

# Rules and Regulations

Federal Register

Vol. 83, No. 177

Wednesday, September 12, 2018

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 929

[Doc. No. AMS-SC-18-0012; SC18-929-2 FR]

#### Cranberries Grown in States of Massachusetts, et al.; Establishment of 2018-19 Seasonal Volume Regulation

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

**ACTION:** Final rule.

**SUMMARY:** This rule implements a recommendation to establish a grower allotment percentage for the 2018-19 crop year and allows for the diversion of processed products from that year under the marketing order for cranberries grown in the production area (Order). This action also specifies handlers subject to the regulation, revises the definition of outlets for excess fruit, revises dates by which certain actions are due, and establishes exemptions to the action.

**DATES:** Effective October 12, 2018.

**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 final rule, pursuant to 5 U.S.C. 553, amends

regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This final rule 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 of cranberries operating within the production area, and a public member.

The Department of Agriculture (USDA) is issuing this final 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 final 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 rule 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 of Agriculture (Secretary) finds that "such regulation will tend to effectuate the declared policy of the Act." Accordingly, this rule establishes a marketable quantity and grower allotment percentage for cranberries produced during the 2018-19 crop year, beginning September 1, 2018, and ending August 31, 2019.

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 final rule establishes a marketable quantity and grower allotment percentage for the 2018-19 crop year. This rule is the result of the Committee's recommendations made during its August 4, and August 31, 2017, meetings, and a February 18, 2018, email vote. This rule establishes a marketable quantity of 7.275 million barrels and a grower allotment percentage of 75 percent. This action also allows handlers to process up to 50 percent of the excess cranberries they receive above their growers' allotment, provided they divert an equivalent amount of 2018-19 cranberry processed products. It also establishes an exemption for organically grown cranberries, specifies handlers subject to the regulation, revises the definition of outlets for excess fruit, and revises dates by which certain actions are due.

The Committee also recommended an exemption for organically grown cranberries, and an exemption of 2,500 barrels for each grower. After much consideration, USDA determined the recommended grower exemption of 2,500 barrels should be revised. Consequently, this final rule does not include the exemption of 2,500 barrels for each grower and instead exempts handlers that processed less than 125,000 barrels during the 2017-18 fiscal year, or handlers that did not have carryover inventory at the end of the 2017-18 fiscal year. Accordingly, growers delivering their fruit to exempt handlers are not subject to the allotment.

In addition, in a February 18, 2018, vote by email, the Committee voted unanimously to adjust reporting dates associated with the allotment regulation. These changes were previously discussed and supported by the Committee at a meeting on April 22,

2014, as part of the consideration of another volume regulation for which a rule was not issued.

The recommendations included in this rule will adjust supply to more closely meet market demand, improve grower and handler returns, and help reduce inventory.

Sections 929.49 and 929.52 provide, in part, authority to establish a marketable quantity and grower allotment percentage. Section 929.14 defines marketable quantity as the volume of cranberries needed to meet market demand and provide for an adequate carryover into the next season. The allotment percentage is derived by dividing the marketable quantity by the total of all growers' sales histories. Section 929.48 outlines procedures for computing a grower's sales history.

Section 929.49 also prescribes how the grower allotment percentage is calculated and distributed to growers and handlers. Each grower's allotment volume is calculated by multiplying the individual's sales history by the allotment percentage. A grower's allotment is the total volume a handler may purchase from, or handle on behalf of, that grower during a year of volume regulation. Cranberries received by a handler that exceed the sum of their growers' allotments can be used to fill unused allotment. Any remaining cranberries are defined as excess cranberries as defined in § 929.59, which also outlines the procedures and dates by which excess cranberries are to be diverted. Section 929.61 prescribes outlets for excess cranberries, which are further defined in § 929.104.

In addition, § 929.50 provides authority for the transfer of sales history and annual allotment. Section 929.51 requires the Committee to consider market conditions, including supply and demand, prior to recommending an allotment percentage, and that any recommendation be made by March 1. 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 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. However, grower prices are very sensitive to changes in supply. Consequently, 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.

The Committee met on August 4, 2017, and again on August 31, 2017, and discussed the estimated 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. Carryover inventory was estimated at approximately 9.9 million barrels and foreign acquired cranberries were 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 crop year.

Using these numbers, with estimated sales of 9.5 million barrels for 2017–18, the Committee calculated a potential carryover for the 2018–19 season of 10.9 million barrels. This is an approximately one million barrel increase from the carryover inventory for the 2017–18 crop year. Based on these numbers, carryover inventory for the 2018–19 crop year would be approximately 115 percent of annual sales.

In discussing market conditions, the Committee recognized that sales have been relatively flat. The Committee also noted supply has been exceeding demand by about one million barrels a year. Using crop and sales estimates similar to 2017–18, and the estimated carryover from the 2017–18 season of 10.9 million barrels, the potential carryover supply at the end of the 2018–19 crop year could increase by another one million barrels to 11.9 million if no action is taken to regulate supply.

In reviewing these numbers, the Committee agreed the industry is faced with a large inventory that continues to build. To address the problems

associated with oversupply and to try to stabilize grower returns, the Committee discussed the need to establish volume regulation. The Committee considered several options, including establishing free and restricted percentages under a handler withholding for the 2017–18 crop year, establishing a grower allotment for the 2018–19 season, or recommending both regulations.

Considering the levels of inventory and low grower returns, the Committee voted to recommend a handler withholding, setting the free and restricted percentages of 85 percent and 15 percent, respectively, for the 2017–18 season. AMS agreed with the Committee's analysis and recommendation and published the rule establishing these percentages in the **Federal Register** on April 4, 2018 (83 FR 14350). The Committee estimated that the 15 percent restriction would remove approximately one million barrels from inventory, helping to maintain inventories at current levels. While the Committee recognized a small restriction would not immediately balance supply with demand, even a small restriction would remove a portion of the volume from the market and help prevent an additional increase in inventory.

With the handler withholding removing an estimated one million barrels from the market, the industry would still have approximately 10 million barrels remaining in inventory. Given the static demand and anticipated market conditions for the 2018–19 fiscal year, the Committee also recommended establishing a grower allotment percentage for the 2018–19 fiscal year.

The Committee discussed various levels of restriction, being sensitive to the impact volume control could have on small growers and 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. However, the Committee also recognized that volume control measures could help increase grower returns by helping to align supply with demand.

In addition, establishing an allotment regulation can help growers reduce production costs. Growers could choose to take bogs out of production, or reduce inputs such as fertilizer and pesticides in order to reduce their production volume to match their allotment. These and other steps could help growers reduce their costs of production for the 2018–19 crop.

Based on the information available, the Committee recommended

establishing a marketable quantity of 7.275 million barrels and an allotment percentage of 75 percent for the 2018–19 crop year. With volume regulation, returns are expected to be higher than without volume regulation. This increase is beneficial to all growers and handlers regardless of size, and enhances total revenues in comparison to no volume regulation. Establishing an allotment percentage allows the industry to help stabilize supplies. This rule could remove a potential 2 million barrels from supply, reduce industry inventory, and increase industry returns. This rule adds a new § 929.253 to establish the marketable quantity and grower allotment.

The Committee also recommended that handlers have the option to receive cranberries over their grower allotment and process up to 50 percent of the excess cranberries received rather than divert them in fresh form, as currently required. Handlers that do so need to divert an amount of 2018–19 cranberry processed products equivalent to the volume of excess cranberries processed.

The Committee made this recommendation recognizing that processing fresh fruit to produce one of its top-selling items, sweetened dried cranberries (SDC), results in juice concentrate as a by-product. A significant amount of current inventory is in the form of juice concentrate. By allowing handlers to process a portion of the excess cranberries they receive, more fresh cranberries are available to produce products requiring whole cranberries, such as SDC, and the diversion of concentrate will help prevent additional build-up of inventory. Handlers still have the option to divert fresh berries as excess supply.

To allow for the diversion of processed products, § 929.104(b), which currently prohibits the handling of excess fruit, is removed. To ensure the diversion of processed products in lieu of fresh cranberries is correctly accounted for, the final rule for volume regulation for the 2017–18 season (83 FR 14350) adds guidance under § 929.107 along with a conversion table. The table recognizes different conversion equivalencies of cranberries 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 for concentrate is 50 Brix. The Committee acknowledged that the Brix level can vary depending on the growing region and farming practices. The table helps ensure that the diversion of processed product in lieu of

fresh berries is applied equitably among all handlers.

Using the conversion table, handlers can determine the amount of cranberry concentrate they need to divert, in lieu of fresh berries, to cover the fresh cranberry equivalent of any excess cranberries processed. 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 will be provided by the Committee based on information provided by the requesting handler.

For example, a grower with a sales history of 1,000 barrels will have an allotment of 750 barrels ( $1,000 \times .75$ ). If the grower delivered all 1,000 barrels to the handler, the handler will have 250 barrels of excess fruit. Under this final rule, the handler could divert 250 barrels of fresh fruit to approved outlets or divert half (125 barrels of fresh fruit) and process half, diverting a 125 barrel equivalent in 2018–19 processed product.

The Committee also recommended changes to date requirements currently specified in the Order. Section 929.59(b) currently states that “prior to January 1, or such other date as recommended by the committee and approved by the Secretary, handlers holding excess cranberries shall submit to the committee a written plan outlining procedures for the systematic disposal of such cranberries in the outlets prescribed in § 929.61.” The Committee agreed the date for submitting disposal plans should be extended in order to give handlers more time to consider how to divert their excess cranberries. Therefore, the Committee recommended changing the deadline prescribed in § 929.59(b) from January 1 to March 1 of the regulated season.

Section 929.59(c) states that “prior to March 1, or such other date as recommended by the committee and approved by the Secretary, all excess cranberries shall be disposed of pursuant to § 929.61.” Given the change in the due date for the diversion plans, the Committee agreed that this date should also be changed to provide handlers with enough time to comply with this requirement. Therefore, the Committee recommended changing the date by which diversion is to be completed from March 1 to August 31. AMS agrees with the Committee’s analysis and recommendation and is issuing this rule to add a new § 929.159 to make these date changes.

Section 929.62(a) requires each grower to file a report with the Committee by January 15 of each year

providing the following information: Total acreage harvested and whether owned or leased; total commercial cranberry sales in barrels from such acreage; the amount of acres either in production but not harvested, or taken out of production, and the reason(s) why; the amount of new or replanted acreage coming into production; the name of the handler(s) to whom commercial cranberry sales were made; and such other information as may be needed for implementation and operation of this section. Growers might not have all necessary information to complete the report by the current deadline. Therefore, the Committee recommended changing the grower reporting date from January 15 to March 1.

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

To address the burden the volume regulation would have on small growers and handlers, the Committee also recommended providing an exemption of 2,500 barrels for all growers. Under the Committee’s recommendation, the exemption would be applied following the calculation of a grower’s allotment. However, after much consideration, USDA determined the exemption recommendation should be revised. Rather than provide an exemption of 2,500 barrels for each grower, this action exempts small handlers who processed less than 125,000 barrels from the allotment requirement. Further, handlers who did not have carryover inventory at the end of the 2017–18 fiscal year are also exempt from the allotment requirement. Accordingly, growers delivering their fruit to exempt handlers are not subject to the allotment.

These changes allow handlers who have matched their production with market demand to continue to serve their customer base and maintain their market share. Small growers also have the option of delivering their fruit to handlers who are not subject to the regulation. Handlers subject to the allotment percentage should be able to meet any market shortfalls by utilizing cranberries or cranberry products available in inventory. The provision allowing handlers to process a portion of their excess cranberries also helps provide some flexibility.

With this action, only those handlers carrying inventory are subject to

meeting the allotment requirement. In reviewing the Committee's recommendation and other available industry information, USDA has determined that existing inventories in excess of 9 million barrels are putting the most downward pressure on returns to both growers and handlers. Consequently, this rule puts more focus on reducing the volume in inventory.

Section 929.125 provides authority for a grower to request a review by an appeals subcommittee if the grower is dissatisfied with his or her sales history calculation provided by the Committee. The grower must request the review within 30 days after receipt of the Committee's determination of sales history and must submit documentation showing why he or she believes the calculation is inaccurate. Within 15 days after notification of the appeals subcommittee's decision, if the grower is not satisfied with the decision, the grower may further appeal to the Secretary.

A grower may transfer all or part of their allotment to another grower, provided that the transferred allotment remains assigned to the same handler. Transfers of allotment between growers having different handlers may occur with the consent of both handlers. All such transfers have to be reported to the Committee. After all allotment transfers have occurred, any unused allotment would be transferred to the Committee. The Committee would then redistribute any unused allotment to handlers having excess cranberries in an amount proportionate to each handler's total allotment. These provisions help ensure that excess supply is utilized, to the extent possible, through unfilled allotment.

The Committee considered the estimated level of production and anticipated demand, and determined that without some action on the part of the Committee, inventory levels will continue to increase throughout the 2018–19 season. The Committee believes using the volume control authorities in the Order will help stabilize marketing conditions for cranberries by helping to adjust supply to meet market demand and improve grower returns.

Accordingly, this final rule establishes a grower allotment at 75 percent for the 2018–19 season. It also gives handlers the option to process up to 50 percent of the excess cranberries they receive above their growers' allotment, provided they divert an equivalent amount of 2018–19 cranberry processed products. This final rule also exempts organically grown cranberries, specifies handlers subject to the

regulation, revises the definition of outlets for excess fruit, and revises dates by which certain actions are due.

#### Final 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 final 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 growers 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 growers 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 and results in high levels of inventories, grower and handler returns can be negatively impacted.

Demand for cranberries is inelastic, meaning changes in price have a minimal effect on total sales volume. However, grower prices are very sensitive to changes in supply. A grower allotment program results in a decrease in supply as handlers can only purchase a portion of a grower's production, which is based on the grower's past sales history. Even a small shift in supply can have a positive effect on grower prices. Therefore, using a grower allotment program to reduce supply should increase grower prices and revenues.

This final rule establishes a grower allotment of 75 percent for the 2018–19 crop year. It also allows handlers to process up to 50 percent of the excess cranberries they receive above their growers' allotment, provided they divert an equivalent amount of 2018–19 cranberry processed products. In addition, this rule exempts organically grown cranberries, specifies handlers subject to the regulation, revises the definition of outlets for excess fruit, and revises dates by which certain actions are due. These actions are designed to help stabilize marketing conditions, reduce burdensome inventories, and improve grower and handler returns. This rule revises §§ 929.104 and 929.105 and establishes new §§ 929.159 and 929.253. The authority for these actions is provided for in §§ 929.48, 929.49, 929.51, 929.52, 929.58, 929.59, 929.61, and 929.62. These changes are based on Committee recommendations from meetings on August 4 and August 31, 2017, and a February 18, 2018, email vote.

While these actions could result in some additional costs to the industry, the benefits are expected to outweigh them. The purpose of establishing an allotment percentage 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 will likely continue to increase, further lowering returns.

Inventories have significantly increased since 2011. In 2011, existing inventories were around 4.6 million barrels. By the end of the 2016–17 season, inventories were approximately 9.9 million barrels, and by the end of the 2017–18 season, inventories are projected to be approximately 10.9 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 could reach an anticipated 115 percent after the 2017–18 season. These inventories have had a depressing effect on grower prices, which for many growers have fallen below their cost of production.

Retail demand for cranberries is highly inelastic, which indicates changes in consumer prices do not result in significant changes in the quantity demanded. Consumer prices are also not significantly impacted by minor 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 allotment percentages will likely have a positive impact on grower and handler returns for this crop year.

This rule will result in some fruit being taken off the market. However, a sufficient amount of fruit will still be available to supply all aspects of the market. In addition, allowing handlers the option to process up to 50 percent of the excess cranberries they receive above their growers' allotment, provided they divert an equivalent amount of 2018–19 cranberry processed products, provides handlers some additional flexibility and may help reduce inventories of juice concentrate, one of the largest segments of existing inventory.

There are also secondary outlets available for excess 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 can be utilized to meet demand.

This action also exempts small handlers who processed less than 125,000 barrels in 2017–18 from the allotment percentage. Consequently, small handlers whose acquired volume is 125,000 barrels or less are exempt from the allotment volume restriction.

This will reduce the burden the volume restriction has on small handlers and their growers.

In addition, handlers who did not have carryover inventory at the end of the 2017–18 fiscal year are also exempt from the allotment percentage. This allows handlers that have matched their production with market demand to continue to serve their customer base and maintain their market share. Handlers subject to the restriction should be able to meet any shortfalls by utilizing cranberries or cranberry products they have in inventory.

Further, making the recommendation to regulate the volume handled under a grower allotment program could result in some cost savings for growers depending upon what actions they may take to adjust supply.

As the allotment represents a percentage of the grower's sales history, 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, benefit from the stabilizing effects of this action.

One alternative considered by the Committee was not to impose a volume regulation during the 2018–19 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 allotment percentage levels. However, some members were concerned that setting an allotment percentage that was too restrictive could negatively impact small growers. The Committee also considered not recommending a provision to allow a percentage of excess cranberries to be processed into cranberry products. The Committee determined that allowing handlers to process up to 50 percent of the excess cranberries they receive above their growers' allotment would provide additional volumes of fresh cranberries for processing and would provide handlers some flexibility while not adding additional 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, Fruit Crops. No changes in those requirements as a result of this action are necessary. Should any changes

become necessary, they would be submitted to OMB for approval.

This final rule will not impose any additional reporting or recordkeeping requirements on either small or large cranberry growers or 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.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final 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, 2017 and August 31, 2017 meetings were public meetings and all entities, both large and small, were able to express views on these issues.

A proposed rule concerning this action was published in the **Federal Register** on April 27, 2018 (83 FR 18462). Copies of the proposed rule were sent via email to Committee members and cranberry handlers. Additionally, the rule was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending May 29, 2018, was provided to allow interested persons to respond to the proposal.

During the comment period, 24 comments were received in response to the proposal. Of the comments received, 12 were in support of the regulation, but also requested some changes to the proposal, 11 were opposed to the regulation, and 1 took no position.

*Comments:* In the comments that supported volume regulation, but with changes from what was included in the proposed rule, the 12 commenters stated the volume regulation was a way to reduce supply and benefit the industry. These 12 comments also specifically supported the handler's flexibility to divert excess fruit, stating it would help handlers maximize the value of the fruit.

The 12 comments also suggested handlers be allowed to divert 100 percent of their excess fruit in processed form, rather than the 50 percent allowed under the proposed rule. They stated

that with a significant amount of the current inventory in the form of juice concentrate, this would help prevent additional build-up of inventory.

*Response:* While a significant portion of existing inventory is concentrate, not all handlers produce concentrate or concentrate as a byproduct of SDC production. Allowing the use of 50 percent of 2018–19 cranberry products to meet the excess fruit restriction recognizes the need to reduce cranberry concentrate inventory, while also addressing the overall oversupply facing the industry.

*Comments:* Eleven of these commenters also expressed that the exemption for small handlers does not help small growers. These commenters asked USDA to reconsider its decision to do away with the 2,500 barrel exemption for each grower as recommended by the Committee.

*Response:* In reviewing the Committee's recommendation and other available industry information, USDA has determined that existing inventories in excess of 9 million barrels are putting the most downward pressure on returns to both growers and handlers. Consequently, this rule puts more focus on reducing the volume in inventory, which should benefit both small growers and small handlers.

Rather than provide an exemption of 2,500 barrels for each grower, an action which would have exempted nearly 2.75 million barrels, this action exempts small handlers who processed less than 125,000 barrels during the 2017–18 fiscal year from the allotment requirement. Small handlers processing less than 125,000 barrels make up nearly 88 percent of all handlers, yet combined, account for less than 10 percent of the total volume of cranberries processed. Based on Committee data, these small handlers were holding little or no volume in inventory at the end of the 2016–17 season. USDA's revisions to the Committee's proposal therefore exempts these handlers from the allotment requirement. Although focused on handlers, this change is expected to have a positive impact on grower returns by reducing overall supply in the market. Additionally, small growers would have the option of delivering their fruit to handlers who are not subject to the regulation.

In addition, handlers who did not have carryover inventory at the end of the 2017–18 fiscal year are also exempt. USDA believes that this will allow handlers who have matched their production with market demand to continue to serve their customer base and maintain their market share. Only

those handlers carrying inventory will be subject to meeting the allotment requirement.

Handlers subject to the allotment percentage should be able to meet any market shortfalls by utilizing cranberries or cranberry products available in inventory. The provision allowing handlers to process a portion of their excess cranberries also helps provide some flexibility.

*Comment:* Another comment stated they did not support using 2017 deliveries to determine the 2018 exemptions, and that the no carryover inventory exemption is flawed.

*Response:* Regarding using 2017–18 information to determine 2018–19 exemptions, this is a grower's production allotment volume regulation. As such, it is important for growers to have an idea of what their allotment will be for the upcoming season. Growers can then use that information to make determinations regarding their production. By using the information from 2017–18, USDA provided growers with exemptions they could use to determine whether their production would be subject to the allotment, or the potential opportunity to choose to deliver their production to an exempt handler.

*Comments:* Of the 11 comments in opposition of the proposed rule, five support the reinstatement of the 2,500 barrel exemption for each grower as discussed above. Four stated the proposed change would do little or nothing to accomplish USDA's stated goal of controlling the overage of cranberry concentrate.

*Response:* Concentrate represents a large portion of existing inventory. However, at the end of the 2016–17 fiscal year, of the estimated 9.7 million barrels in inventory, approximately 4.2 million barrels were frozen berries, while approximately 3.7 million barrels were concentrate. The rule provides for the diversion of processed product to meet 50 percent of the restriction as a way to reduce the inventory of concentrate. However, reducing overall supply, including whole fruit, is also important in addressing the current level of inventory.

*Comments:* Six comments stated that the proposed regulation would negatively impact independent growers and another stated that this would hurt small growers. Four commenters stated this regulation would adversely affect midsize handlers.

*Response:* While these actions could result in some additional costs to the industry, the allotment percentage established by this rule applies uniformly to all those regulated,

regardless of size. A grower's allotment is the total volume a handler may purchase from, or handle on behalf of, that grower during a year of volume regulation. Each grower's allotment volume is calculated by multiplying the individual's sales history by the allotment percentage. As the allotment percentage is applied to each grower's sales history, the costs, when applicable, are proportionate and should not place an extra burden on small entities as compared to large entities.

Further, the benefits are expected to outweigh any additional costs and positively impact all growers and handlers, regardless of size. The industry has a significant volume in inventory, and this has had a negative impact on all grower and handler returns. If steps are not taken to reduce the level of inventory, these downward pressures will persist. The purpose of establishing the allotment percentage is to address the oversupply conditions which are negatively impacting industry returns. Generally, reducing supply levels results in prices increasing for growers and handlers. Therefore, lowering inventory levels is expected to result in positive returns for the entire industry.

*Comments:* Four comments stated the shortage in the 2017 crop makes the grower allotment unnecessary and harmful, and the rule will create an artificial spike in market price for finished goods. Another commenter questioned regulating cranberries when Canadian production is not subject to the allotment.

*Response:* In reviewing the Committee's recommendation and other available industry information, USDA has determined that existing inventory is putting the most downward pressure on returns to both growers and handlers. Even with the shortfall in the 2017 crop and the handler withhold established for the 2017–18 season, the industry will enter the 2018–19 season with inventory levels that will continue to negatively affect industry returns. In addition, existing inventory, combined with an additional 9 million barrels of anticipated 2017 domestic production, will provide a more than ample domestic supply to meet sales requirements. Consequently, this regulation should have little effect on consumer prices. Moreover, while the Order does not regulate the volume of imports, given the current levels of available domestic supply, this rule is not expected to lead to an increase in imported product.

*Comment:* One comment in opposition to the proposal stated it

would be implemented too late, as growers have already made their production decisions. It further stated the rule should be implemented next season when they have more time to make economic decisions relating to their crop.

*Response:* Utilizing a production allotment allows growers to make adjustments to reduce their costs. Given the oversupply, it is important to take action on this issue. Further, growers have been aware of this recommendation for some time, and the proposed rule on this action published on April 27, 2018.

*Comment:* Another commenter stated the proposed regulation originated from the major cooperative.

*Response:* As stated above, the proposal for production allotment was discussed and ultimately recommended by the Committee for USDA's consideration at the August 4, 2017 and August 31, 2017 meetings. The Committee is comprised of growers of cranberries operating within the production area and a public member, and all meetings are open to industry and public participation.

*Comment:* The one comment taking a neutral position on the proposed action also indicated support for reestablishing the 2,500-barrel exemption for each grower, as recommended by the Committee, should USDA decide to go forward with the regulation.

*Response:* For the reasons given above, the 2,500-barrel exemption for growers will not be reestablished.

*Comments:* Additional comments were received that addressed issues outside the scope of the proposed rule.

For the reasons discussed above, no changes will be made to the rule as proposed, based on the comments received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation of the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

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

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

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

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

- 2. In § 929.104, revise paragraph (a) introductory text and remove and reserve paragraph (b).

The revision reads as follows:

#### **§ 929.104 Outlets for excess cranberries.**

(a) In accordance with § 929.61, excess cranberries may be diverted only to the following noncommercial or noncompetitive outlets:

\* \* \* \* \*

- 3. In § 929.105, add paragraph (c) to read as follows:

#### **§ 929.105 Reporting.**

\* \* \* \* \*

(c) Beginning with crop year 2018–19, the due date for the grower report required under § 929.62(a) is changed to March 1.

- 4. Add § 929.159 to read as follows:

#### **§ 929.159 Excess cranberries.**

(a) Beginning with crop year 2018–19, handlers holding excess cranberries shall submit to the Committee a written plan outlining procedures for the systematic disposal of such cranberries as specified in § 929.59(b) by March 1.

(b) Beginning with crop year 2018–19, all excess cranberries shall be diverted as specified in § 929.59(c) prior to August 31.

- 6. Add § 929.253 to read as follows:

#### **§ 929.253 Marketable quantity and allotment percentage for the 2018–19 crop year.**

(a) The marketable quantity for the 2018–19 crop year is set at 7.275 million barrels and the allotment percentage is designated at 75 percent.

(b) Organically grown fruit shall be exempt from the volume regulation requirements of this section. Small handlers who processed less than

125,000 barrels during the 2017–18 fiscal year are exempt from the volume regulation requirements of this section. Any handler who did not have carryover inventory at the end of the 2017–18 fiscal year is also exempt from the volume regulation requirements of this section.

(c) Handlers have the option to process up to 50 percent of the excess cranberries received over their growers' allotments into dehydrated cranberries or other processed products. Handlers utilizing this option shall divert an amount of 2018–19 processed products equivalent to the volume of excess cranberries processed as provided for in § 929.107. The remaining volume of excess cranberries must be diverted as whole fruit.

Dated: September 7, 2018.

**Bruce Summers,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2018–19825 Filed 9–11–18; 8:45 am]

**BILLING CODE 3410–02–P**

## **BUREAU OF CONSUMER FINANCIAL PROTECTION**

### **12 CFR Part 1070**

[Docket No. CFPB–2016–0039]

**RIN 3170–AA63**

#### **Disclosure of Records and Information**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the procedures used by the public to obtain information from the Bureau of Consumer Financial Protection (Bureau) under the Freedom of Information Act, the Privacy Act of 1974, and in legal proceedings.

**DATES:** This final rule is effective October 12, 2018.

**FOR FURTHER INFORMATION CONTACT:** David Snyder, Senior Counsel, Legal Division, at 202–435–7758. If you require this document in an alternative electronic format, please contact [CFPB\\_Accessibility@cfpb.gov](mailto:CFPB_Accessibility@cfpb.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The Bureau first published the procedures used by the public to obtain information from it under the Freedom of Information Act, the Privacy Act of 1974, and in legal proceedings in an interim final rule on July 28, 2011, 76 FR 45371 (Jul. 28, 2011). This was followed by a final rule on February 15,