



Agricultural Marketing Service

7 CFR Part 987

[Doc. No. AMS-SC-21-0056; SC21-987-1 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 2020-21 and subsequent crop years. 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: Barry Broadbent, Senior Marketing Specialist, West Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724, or Email: Barry.Broadbent@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, or Email: Richard.Lower@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 final 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 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This final rule has been reviewed under Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. The Agricultural Marketing Service (AMS) has determined that this rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This final 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. The assessment rate is applicable to all assessable dates for the 2020-21 crop year, and will 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 (7 U.S.C. 608(15)(A)), 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 can 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 \$0.15 per hundredweight, the rate that was established for the 2018-19 and subsequent crop years, to \$0.20 per hundredweight of dates handled for the 2020-21 and subsequent crop years. The Committee recommended the increased assessment rate to compensate for increasing administrative expenses. The higher assessment rate will provide sufficient funds to cover most of the 2020-21 crop year anticipated expenses, with the balance coming from other income and the Committee's financial reserve.

The Committee met on June 25, 2020, and unanimously recommended increasing the assessment rate from \$0.15 per hundredweight to \$0.20 per hundredweight to fund necessary administrative expenses and maintain a sufficient operating reserve. The assessment rate increase will provide sufficient funds to cover most of the Committee's 2020-21 crop year budgeted expenses, with the balance coming from other revenue sources and reserve funds.

The Committee estimates the 2020-21 domestic date crop to be 32,000,000 pounds (320,000 hundredweight), which is expected to generate \$64,000 in assessment income at the \$0.20 per hundredweight assessment rate. The Committee anticipates other income of approximately \$5,000. Total income of \$69,000, combined with \$6,250 from the financial reserve, will provide enough funds to cover 2020-21 crop year budgeted expenditures. Reserve funds remaining at the end of the 2020-21 crop year are expected to be \$28,750.

The Committee's budget for the 2020-21 crop year is estimated to be \$75,250. The Committee's expenses include \$47,000 for management, \$19,250 for office administration, and \$9,000 for the financial audit. In comparison, the previous crop year's total budget was \$74,200, and the administrative expenses were \$43,000, \$21,200, and \$10,000, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, the expected volume of dates handled, and the amount of funds available in the operating reserve. Income derived from handler assessments of \$64,000 (320,000 hundredweight assessed at a rate of \$0.20 per hundredweight) will be adequate to cover most of the Committee's budgeted expenses of \$75,250, with the balance covered from \$5,000 in other income and \$6,250 from reserve funds. After expending \$6,250, the ending 2020-21 crop year balance in the financial reserve is expected to be

\$28,750, which would be less than the average of the annual expenses of the preceding five years as mandated by § 987.72(d).

The assessment rate established by 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. Meetings are public and held virtually or in a hybrid style with participants having a choice whether to attend in person or virtually. All interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's budget for subsequent crop years will 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), 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 \$1,000,000, and small agricultural service firms as those whose annual receipts are less than \$30,000,000. (13 CFR 121.201)

According to the National Agricultural Statistics Service (NASS), data for the most-recently completed crop year (2019) shows that the producer price for fresh market California dates was \$4,130 per ton. With the estimated 16,000-ton crop, the total farm gate value for California date producers was approximately \$66,080,000 (16,000 times \$4,130). Therefore, the average fresh market date revenue for the 70 producers within the production area is approximately \$944,000 (\$66,080,000 divided by 70). Thus, assuming a normal bell-curve distribution of receipts among producers, AMS estimates the majority of producers would qualify as small businesses under the SBA definition.

Furthermore, USDA Market News reported an average terminal market price of \$50.88 per 11-pound carton for the 2019-20 crop year. With approximately 32,000,000 pounds handled, the industry would have shipped an estimated 2,909,091 11-pound cartons (32,000,000 divided by 11) of packaged dates for a total value of \$148,014,550 (2,909,091 times \$50.88). With 11 date handlers within the production area, the average revenue per handler is estimated to be \$13,455,868 for the 2019-20 crop year (\$148,014,550 divided by 11). Thus, most California date handlers would be considered small businesses under the SBA definition.

This final rule increases the assessment rate collected from handlers for the 2020-21 and subsequent crop years from \$0.15 to \$0.20 per hundredweight of dates handled. The Committee unanimously recommended 2020-21 crop year expenditures of \$75,250 and an assessment rate of \$0.20 per hundredweight of dates, which is \$0.05 higher than the rate currently in effect. The quantity of assessable dates for the 2020-21 crop year is estimated to be 32,000,000 pounds (320,000 hundredweight). The \$0.20 per hundredweight assessment rate is expected to provide \$64,000 in assessment income.

Income derived from handlers' assessments, plus \$5,000 of other income and \$6,250 from the Committee's authorized reserve, will be adequate to cover the Committee's budgeted expenses for the 2020-21 crop year.

The total budget recommended by the Committee for the 2020-21 crop year is \$75,250, compared to \$74,200 for the 2019-20 crop year. The Committee recommended the higher assessment rate to fully fund ongoing program expenses without depleting its operating reserve.

The income generated from the higher assessment rate, combined with other income and a small amount from the financial reserve, will be sufficient to cover anticipated 2020-21 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 that funds in its reserve were approximately \$35,000 at the beginning of the 2020-21 crop year. It expects to utilize \$6,250 of the reserve during the year, leaving a reserve of approximately \$28,750 to start the 2021-22 crop year, which would be within the limit specified in the Order.

The Committee reviewed and unanimously recommended 2020-21 crop year expenditures of \$75,250. The Committee considered several factors before making its recommendation, including the size of the anticipated 2020-21 crop, the Committee's estimated 2020-21 reserve carry-in, other sources of income, and its anticipated expenses. Further, the Committee considered several alternative expenditure levels and assessment rates, including not changing the assessment rate or adjusting expenses. Ultimately, the Committee recommended the \$0.20 per hundredweight assessment rate to fund the program's expenses and maintain its reserve at a reasonable level.

A review of historical and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2020-21 crop year is estimated to be \$201.50 per hundredweight of dates. Utilizing that price, the estimated crop size, and the \$0.20 per hundredweight assessment rate, the estimated assessment revenue for the 2020-21 crop year as a percentage of total producer revenue is approximately 0.1 percent (\$0.20 per hundredweight divided by \$201.50 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 are offset by the benefits derived by the operation of the Order. In addition, the Committee 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. The June 25, 2020 Committee meeting was a virtually held public meeting and all entities, both large and small, were able to express views on this issue. Interested persons were invited to submit comments on the proposed rule, including the regulatory and information collection impacts of this action on small businesses.

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 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 will not impose any 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.

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.

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

A proposed rule concerning this action was published in the **Federal Register** on August 26, 2021 (86 FR 47599). Copies of the proposal were provided by the Committee to members and handlers. Finally, the proposed rule was made available through the internet by USDA and the **Federal Register**. A 15-day comment period ending September 10, 2021, was provided to allow 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,
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, 2020, an assessment rate of \$0.20 per hundredweight is established for dates produced or packed in Riverside County, California.

Erin Morris, Associate Administrator,
Agricultural Marketing Service.

[FR Doc. 2021-25115 Filed: 11/17/2021 8:45 am; Publication Date: 11/18/2021]