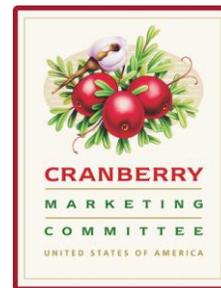


2017-2018 Handler Withhold Final Rule Industry Questions & USDA Answers

Updated 6-20-18



1. What is the definition of “handle”?

USDA Answer: Handle is defined as:

§ 929.10 Handle.

(a) Handle means:

(1) To can, freeze, or dehydrate cranberries within the production area or;

(2) To sell, consign, deliver, or transport (except as a common or contract carrier of cranberries owned by another person) fresh cranberries or in any other way to place fresh cranberries in the current of commerce within the production area or between the production area and any point outside thereof.

(b) The term handle shall not include:

(1) The sale of non harvested cranberries;

(2) The delivery of cranberries by the grower thereof to a handler having packing or processing facilities located within the production area;

(3) The transportation of cranberries from the bog where grown to a packing or processing facility located within the production area; or

(4) The cold storage or freezing of excess or restricted cranberries for the purpose of temporary storage during periods when an annual allotment percentage and/or a handler withholding program is in effect prior to their disposal, pursuant to § 929.54 or §929.59.

Cranberries that are frozen should be considered as being handled at the time they are frozen, unless the berries are frozen pursuant to §929.10(b)(4) above. Inter-handler transfers would require a written agreement between the handlers as to who is responsible for the assessments and restriction. If the receiving handler agrees to be responsible for the assessment and withholding responsibility for the transferred berries, these berries would be added to the acquiring handler’s total of berries acquired, and the responsibility for meeting the restriction would rest with that handler. For the movement of previously handled fruit between handlers that

is considered as a sale, the responsibility for meeting the assessment requirements and withholding requirements rest with the originating handler.

2. *How does a handler qualify to be exempt from the 2017 handler withholding volume regulation?*

There are three exemptions applied to the 2017-18 handler withhold volume regulation. The new exemption regulation is as follows:

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

(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 handlers who do not have carryover inventory at the end of the 2017-18 fiscal year are also exempt.

If Handler A is the handler as defined in the Order, then any responsibility for the withhold rests with that handler. Consequently, any handled product moved by Handler A to another handler or entity, the second handler or entity would not be subject to the withholding restriction on that fruit, but the product would count toward the inventory of the second handler or entity.

Example 1: Should Handler A acquire 300,000 barrels of cranberries, they are subject to the regulation. However, should Handler A sell 100,000 barrels to entity B and the remaining 200,000 barrels to entity C, and has no additional inventory, Handler A would be exempt because they have zero inventory at the end of the fiscal period. The fruit would have already been subject to the regulation by Handler A, so neither entity B nor C would be subject to the restriction for this fruit. However, the fruit would be added to the inventory of both entity B and entity C. Should B have an acquired total less than 125,000, not including the 100,000 barrels purchased from Handler A, B would be exempt from the restriction since he/she is below the minimum exemption.

Example 2: Should Handler A acquire and handle 100,000 barrels, they would be exempt from the regulation. Handler B does not have a sufficient amount of fruit to meet his/her restriction obligation. Handler B could purchase fruit from Handler A to meet his restriction. Handler B would not be responsible for meeting the restriction on this fruit (Handler A is exempt because they met the minimum exemption of 125,000 barrels).

Handlers that have specific questions about how they intend to meet their restriction obligation, or plan to qualify for an exemption, should submit their specific plan to the Committee and provide all documents that support their claim that they are exempt from the 2017 handler withholding regulation. All reports will be reviewed by CMC staff and if necessary, by USDA.

3. *What do we do for producer/handlers that handled their own fruit in 2017 that were not handlers of record for 2016 and the majority of their fruit is already sold?*

USDA Answer: The rule **does not** include a restriction that the handler must be a handler of record during 2016 to qualify for the exemption.

4. *We need confirmation that the regulated fruit is based on the total acquisitions of fruit acquired during the 2017 harvest and not just the fruit in inventory as of August 31, 2018.*

USDA Answer: **It is based on fruit acquired.** Section §929.54 states each handler shall withhold from handling a portion of the cranberries acquired during such period. The withheld portion shall be equal to the restricted percentage multiplied by the volume of marketable cranberries acquired.

5. *If a handler acquires fruit above the 125,000 barrels and includes organic fruit, do we subtract the amount of organic fruit which would bring them below the 125,000 therefore they are not regulated?*

Example: Handler acquired 130,000 bbls for 2017. 10,000 bbls are certified organic. This leaves handler with 120,000 bbls of conventional fruit and therefore will not be subjected to regulation even if this handler has carry-over inventory as of August 31, 2018. Please confirm this scenario is accurate.

USDA Answer: In this example, the handler would be exempt from regulation.

6. *Contracted fruit has no timeline so any “contract” would qualify between handlers even if it goes out years from August 31, 2018?*

Example 1: Handler A acquires over 125,000 bbls of fruit from growers. All fruit is contracted to a processor with no end date to the contract. Fruit remains at Handler A’s facility until the fruit is needed or fruit remains in the processors inventory. Since this fruit is under contract to eventually go to the processor, this handler is not regulated.

USDA Answer: To be included as under contract, the contract would need to include a price, volume, and a set delivery date.

Example 2: Handler A acquires over 125,000 of fruit from growers. This fruit will be transferred to Handler B where it will be added to Handler B’s inventory. Handler A is not regulated because all their fruit is contracted to be transferred to Handler B. Handler B is only regulated for their fruit they acquired directly from their growers and not regulated on the fruit they acquired from Handler A because this fruit is non-regulated.

USDA Answer: If Handler A is the first handler, and the fruit they acquire is above 125,000 barrels, they are regulated. **If through the transfer, Handler B becomes the first handler, this becomes their acquired fruit, and is subject to regulation.**

Example 3: Does it matter if entity B is a handler or not a handler? (i.e. processor, broker, niche market, etc.)

USDA Answer: In this case, if the entity B is serving as the first handler, they are the regulated party.

7. *How do inter-handler transfers differ from times of regulation vs. non-regulation?*

USDA Answer: Section §929.55 (a) states, the transfer of cranberries from one handler to another may be made without prior notice to the Committee, except during a period when a volume regulation has been established. If such transfer is made between handlers who have packing or processing facilities located within the production area, the assessment and withholding obligations provided under this part shall be assumed by the handler who agrees to meet such obligation. If such transfer is to a handler whose packing or processing facilities are outside of the production area, such assessment and withholding obligation shall be met by the handler residing within the production area.

8. *What exactly does “previous crop inventory” mean or is it to just reference the handler of record clause? How do we evaluate what is previous crop inventory and how does it factor in as a carryover? Can a handler use all their 2017 crop first and still have inventory from 2016 and qualify to be exempt?*

USDA Answer: **Inventory for the purposes of the exemption would include all fruit in inventory from current and previous seasons.** Even if a handler sells all fruit acquired during the 2017-18 season, but has fruit in inventory from previous seasons, the handler would not qualify for the inventory exemption specified in the regulation.

9. *If a handler is not exempt and has to dispose of fruit, is there an assessment refund on the volume of fruit that must be destroyed? The Committee agreed in the original motion that assessments would be collected on all fruit delivered. Please clarify §929.41 (a) and §929.57.*

USDA Answer: In reviewing, while §929.41 references §929.57, it also references excess fruit. Fruit restricted under the handler withhold is not normally referred to as excess fruit, as the order defines excess fruit in relation to allotment percentage regulation. We reviewed the final rule for the order amendments completed in 1992, as well as the definition of handle, §929.10. Based on this review, **assessments would be due on all fruit acquired under the handler withhold.** We plan to make the necessary correction to §929.41 so that it references the appropriate section.

10. *There is no mention of §929.56 in the published rule. Please clarify §929.56 (a) & (b) and how this needs to be implemented. The Committee specifically wanted §929.56 (c) - (h) not applicable as included in their motion.*

USDA Answer: The Committee made no recommendations in regards to how section §929.56 (c)-(h) would be implemented. Rather, they specifically recommended that the authorities in those provisions not be included in this rulemaking action. Therefore, no action was taken to implement those provisions. Further, the Department will be reviewing to determine if these provisions are inconsistent with a recent court decision. **We may need to move to suspend or remove this language.**

11. *Who reviews and approves a handler's plan and supporting documents/data for fruit disposal or proof they are exempt from regulation and supporting data?*

USDA Answer: **This is the role of Committee staff.** Additional information regarding this process is outlined in the proposed rule to establish the diversion provisions and forms.

12. *The June Handler Withholding report requires a handler to estimate their process for complying with the Handler Withholding. If the June report/plan is completed and the handler has a change or modification to their June plan, does this matter as long as the final report states what was actually done?*

USDA Answer: The plan is an outline of how the handler plans to meet their restricted obligation. However, given an adjustment may be necessary based on a change of circumstance, **the means by which the handler meets their obligation does not need to match perfectly with the original plan.**

13. *The new sections of 929 do not seem to state that disposal must be completed by 8/31/18? Is that listed elsewhere?*

USDA Answer: The regulation is based on the regulated period. Consequently, **the handler needs to meet their restricted requirement by the end of the period, August 31, 2018.**

14. *What will be the process if a handler is in the process of disposing of restricted fruit but they have not been able to finish by August 31, 2018?*

USDA Answer: This is a difficult question to answer as we do not know why the handler has not been able to meet their restricted obligation. **The handler would need to provide the Committee with information regarding the delay and their progress in meeting their restricted obligation.**

15. *Can you clarify this section of §929.54? If the following statement is accurate, can this be interchangeable between the HW and the PA?*

(d) Any handler who withholds from handling a quantity of cranberries in excess of that required pursuant to paragraph (a) of this section shall have such excess quantity credited

toward the next fiscal year's withholding obligation, if any—provided that such credit shall be applicable only if the restricted percentage established pursuant to §929.52 was modified pursuant to §929.53; to the extent such excess was disposed of prior to such modification; and after such handler furnishes the committee with such information as it prescribes regarding such withholding and disposition.

USDA Answer: This section pertains to establishment of a handler withhold. Also, excess fruit to be credited would need to be the result of an adjustment to the established percentage. No such adjustment was made; therefore **this section is not applicable.**

16. *The CMC recommendation removed certain provisions in §929.56 (c-h) related to the CMC taking possession and selling restricted cranberries. What is the status of that?*

USDA Answer: See above. (Question No. 8)

17. *The statement below makes it sound like you can sell product into the “other outlets”. This does not seem consistent with the “Non-commercial” requirement. Can you confirm if a handler is allowed to sell restricted fruit or fruit products into the “other outlets”? Are handlers allowed to “sell” products, such as seconds, into any of these other outlets as listed?*

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.

USDA Answer: To the extent possible, **handlers can sell their restricted fruit into noncompetitive outlets** as identified in the rule.