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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Docket No. AMS-FV-12-0035; FV12-987-1 FIR]

**Domestic Dates Produced or Packed in Riverside County,
California; Decreased Assessment Rate**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting as a final rule, without change, an interim rule that decreased the assessment rate established for the California Date Administrative Committee (Committee) for the 2012-13 and subsequent crop years from \$1.00 to \$0.90 per hundredweight of dates handled. The Committee locally administers the marketing order which regulates the handling of dates grown or packed in Riverside County, California. Assessments upon date handlers are used by the Committee to fund reasonable and necessary expenses of the program. The crop year begins October 1 and ends September 30. The interim rule was necessary because the 2012-13 crop is expected to be larger than last year's crop and the current assessment rate would generate excess assessment revenues.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Kathie M. Notoro, Marketing Specialist, or Martin Engeler, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: Kathie.Notoro@ams.usda.gov or Martin.Engeler@ams.usda.gov.

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following website:

<http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>;
or by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 987, both as amended (7 CFR part 987), regulating the handling of dates produced or packed in Riverside County, California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

Under the order, date handlers are subject to assessments, which provide funds to administer the order. It is intended that the assessment rate as issued herein will be applicable to all assessable dates for the entire crop year, and continue until amended, suspended, or terminated. The Committee's crop year begins on October 1 and ends on September 30.

In an interim rule published in the **Federal Register** on January 8, 2013, and effective on January 9, 2013, (78 FR 1130, Doc No. AMS-FV-12-0035; FV12-987-1 IR), § 987.339 was amended by decreasing the assessment rate established for dates because the 2012-13 crop is expected to be larger than last year's crop and the current assessment rate would generate excess assessment revenues. Assessment revenue, combined with funds from the sale of cull dates and a contribution from the California Date Commission to offset shared marketing expenses, is expected to provide sufficient funds to cover the anticipated expenses.

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 rule 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 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 the 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 79 producers of dates in the production area and 11 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,000,000.

According to the National Agricultural Statistics Service (NASS), data for the 2011 crop year shows that about 3.68 tons, or 7,360 pounds, of dates were produced per acre.

The 2011 grower price published by the NASS was \$1,320 per ton, or \$.66 per pound. Thus, the value of date production per acre in 2011 averaged about \$4,858 (7,360 pounds times \$.66 per pound). At that average price, a producer would have to farm over 154 acres to receive an annual income from dates of \$750,000 (\$750,000 divided by \$4,858 per acre equals 154 acres). According to Committee staff, the

majority of California date producers farm less than 154 acres. Thus, it can be concluded that the majority of date producers could be considered small entities. According to data from the Committee staff, the majority of handlers of California dates may also be considered small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2012-13 and subsequent crop years from \$1.00 to \$0.90 per hundredweight of dates handled. The Committee unanimously recommended 2012-13 expenditures of \$260,000 and an assessment rate of \$0.90 per hundredweight of dates, which is \$0.10 lower than the rate previously in effect. The quantity of assessable dates for the 2012-13 crop year is estimated at 26,500,000 pounds. Thus, the \$0.90 rate should provide \$238,500 in assessment income. Income derived from handler's assessments, along with proceeds from the sale of cull dates and a contribution from the California Date Commission for shared marketing expenses should be adequate to meet the 2012-13 crop year expenses.

Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers.

In addition, the Committee's meeting was widely publicized throughout the California date industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 12, 2012, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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 the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178. 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 action imposes no additional reporting or recordkeeping requirements on either small or large Riverside County, California, date 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.

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

Comments on the interim rule were required to be received on or before March 11, 2013. No comments were

received. Therefore, for reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to:

<http://www.regulations.gov/#!documentDetail;D=AMS-FV-12-0035-0001>.

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (78 FR 1130, January 8, 2013) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

PART 987 - DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

Accordingly, the interim rule amending 7 CFR part 987, which was published at 78 FR 1130 on January 8, 2013, is adopted as a final rule, without change.

Dated: April 23, 2013

David R. Shipman
Administrator
Agricultural Marketing Service

[FR Doc. 2013-09999 Filed 04/26/2013 at 8:45 am; Publication Date: 04/29/2013]