

# 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 929

[Doc. No. AMS-SC-17-0061; SC17-929-2 PR]

#### Cranberries Grown in States of Massachusetts, et al.; Free and Restricted Percentages for the 2017-18 Crop Year for Cranberries

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule invites comments on a recommendation to establish free and restricted percentages for the 2017-18 crop year under the marketing order for cranberries grown in the production area (Order). This action would establish the proportion of cranberries from the 2017-18 crop which may be handled and allow for the disposal of 2017-18 processed cranberry products. It would also establish a minimum quantity exemption and an exemption for handlers with no carryover inventory, exempt organically grown cranberries, and define outlets for restricted fruit. This action would adjust supply to more closely meet market demand, improve grower and handler returns and reduce inventory. This proposal also contains a formatting change to subpart references to bring the language into conformance with the Office of Federal Register requirements.

**DATES:** Comments must be received by February 1, 2018.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, 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 proposal 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:** Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 291-8614, or Email: [Doris.Jamieson@ams.usda.gov](mailto:Doris.Jamieson@ams.usda.gov) or [Christian.Nissen@ams.usda.gov](mailto:Christian.Nissen@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email: [Richard.Lower@ams.usda.gov](mailto:Richard.Lower@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposal is issued under Marketing Agreement and Order No. 929, as amended (7 CFR part 929), 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. Part 929 (referred to as 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 Cranberry Marketing Committee (Committee) locally administers the Order and is comprised of growers and handlers of cranberries operating within the production area, and a public member.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions

that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this proposed rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. Order provisions provide that the Committee may recommend and implement, subject to USDA approval, volume control regulation which would decrease the available supply of cranberries, whenever the Secretary finds that "such regulation will tend to effectuate the declared policy of the Act." Accordingly, this proposed rule would establish free and restricted percentages for cranberries for the 2017-18 crop year, beginning September 1, 2017, through August 31, 2018.

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 proposed rule invites comments on the establishment of free and restricted percentages for the 2017-18 crop year. This proposal would establish the proportion of cranberries from the 2017-18 crop that may be handled at 85 percent free and 15 percent restricted. This action would also allow for the disposal of 2017-18 processed cranberry products to meet up to 50 percent of a handler's

restriction. It would also establish a minimum quantity exemption, exempt handlers with no carryout inventory, exempt organically grown cranberries, and define outlets for restricted fruit. This action would adjust supply to more closely meet market demand, improve grower returns, and help reduce inventory.

The Committee met on August 4, 2017, and August 31, 2017, and recommended establishing these free and restricted percentages for the 2017–18 season, providing handlers with the option to divert processed cranberry products to meet up to 50 percent of their restricted percentage, and designating outlets for restricted fruit. The Committee also recommended establishing a minimum exemption of 125,000 barrels for each handler. After much consideration, USDA determined the minimum exemption portion of the recommendation should be revised. Consequently, this proposal would only exempt small handlers who process less than 125,000 barrels or handlers who would not have carryover inventory at the end of the 2017–18 fiscal year from the restriction. The 125,000 barrel exemption would not apply to handlers who do not meet these criteria.

Sections 929.52 and 929.54 provide authority to control volume by designating free and restricted percentages for cranberries acquired by handlers in a given crop year. Section 929.52 also provides that the Secretary shall control the handling of cranberries whenever the Secretary finds, from the recommendations and information submitted by the committee, or from other such information, that such volume control will tend to effectuate the declared policy of the Act. Free percentage volume may be shipped to any market, while restricted percentage volume must be diverted or used for noncompetitive purposes as prescribed in § 929.57. Section 929.51 requires the Committee to consider certain conditions, including supply and demand, prior to recommending a handler withholding program, and that any recommendation to do so be made by August 31.

Section 929.58(a) provides the authority to exempt from any or all requirements the handling of cranberries in such minimum quantities as the Committee, with the approval of the Secretary, may prescribe. Section 929.58(b) provides, in part, the authority to exempt from any or all requirements the handling of cranberries of such forms or types, including organic cranberries, as the Committee, with the approval of the Secretary, may prescribe.

Domestic cranberry production has been increasing over the past few years, up from 8.0 million barrels in 2012 to 9.6 million barrels in 2016. During the last few years, demand has remained relatively flat, and has not kept pace with the increases in supply. This has led to increasing levels of inventories. Ending inventory levels have increased from 5.8 million barrels in 2012 to 9.7 million barrels in 2016.

Demand for cranberries is inelastic, meaning changes in consumer price have a minimal effect on total sales volume. However, grower prices are very sensitive to changes in supply. As such, higher inventory levels place downward pressure on grower prices for cranberries and reduce grower returns. Data reviewed by the Committee indicates that the price per barrel received by some growers has fallen from \$30 a barrel in 2011 to \$10 a barrel in 2016. With the cost of production estimated at approximately \$35 a barrel, for many growers returns have fallen below the cost of production.

On August 4, 2017, and again on August 31, 2017, the Committee met to discuss the levels of supply and demand and how market conditions were impacting the industry. The Committee discussed the approximate levels of production for the 2017–18 season, forecasting production at approximately 9.1 million barrels. Carry-in inventory was estimated at approximately 9.9 million barrels and foreign acquired cranberries are expected to provide an additional 2.1 million barrels, for a total available supply of approximately 21.1 million barrels for the year. After accounting for shrinkage, the Committee agreed on an adjusted supply of 20.4 million barrels for the 2017–18 season.

The Committee also reviewed anticipated sales for the upcoming season. Sales for fresh fruit were estimated at 333,000 barrels and processed fruit sales were estimated at 9.2 million barrels. Based on these expectations, inventory at the end of the 2017–18 crop year is anticipated to be roughly 10.9 million barrels, a 10 percent increase from the previous year. Using these numbers, end of year inventories would be approximately 115 percent of average annual sales.

After calculating the anticipated level of surplus for the 2017–18 season, the Committee agreed the industry is faced with a large inventory that continues to build. In its discussions of how to address this issue, the Committee considered several options. During the discussion of regulating the volume for the 2017–18 season, some members preferred establishing a producer allotment for the 2018–19 season over

implementing a handler withholding for the current season. However, other members stated that if no action was taken to control supply for the 2017–18 season, another million barrels of cranberries would be added to the surplus inventory. In addition, not regulating the 2017–18 crop would require greater levels of restriction on the 2018–19 crop, and grower returns may decline further.

The Committee discussed various levels of restriction, being sensitive to the impact volume control could have on small handlers. Some small handlers are able to sell all their production each year and do not maintain an inventory. Several Committee members stated a large restriction would place a hardship on these small handlers. The Committee also recognized a small restriction would not immediately balance supply with demand. However, even a small restriction would remove a portion of the volume from the market and help prevent an additional increase in inventory. Therefore, based on these discussions, the Committee recommended establishing free and restricted percentages at 85 percent free and 15 percent restricted.

The Committee also recommended an allowance for the diversion of 2017–18 processed cranberry products to meet up to 50 percent of a handler's restriction. The Committee made this recommendation recognizing that processing fresh fruit to produce one of its top-selling items, sweetened dried cranberries, results in juice concentrate as a by-product. A significant amount of current carry-in inventory is in the form of juice concentrate. By allowing for the diversion of processed cranberry products, such as juice concentrate, to meet a portion of a handler's restriction, the Committee believes this would help prevent additional build-up of carry-in inventory. The ability to use cranberry processed products in addition to fresh berries to meet diversion requirements may also help handlers who find they need to divert additional volume late in the year when the availability of fresh berries may be limited.

To ensure the disposal of processed products in lieu of fresh berries are correctly accounted for under the restriction, the Committee also recommended including a conversion table, Table 1, in the regulations. The table recognizes different conversion equivalencies of berries to processed product based on the volume of Brix concentrate.

Brix is the method for measuring the amount of sugar contained in the cranberry products, and the industry average is 50 Brix. The Committee

acknowledged that the Brix level can vary depending on the growing region and farming practices. This table would

assist in ensuring that the disposal of processed product in lieu of fresh

berries would be applied equitably among all handlers.

TABLE 1—CONVERSION TABLE

Region	Brix average	Concentrate yield for one barrel of cranberries
Oregon .....	9.8	1.91 gallons 50 Brix concentrate.
Washington .....	9.3	1.81 gallons 50 Brix concentrate.
New Jersey .....	8.8	1.72 gallons 50 Brix concentrate.
Wisconsin .....	8.7	1.70 gallons 50 Brix concentrate.
Massachusetts .....	8.4	1.64 gallons 50 Brix concentrate.
All others .....	8.7	1.70 gallons 50 Brix concentrate.

For example, using the conversion table above, handlers could determine the amount of cranberry concentrate they would need to divert, in lieu of fresh berries, to cover any restricted percentage. Juice concentrate should comprise the vast majority of processed product used for diversion. Should requests be made to use other processed products for diversion, conversion rates for those products would be provided by the Committee based on information provided by the requesting handler. The means for approving and appealing the conversion rates would be provided in a separate rulemaking action.

For example, a handler covered under the restriction whose acquired volume is 1,000,000 barrels would have 1,000,000 barrels in regulated volume with 850,000 barrels of free use cranberries ( $1,000,000 \times .85$ ) and 150,000 barrels of restricted use cranberries ( $1,000,000 \times .15$ ) for the 2017–18 season. Under this proposed rule, the handler could divert fresh fruit to outlets for restricted cranberries as prescribed in the Order, or divert up to 50 percent of the restriction, or a 75,000 barrel equivalent ( $150,000 \text{ barrels} \div 2$ ) in processed products from the 2017–18 harvest, with the remaining amount fulfilled using fresh berries. For cranberries produced in Wisconsin, this would equate to 127,500 gallons of concentrate ( $75,000 \text{ barrels} \times 1.7 \text{ gallons}$ ) that would need to be diverted to outlets for restricted cranberries.

Section 929.57 states that cranberries withheld from handling may only be diverted through such outlets as the Committee, with the approval of the Secretary, finds are noncompetitive to outlets for unrestricted (free percentage) cranberries. The Committee discussed various outlets and recommended the following: Foreign countries, except Canada; charitable institutions; any nonhuman food use; and, research and development projects approved by the Committee dealing with the development of foreign and domestic

markets, including, but not limited to dehydration, radiation, freeze drying, or freezing of cranberries as outlets for withheld cranberries. They further recommended that cranberries may not be converted into canned, frozen, or dehydrated cranberries or other cranberry products by any commercial process prior to diversion to foreign countries. These outlets for restricted cranberries would be added to the rules and regulations under the Order by creating a new § 929.108.

The Committee also recommended organically grown cranberries be exempt from this proposed regulation as they serve a niche market and represent a very small portion of the total crop. All other cranberry production, including fresh cranberries, would be subject to regulation under the handler withhold volume regulation.

To address the burden the volume regulation would have on small handlers, the Committee also recommended providing a minimum quantity exemption of 125,000 barrels. Under the Committee's recommendation, the exemption would be given to handlers of record for the 2016–17 (previous) crop year and the 125,000 barrels would be subtracted from the handler's 2017–18 acquired volume before the restricted percentage would be applied. Small handlers whose acquired volume is 125,000 barrels or less would be exempt from the volume regulation, and handlers with slightly larger volumes would face minimal restrictions.

After much consideration, USDA determined the minimum exemption recommendation should be revised under this proposal. Rather than provide an exemption of 125,000 barrels for each handler, this action would exempt small handlers who process less than 125,000 barrels from the 15 percent restriction. Further, only handlers who would have carryover inventory that is not sold or under contract at the end of the 2017–18 fiscal year would be subject

to the 15 percent restriction. These changes would reflect the Committee's goal of reducing the burden on small handlers, and would allow handlers that have matched their production with market demand to continue to serve their customer base and protect their market share. Handlers subject to the restriction should be able to meet any market shortfalls by utilizing cranberries or cranberry products they have in inventory.

With this change, only those handlers carrying inventory would be subject to the restriction. In reviewing the Committee's recommendation and other available industry information, it is the existing inventories in excess of 9 million barrels that is putting the most downward pressure on returns to both grower and handler. Consequently, this change would put more focus on reducing the volume in inventory.

Accordingly, this proposal would establish free and restricted percentages of 85 percent and 15 percent, respectively, for the 2017–18 season, provide handlers with the option to divert processed cranberry products to meet up to 50 percent of their restricted percentage, and define outlets for restricted fruit. The Committee recommended these actions in a vote of 11 in favor and 2 opposed. This rule would also would exempt small handlers who process less than 125,000 barrels from the restriction, as well as handlers with no carryout inventory.

One member who opposed the Committee's recommendations stated the regulation would cause a hardship on small handlers, as many are able to sell all of their production each season and do not maintain an inventory. He further stated that the small handlers did not create the problem and should not be a part of the solution. However, this issue is addressed by providing the minimum exemption of 125,000 barrels of cranberries, which would exempt many small handlers from the regulation entirely. The other member

who voted against the recommendation opposed volume regulation in general.

The Committee considered the estimated level of production, anticipated demand, and determined that without some action on the part of the Committee, inventory levels would continue to increase throughout the 2017–18 season. The Committee believes using the volume control authorities in the Order would help stabilize marketing conditions for cranberries by helping to adjust supply to meet market demand and improve grower returns.

The Committee also recommended reporting and recordkeeping requirements to be used with the volume regulation, as well as safeguard measures to monitor compliance. These recommendations are being considered under separate actions.

### 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 businesses 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 1,100 cranberry growers in the regulated area and approximately 65 cranberry handlers subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,500,000 (13 CFR 121.201).

According to industry and Committee data, the average grower price for cranberries during the 2016–17 season was \$23.50 per barrel and total sales were approximately 9.5 million barrels. The value for cranberries that year totaled \$223,250,000 (\$23.50 per barrel multiplied by 9.5 million barrels). Taking the total value of production for cranberries and dividing it by the total number of cranberry growers provides an average return per grower of \$202,955. Using the average price and utilization information, and assuming a

normal distribution, the majority of cranberry growers receive less than \$750,000 annually.

According to USDA's Market News report, the average free on board (f.o.b.) price for cranberries was approximately \$30.00 per barrel. Multiplying the f.o.b. price by total utilization of 9.5 million barrels results in an estimated handler-level cranberry value of \$285 million. Dividing this figure by the number of handlers (65) yields an estimated average annual handler receipt of \$4.3 million, which is below the SBA threshold for small agricultural service firms. Therefore, the majority of producers and handlers of cranberries may be classified as small entities.

While cranberry production has continued to rise, demand has failed to keep pace, and inventories have been increasing. In an industry such as cranberries, product can be stored in inventory for long periods of time. Large inventories are costly to maintain, difficult to market, and have a price-depressing effect. When supply outpaces demand resulting in high levels of inventories, grower and handler returns can be negatively impacted.

Demand for cranberries is inelastic, meaning changes in consumer price have a minimal effect on total sales. However, grower prices are very sensitive to changes in supply. With an inelastic demand, even a small shift in supply can affect grower prices. The Committee's recommendation to set free and restricted percentages would more closely align supply with demand. Free percentage cranberries could be marketed by handlers to any outlet, while restricted percentage volume could only be used for noncompetitive purposes. Establishing free and restricted percentages would result in a decrease in supply, as handlers can only deliver a certain portion of their cranberries into the competitive marketplace. Therefore, using volume regulation to reduce supply should increase grower and handler prices and revenues.

This proposal would control the supply of cranberries by establishing free and restricted percentages at 85 percent free and 15 percent restricted for the 2017–18 crop year. It would also allow for the diversion of 2017–18 processed cranberry products to meet up to 50 percent of a handler's restriction. In addition, this proposal would establish a minimum quantity exemption, exempt handlers with no carryout inventory, exempt organically grown cranberries, and define outlets for restricted fruit. These actions are designed to help stabilize marketing

conditions, reduce burdensome inventories, and improve grower and handler returns. This rule would establish new §§ 929.107, 929.108 and 929.252. The authority for these actions is provided for in §§ 929.51, 929.52, 929.54, 929.57, 929.58. These changes are based on Committee recommendations from meetings on August 4 and August 31, 2017.

While these actions could result in some additional costs to the industry, the benefits are expected to outweigh them. The purpose of establishing free and restricted percentages is to address oversupply conditions and to stabilize grower prices. The industry has a significant volume in inventory, and this has had a negative impact on grower and handler returns. Without volume control, inventories would likely continue to increase, further lowering returns.

Inventories have more than doubled since 2011. In 2011, existing inventories were around 4.6 million barrels. By the end of the 2016–17 season, inventories are anticipated to be around 9.9 million barrels. Inventories as a percentage of total sales have also been increasing from approximately 50 percent in 2010 to approximately 103 percent in 2016, and will reach an anticipated 115 percent after the 2017–18 season if volume control is not implemented. These inventories have had a depressing effect on grower prices, which for many has fallen below their cost of production.

Retail demand for cranberries is highly inelastic, which indicates changes in consumer price do not result in significant changes in the quantity demanded. Consumer prices largely do not reflect changes in cranberry supplies. Therefore, this action should have little or no effect on consumer prices and should not result in a reduction in retail sales. However, even a small shift in supply could increase grower and handler returns. The use of free and restricted percentages would likely have a positive impact on grower and handler returns for this crop year.

This proposal would result in some fruit being taken off the market. However, a sufficient amount of fruit would still be available to supply all aspects of the market. In addition, allowing handlers the option to divert 2017–18 processed cranberry products to meet up to 50 percent of their restriction would provide handlers some additional flexibility and may help reduce inventories of juice concentrate, one of the largest segments of existing inventory.

This action would also exempt small handlers who process less than 125,000

barrels from the restriction. Consequently, small handlers whose acquired volume is 125,000 barrels or less would be exempt from the volume restriction, and handlers with slightly larger volumes would face minimal restrictions. This would reduce the burden the volume restriction would have on small handlers and their growers.

In addition, only handlers who would have carryover inventory that is not sold or under contract at the end of the 2017–18 fiscal year would be subject to the 15 percent restriction. This would allow handlers that have matched their production with market demand to continue to serve their customer base and protect their market share. Handlers subject to the restriction would be able to meet any shortfalls by utilizing cranberries or cranberry products they have in inventory.

There are also secondary uses available for restricted fruit, including foreign markets except Canada, charitable institutions, nonhuman food use, and research and development projects. While these alternatives may provide different levels of return than sales to primary markets, they play an important role for the industry. In addition, if demand is greater than anticipated, there are significant amounts of fruit in inventory that could be utilized to meet demand.

As the restriction represents a percentage of a handler's volume, the costs, when applicable, are proportionate and should not place an extra burden on small entities as compared to large entities. Likewise, growers and handlers, regardless of size, would benefit from the stabilizing effects of this restriction.

One alternative considered was not to impose volume restrictions during the 2017–18 crop year. However, Committee members believed that inventory levels were such that some form of volume control was necessary to help stabilize marketing conditions.

The Committee also considered other levels of free and restricted percentages. However, some members were concerned that setting a restriction that was too high could negatively impact small handlers. The Committee determined that allowing diversion of 50 percent to meet the restriction allows large handlers to reduce inventory and not add additional volumes of juice concentrate to the existing inventory levels. Therefore, for the reasons

mentioned above, these alternatives were rejected by the Committee.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0189, Generic Fruit Crops. The Committee will be recommending reporting and recordkeeping requirements to be used with the volume restriction, as well as safeguard measures to monitor compliance, under a separate rulemaking action.

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 proposed rule.

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.

In addition, the Committee's meetings were widely publicized throughout the cranberry industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the August 4 and August 31, 2017, meetings were public meetings and all entities, both large and small, were able to express views on these issues. 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/MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Richard Lower 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 since handlers are already receiving cranberries from the 2017–18 crop and the proposed handler withholding needs to be applied in order to be effective. All written

comments timely received will be considered before a final determination is made on this rule.

#### List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

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

#### **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**

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

Authority: 7 U.S.C. 601–674.

#### **Subpart Redesignated as Subpart A**

- 2. Designate the subpart labeled “Order Regulating Handling” as Subpart A.

#### **Subpart Redesignated as Subpart B and Amended**

- 3. Designate the subpart labeled “Rules and Regulations” as Subpart B and revise the heading as shown below:

#### **Subpart B—Administrative Requirements**

- 4. Add § 929.107 to read as follows:

#### **§ 929.107 Conversion.**

During a year of volume regulation, cranberry concentrate and other processed products made from excess or restricted cranberries harvested in that year may be diverted according to the provisions of this part. Any handler disposing of concentrate or other processed products must report the whole-berry equivalent to the Committee so that all excess or restricted cranberries are accounted for and reported per rules and regulations in effect. Table 1-Conversion Table provides a conversion rate for concentrate to barrels of whole berries based on Brix average by production region. Should requests be made to use other processed products for diversion, conversion rates for those products would be provided by the Committee based on information provided by the requesting handler.

TABLE 1 TO § 929.107—CONVERSION TABLE

Region	Brix average	Concentrate yield for one barrel of cranberries
Oregon .....	9.8	1.91 gallons 50 Brix concentrate.
Washington .....	9.3	1.81 gallons 50 Brix concentrate.
New Jersey .....	8.8	1.72 gallons 50 Brix concentrate.
Wisconsin .....	8.7	1.70 gallons 50 Brix concentrate.
Massachusetts .....	8.4	1.64 gallons 50 Brix concentrate.
All others .....	8.7	1.70 gallons 50 Brix concentrate.

■ 5. Add § 929.108 to read as follows:

**§ 929.108 Outlets for restricted cranberries.**

In accordance with § 929.57, restricted cranberries may be diverted only to the following noncommercial or noncompetitive outlets:

(a) Foreign countries, except Canada, provided that restricted cranberries diverted under this provision may not be converted into canned, frozen, or dehydrated cranberries or other cranberry products by any commercial process, prior to diversion;

(b) Charitable institutions;

(c) Any nonhuman food use, or;

(d) Research and development projects approved by the Committee dealing with the development of foreign and domestic markets, including, but not limited to dehydration radiation, freeze drying, or freezing of cranberries.

**Subpart Redesignated as Subpart C**

■ 6. Designate the subpart labeled “Assessment Rate” as Subpart C.

■ 7. Add § 929.252 to read as follows:

**§ 929.252 Free and restricted percentages for the 2017–18 crop year.**

(a) The percentages for cranberries handled by handlers during the crop year beginning on September 1, 2017, which shall be free and restricted, respectively are designated as follows: Free percentage, 85 percent and restricted percentage, 15 percent.

(b) Handlers have the option to process restricted cranberries into dehydrated cranberries or other processed products. Handlers also have the option to divert concentrate or other processed products as provided in § 929.107 to account for up to 50 percent of their restriction.

(c) Organically grown fruit shall be exempt from the volume regulation requirements of this section. Small handlers who process less than 125,000 barrels during the 2017–18 fiscal year are exempt from the restriction. Any handler who does not have carryover inventory at the end of the 2017–18 fiscal year would also be exempt.

Dated: December 26, 2017.

**Bruce Summers,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2017–28169 Filed 12–29–17; 8:45 am]

**BILLING CODE 3410–02–P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 930**

[Doc. No. AMS–SC–17–0047; SC17–930–1 PR]

**Tart Cherries Grown in the States of Michigan, et al.; Revision of Exemption Requirements**

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would implement a recommendation from the Cherry Industry Administrative Board (Board) to revise the exemption provisions under the Marketing Order for tart cherries (Order). This rule changes the number of years that new product, new market development, and market expansion projects are eligible for handler diversion credit. This action would also permit handlers to apply for previously awarded projects if the original handler has not begun the project within a year of approval, and provides an expedited approval option for some market expansion activities. These changes are intended to encourage handlers to participate in new product, new market and market expansion activities, expand demand, and make the approval process more efficient.

This proposal also contains a formatting change to subpart references to bring the language into conformance with the Office of Federal Register requirements.

**DATES:** Comments must be received by February 1, 2018.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be

sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, 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:** This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3775, Fax: (863) 291–8614, or Email: [Jennie.Varela@ams.usda.gov](mailto:Jennie.Varela@ams.usda.gov) or [Christian.Nissen@ams.usda.gov](mailto:Christian.Nissen@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: [Richard.Lower@ams.usda.gov](mailto:Richard.Lower@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 930, as amended (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. Part 930