

**§ 51.2129 Serious damage.**

*Serious damage* means any defect which makes a kernel or piece of kernel unsuitable for human consumption, and includes decay, rancidity, insect injury and damage by mold.

**§ 51.2130 Diameter.**

*Diameter* means the greatest dimension of the kernel, or piece of kernel at right angles to the longitudinal axis. Diameter shall be determined by passing the kernel or piece of kernel through a round opening.

**§ 51.2131 Fairly uniform in size.**

*Fairly uniform in size* means that, in a representative sample, the weight of 10 percent, by count, of the largest whole kernels shall not exceed 1.70 times the weight of 10 percent, by count, of the smallest whole kernels.

Dated: April 9, 1996.

Lon Hatamiya,  
Administrator.

[FR Doc. 96-9829 Filed 4-19-96; 8:45 am]

BILLING CODE 3410-02-P

**7 CFR Part 929**

[Docket No. FV-96-929-1PR]

**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; Change in Reporting Requirements**

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposal invites comments on a change to the reporting requirements currently prescribed under the cranberry marketing order. The marketing order regulates the handling of cranberries grown in 10 States and is administered locally by the Cranberry Marketing Committee (committee). This rule would modify language in the order's rules and regulations to change the first date by which handlers must file their acquisition report from February 5 to January 5 during each crop year. This rule would provide more useful production information to the cranberry industry at an earlier time.

**DATES:** Comments must be received by May 22, 1996.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525-S, PO Box

96456, Washington, DC 20090-6456, Fax # (202) 720-5698. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella or Kathleen M. Finn, Marketing Specialists, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-1509, Fax # (202) 720-5698.

**SUPPLEMENTARY INFORMATION:** This proposal is issued under Marketing Order No. 929 (7 CFR part 929), as amended, regulating the handling of cranberries grown in 10 States, 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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 the Secretary 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 the Secretary 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 15 handlers of cranberries who are subject to regulation under the marketing order and approximately 1,100 producers of cranberries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000. The majority of handlers and producers of cranberries may be classified as small entities.

This proposal invites comments on a change to the reporting requirements currently prescribed under the cranberry marketing order. This rule would modify language in the order's rules and regulations to change the first date by which handlers must file their acquisition reports from February 5 to January 5. The committee unanimously recommended that the date be changed from February 5 to January 1. The Department proposes modifying the recommendation by requiring the first report to be filed by January 5 in order to allow sufficient time for the handlers to file the reports.

Section 929.62(b) of the cranberry marketing order provides authority to require each handler to file promptly with the committee a certified report as to the quantity of cranberries acquired during such period as may be specified. The fiscal period under the order is from September 1 of one year through August 31 of the following year. Section 929.105(b) of the order's rules and regulations prescribe that certified reports shall be filed by each handler to the committee not later than the 5th day of February, May, and August of each fiscal period and the 5th day of September of the succeeding fiscal period. Such report shall show the total quantity of cranberries the handler acquired and the total quantity of cranberries the handler handled from the beginning of the reporting period indicated through January 31, April 30, July 31, and August 31, respectively.

The committee recommended that the first acquisition report due to the committee on February 5 that shows the total quantity of cranberries the handler acquired through January 31 be changed

to an earlier date. This would provide producers and handlers vital production information earlier in the season and allow them to plan accordingly. The order's reporting and recordkeeping requirements have not been amended since 1988. Handlers' techniques in gathering and recording acquisition data have progressed considerably over the last seven years. Handlers have indicated that they could provide the committee with an acquisition report prior to January 1 of the crop year.

Therefore, the committee recommended that § 929.105(b) be revised by changing the first reporting due date from February 5 to January 1. As stated previously, the Department has modified this date from January 1 to January 5. The first acquisition report currently shows the total quantity of cranberries acquired and the total quantity of cranberries handled from the beginning of the reporting period through January 31. The committee also recommended that the January 31 date be changed to December 31 to make the report consistent with the new due date. In addition, the Department proposes modifying § 929.105(b) by listing each one of the due dates. This would make the section easier to understand as to when each report is due.

Based on available information, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in the referenced section have been previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13) and have been assigned OMB number 0581-0103.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

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

Marketing agreements, Cranberries, Reporting and recordkeeping requirements.

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

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

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

#### **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**

2. Section 929.105 is amended by revising paragraph (b) to read as follows:

##### **§ 929.105 Reporting.**

\* \* \* \* \*

(b) Certified reports shall be filed with the committee, on a form provided by the committee, by each handler not later than January 5, May 5, and August 5 of each fiscal period and by September 5 of the succeeding fiscal period showing:

- (1) The total quantity of cranberries the handler acquired and the total quantity of cranberries the handler handled from the beginning of the reporting period indicated through December 31, April 30, July 31, and August 31, respectively, and
- (2) The respective quantities of cranberries and cranberry products held by the handler on February 1, May 1, August 1, and August 31 of each fiscal period.

Dated: April 9, 1996.  
James R. Rodeheaver,  
*Acting Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 96-9830 Filed 4-19-96; 8:45 am]

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#### **7 CFR Part 946**

[FV96-946-1PR]

#### **Irish Potatoes Grown in Washington; Modification of the Minimum Size Requirements**

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** This proposed rule would reduce the minimum diameter requirement from 2 1/8 inches to 2 inches for Russet type varieties of Washington potatoes shipped during the July 15 through August 31 period each season. Potato varieties currently being grown for shipment during this period are similar in shape to those grown for marketing during the balance of the season. Reducing the minimum diameter would recognize this similarity and enable handlers to market a larger portion of their crop in fresh outlets. This change would improve the marketing of Washington potatoes and increase returns to producers as well as

provide consumers with increased supplies of potatoes.

**DATES:** Comments which are received by May 22, 1996 will be considered prior to the issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2523, South Building, PO Box 96456, Washington, DC 20090-6456; FAX: (202) 720-5698.

All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Dennis L. West, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204-2807; telephone: (503) 326-2724 or FAX (503) 326-7440; or Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523-S, Washington, DC 20090-6456; telephone: (202) 690-0464 or FAX (202) 720-5698.

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under Marketing Agreement No. 113 and Marketing Order No. 946 (7 CFR part 946), both as amended, regulating the handling of Irish potatoes grown in Washington, hereinafter referred to as the "order." The order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601-674), hereinafter referred to as the "Act." The State of Washington Potato Committee (Committee) is the agency responsible for local administration of the marketing order program in the designated production area.

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

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that