



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Doc. No. AMS-SC-18-0058; SC18-987-1 FR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the California Date Administrative Committee (Committee) to increase the assessment rate for the 2018-19 and subsequent crop years for California dates handled under Marketing Order 987. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Senior Marketing Specialist, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or Email: Terry.Vawter@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.

SUPPLEMENTARY INFORMATION: This action, 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 rule is issued under Marketing Order No. 987, as amended (7 CFR part 987), regulating the handling of domestic dates produced or packed in Riverside County, California. Part 987, (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 Committee locally administers the Order and is comprised of producers and producer-handlers operating within the area of production.

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Orders 13563 and 13175. This rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this 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. Under the Order now in effect, California date handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate will be applicable to all assessable dates for the 2018-19 crop year, and continue until amended, suspended, or terminated.

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. Such 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.

The Order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members are familiar with the Committee's needs and with the costs of goods and services in their local area, and are, thus, in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

This rule increases the assessment rate from \$0.05 per hundredweight, the rate that was established for the 2016-17 and subsequent crop years, to \$0.15 per hundredweight of dates handled for the 2018-19 and subsequent crop years. The higher rate is necessary in order to provide sufficient funds to cover the 2018-19 anticipated expenses. As a result of three consecutive assessment decreases, a smaller crop, anticipated increases in the cost of the annual

financial audit, and increased costs for dues and subscriptions, the Committee recommended an increased assessment rate. The 2018-19 crop is estimated to be approximately 29,000,000 pounds, down from 36,000,000 pounds for the 2017-18 crop year.

The Committee's operating reserve is low enough that an increase in the assessment rate is necessary to ensure that there are sufficient funds to pay for all the Committee's 2018-19 crop year expenses, while also ensuring that the Committee has an operating reserve to carry into the 2019-20 crop year.

The Committee met on June 28, 2018, and unanimously recommended increasing the assessment rate from the current \$0.05 per hundredweight to \$0.15 per hundredweight in order to maintain expenses at a level consistent with recent crop years' expenses, draw a portion of the expenses from the existing operating reserve, and provide a sufficient operating reserve to carry forward. The assessment rate increase, along with the funds from the reserve and other income, should provide sufficient funds to cover anticipated expenses.

The Committee estimates the 2018-19 domestic date crop to be 29,000,000 pounds (290,000 hundredweight), which, at

the \$0.15 rate, should generate \$43,500 in assessment income. Other income, which includes items such as interest income, is expected to be approximately \$5,000. Combined with the anticipated \$50,000 in beginning year operating reserve funds, the total funds available for the 2018-19 crop year are expected to be \$98,500.

The Committee's expenses for the 2018-19 crop year are estimated at \$83,790. The Committee's expenses are entirely operational, since it conducts its research and promotion programs through its sister organization, the California Date Commission, a California State marketing program.

The major administrative expenses include \$58,000 for salaries and \$25,740 for office and Committee expenses such as rent, insurance, postage, website and email, utilities, meeting costs, and other miscellaneous administrative expenses.

The previous crop year's budget was \$67,800, and budgeted expenses for salaries and for office and Committee expenses were \$50,000 and \$17,800, respectively. Increases in the cost of the annual audit, personnel, and in dues and subscriptions account for some of the increased expenses in the 2018-19 crop year.

The increased cost for the annual audit reflects the Committee's need to conduct a comprehensive, government-mandated "single-audit (Yellow Book audit)." Dues and subscriptions have increased due to the Committee's use of an import reporting subscription service, which provides detailed data on date imports.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected volume of dates handled, and the amount of funds available in the operating reserve. Income derived from handler assessments of \$43,500 (290,000 hundredweight assessed at the rate of \$0.15), along with other income and funds from the Committee's operating reserve, would be adequate to cover budgeted expenses of \$83,790. Funds in the operating reserve (currently \$50,000) would not exceed the average of the annual expenses of the preceding five years, as mandated by § 987.72(d).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet

prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's budget for subsequent crop years would be reviewed and, as appropriate, approved by USDA.

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 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 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 70 date producers in the production area and 11 date handlers subject to regulation under the Order. The Small Business Administration defines small agricultural producers as those having annual receipts of less than \$750,000, and small agricultural service firms as those whose annual receipts are less than \$7,500,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), data for the most recently completed crop year (2017) shows that about 3.23 tons, or 6,460 pounds, of dates were produced per acre. The 2017 producer price published by NASS was \$2,840 per ton. Thus, the value of date production per acre averaged about \$9,173 (3.23 tons times \$2,840 per ton). At that average price, a producer would have to farm nearly 82 acres to receive an annual income from dates of \$750,000 ($\$750,000$ divided by $\$9,173$ per acre equals 81.76 acres). According to Committee staff, the majority of California date producers farmed less than 81 acres during the 2017-18 crop year. Thus, it can be concluded that the majority of date producers could be considered small entities.

Furthermore, based on a reported average handler price of \$1.25 per pound for packaged dates handled, a handler would have to handle at least 6,000,000 pounds to have \$7,500,000 in annual receipts (6,000,000 multiplied by \$1.25 per pound). According to information from the Committee on handler utilization of dates, only three of the regulated handlers handled less than 6,000,000 pounds during the 2017-18 crop year. Thus, most of the handlers could be considered large entities.

This rule increases the assessment rate collected from handlers for the 2018-19 and subsequent crop years from \$0.05 to \$0.15 per hundredweight of dates handled. The Committee unanimously recommended 2018-19 expenditures of \$83,740 and an assessment rate of \$0.15 per hundredweight of dates, which is \$0.10 higher than the 2016-17 rate currently in effect. The quantity of assessable dates for the 2018-19 crop year is estimated at 29,000,000 pounds (290,000 hundredweight). Thus, the \$0.15 rate should provide \$43,500 in assessment income. Income derived from handler's assessments, funds from the Committee's authorized reserve, and other income should be adequate to cover expenses for the 2018-19 crop year.

The total expenditure recommended by the Committee for the 2018-19 crop year is \$83,790, compared to \$67,800 for the 2017-18 crop year. The Committee recommended a higher assessment rate because its operating reserve would otherwise be too small to fund program operations when combined with other income. In addition, the crop estimate for the 2018-19 crop year is expected to be 29,000,000 pounds, compared to 36,000,000 pounds for the 2017-18 crop year.

The income generated from the higher assessment rate applied to the estimated crop, combined with carry-in funds and income from other sources, should be sufficient to cover anticipated 2018-19 expenses and to maintain a financial reserve within the limit specified by the Order.

Section 987.72(d) states that the Committee may maintain an operating monetary reserve not to exceed the average of one year's expenses incurred during the most recent five preceding crop years, except that an established reserve need not be reduced to conform to any recomputed average. The Committee estimated a \$50,000 reserve carry-in for the 2018-19 crop year. It expects to utilize \$35,290 of the reserve during the year, leaving a reserve of approximately \$14,710 at the end of the 2018-19

crop year, which is within the limit specified in the Order.

The Committee reviewed and unanimously recommended 2018-19 crop year expenditures of \$83,790. Prior to arriving at this budget, the Committee considered information from its Budget Subcommittee (Subcommittee), which met on June 7, 2018. The Subcommittee discussed alternative expenditure levels and assessment rates, including not changing the assessment rate or adjusting expenses. Ultimately, the Subcommittee and the Committee recommended an assessment rate of \$0.15 per hundredweight of dates handled after considering several factors including the anticipated 2018-19 crop, the Committee's estimated 2018-19 reserve carry-in and other income, and its anticipated expenses.

A review of historical and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2017-18 crop year was approximately \$142.00 per hundredweight of dates. Utilizing that price, the estimated crop size, and the assessment rate of \$0.15 per hundredweight, the estimated assessment revenue for the 2018-19 crop year as a percentage of total producer revenue

will be approximately 0.1 percent (\$0.15 per hundredweight divided by \$142 per hundredweight).

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the Order. In addition, the Committee's and the Subcommittee's meetings were widely publicized throughout the California date industry. All interested persons were invited to attend the meetings and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the June 28, 2018, 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 OMB and assigned OMB No. 0581-0178, Vegetable and Specialty Crops. No changes in those requirements are necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule imposes no additional reporting or recordkeeping requirements on either small or large 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. 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.

A proposed rule concerning this action was published in the *Federal Register* on November 2, 2018 (83 FR 55111). Copies of the proposed rule were provided to all California date handlers. The proposal was also made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending December 3, 2018, was provided for interested persons to respond to the proposal. No comments were received. Accordingly, no changes will be made to the rule as proposed.

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 material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule 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.

For the reasons set forth in the preamble, 7 CFR part 987 is amended as follows:

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

1. The authority citation for part 987 continues to read as follows:

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

2. Section 987.339 is revised to read as follows:

§ 987.339 Assessment rate.

On and after October 1, 2018, an assessment rate of \$0.15 per hundredweight is established for dates produced or packed in Riverside County, California.

Dated: March 12, 2019

Bruce Summers,

Administrator,

Agricultural Marketing Service.

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