded to the Secretary for selection.

Dated: February 2, 2010.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

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