



## **Agricultural Marketing Service**

### **7 CFR Part 987**

**[Doc. No. AMS-SC-23-0058]**

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

**AGENCY:** Agricultural Marketing Service, Department of Agriculture (USDA).

**ACTION:** Final rule.

**SUMMARY:** This final rule implements a recommendation from the California Date Administrative Committee (Committee) to decrease the assessment rate established for the 2023-2024 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:** Bianca Bertrand, Marketing Specialist, or Barry Broadbent, Acting Chief, West Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724, or Email: BiancaM.Bertrand@usda.gov or 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 202500237; Telephone: (202) 720-8085, 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 Agricultural Marketing Service (AMS) is issuing this final rule in conformance with Executive Orders 12866, 13563, and 14094. 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. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Orders 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 will have Tribal implications. AMS has determined that this final 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. It is

intended that the assessment rate will be applicable to all assessable dates beginning October 1, 2023, 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.

This final rule decreases the assessment rate for dates handled under the Order from \$0.20 per hundredweight, the rate that was established for the 2020-2021 and subsequent crop years, to \$0.15 per hundredweight for the 2023-2024 and subsequent crop years.

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

For the 2020-2021 and subsequent crop years, the Committee recommended, and AMS approved, an assessment rate of \$0.20 per hundredweight of dates. That rate continues in effect from crop year to crop year until modified, suspended, or terminated

by AMS upon recommendation and information submitted by the Committee or other information available to AMS.

The Committee met on June 27, 2023, and recommended 2023-2024 crop year expenditures of \$75,800 and an assessment rate of \$0.15 per hundredweight of dates handled for the 2023-2024 and subsequent crop years. In comparison, last year's budgeted expenditures were \$77,250. The \$0.15 per hundredweight assessment rate is \$0.05 lower than the rate in effect prior to this action. The Committee recommended decreasing the assessment rate to better align assessment revenue with budgeted expenses and to keep the Committee's financial reserve within the amount allowed under the Order. The Committee projects that handlers will handle 426,000 hundredweight of California dates for the 2023-2024 crop year, which is the same quantity that was projected for the 2022-2023 crop year. The lower rate will provide sufficient funds to cover most of the 2023-2024 crop year anticipated expenses, with the balance coming from other income and the Committee's financial reserve. Assessments on California dates handled are expected to generate approximately \$63,900 in income at the \$0.15 per hundredweight assessment rate.

The Committee's budgeted expenditures for the 2023-2024 crop year total \$75,800. The Committee's expenses include \$48,000 for management services, \$16,800 for office administration, and \$11,000 for the financial audit. In comparison, the previous crop year's total budget was \$77,250, with \$48,000 for management services, \$19,750 for office administration, and \$9,500 for the financial audit.

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 \$63,900 (426,000 hundredweight assessed at the \$0.15 per hundredweight assessment rate) should be adequate to cover most of the Committee's budgeted expenses of \$75,800, with the

balance covered from \$5,100 in surplus allocation income and \$6,800 from reserve funds. After expending \$6,800 from the reserve on budgeted expenses, the ending 2023-2024 crop year balance in the financial reserve fund is expected to be \$49,400, which would be less than the average of the annual expenses of the preceding five years, as mandated by the Order in § 987.72(d).

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 AMS. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS will 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 2023-2024 crop year budget, and those for subsequent crop years, will be reviewed and, as appropriate, approved by AMS.

### **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 final 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 producers of dates in the production area and 11 handlers subject to regulation under the Order. Small agricultural producers of dates are

defined by the Small Business Administration (SBA) as those having annual receipts of less than \$3,500,000 (NAICS code 111339, Other Noncitrus Fruit Farming), and small agricultural service firms are defined as those whose annual receipts are less than \$34,000,000 (NAICS code 115114, Postharvest Crop Activities) (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), data for the most-recently completed crop year (2022) shows that California date farmers produced 49,200 tons of dates and that the producer price for fresh market California dates was \$2,840 per ton. With the estimated 49,200-ton crop, the total farm gate value for California date producers was approximately \$139,728,000 (49,200 multiplied by \$2,840). Therefore, the average fresh market date revenue for the 70 producers within the production area would be about \$1,996,114 (\$139,728,000 divided by 70). Thus, it can be concluded that the many of the date producers within the production area could be considered small entities.

Furthermore, USDA Market News reported an average terminal market price of \$53.90 per 11-pound carton for the 2021-2022 crop year. With approximately 98,400,000 pounds handled, the industry would have shipped an estimated 8,945,454 11-pound cartons (98,400,000 divided by 11) of packaged dates for a total value of \$482,159,971 (8,945,454 multiplied by \$53.90). With 11 date handlers within the production area, the average revenue per handler is estimated to be \$43,832,724 for the 2021-2022 crop year (\$482,159,971 divided by 11). Thus, most California date handlers could be considered large entities.

This final rule decreases the rate of assessment for the 2023-2024 and subsequent crop years from \$0.20 to \$0.15 per hundredweight of assessable dates. The Committee unanimously recommended 2023-2024 crop year expenditures of \$75,800 and a \$0.15 per hundredweight assessment rate. The Committee expects the industry to handle 426,000 hundredweight of assessable dates during the 2023-2024 crop year. Thus, at the \$0.15

per hundredweight rate, the Committee anticipates \$63,900 in assessment income (426,000 multiplied by \$0.15). The Committee also expects to utilize surplus allocation (\$5,100) and the Committee's monetary reserve (\$6,800) to cover the remaining \$11,900 of expenses. Income derived from all sources are expected to be adequate to meet budgeted expenditures for the 2023-2024 crop year. The Committee's reserve balance (approximately \$49,400 at the end of the 2023-2024 crop year) will be maintained at a level that the Committee believes is appropriate and is compliant with the provisions of the Order.

The Committee's budgeted expenditures for the 2023-2024 crop year total \$75,800. The Committee's expenses include \$48,000 for management services, \$16,800 for office administration, and \$11,000 for the financial audit. In comparison, the previous crop year's total budget was \$77,250, with \$48,000 for management services, \$19,750 for office administration, and \$9,500 for the financial audit.

Prior to arriving at the budget and assessment rate, the Committee discussed various alternatives. However, the Committee determined that the assessment rate established herein will be able to reduce the financial burden on the industry without drawing down reserves to an unsustainable rate. The assessment rate of \$0.15 per hundredweight of assessable dates was derived by considering anticipated expenses, the projected volume of dates handled, the projected monetary balance held in reserve, and additional pertinent factors.

A review of NASS information indicates that the average producer price for the 2022 crop year was \$2,840 per ton (\$142.00 per hundredweight). Utilizing the recommended assessment rate of \$0.15 per hundredweight, the estimated assessment revenue as a percentage of total producer revenue will be approximately 0.106 percent (\$0.15 divided by \$142.00 and multiplied by 100).

This final rule decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, these costs are expected to be offset by the benefits derived by the operation of the Order.

The Committee's meetings are widely publicized throughout the production area. The California date industry and all other interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the June 27, 2023, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit comments on this 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 OMB and assigned OMB No. 0581-0178, Vegetable and Specialty Crops. No changes in those requirements will be necessary as a result of this action. Should any changes become necessary, they will 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.

AMS 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 December 27, 2023 (88 FR 89327). 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 January 26, 2024, was provided for interested persons to respond to the proposal. No comments were received. Accordingly, no changes have been 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: <https://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 recommendations submitted by the Committee and other available information, USDA has determined that this final rule is consistent with and will effectuate the purposes 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, the Agricultural Marketing Service amends 7 CFR part 987 as follows:

#### **PART 987 – DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA**

1. The authority citation for 7 CFR part 987 continues to read as follows:

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

2. Revise § 987.339 to read as follows:

**§ 987.339 Assessment rate.**

On and after October 1, 2023, an assessment rate of \$0.15 per hundredweight is established for dates produced or packed in Riverside County, California.

**Erin Morris,**

*Associate Administrator.*

*Agricultural Marketing Service.*

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