

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Docket No. FV01-987-1 PR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the California Date Administrative Committee (Committee) for the 2001-02 and subsequent crops years from \$0.10 to \$0.25 per hundredweight of dates handled. The Committee locally administers the marketing order that regulates the handling of dates produced or packed in Riverside County, California. Authorization to assess date handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins October 1 and ends September 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by November 14, 2001.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-8938, or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Marketing Assistant, or Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey St., suite 102B, Fresno, CA 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 005720-8938, or E-mail: Jay.Guerber@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 domestic dates produced or packed in Riverside County, California, hereinafter referred to as the "order." The marketing agreement and order are 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing 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 as proposed herein will be applicable to all assessable dates beginning on October 1, 2001, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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 the Secretary 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 the Secretary 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 the Secretary'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 rule would increase the assessment rate established for the Committee for the 2001-02 and subsequent crop years from \$0.10 per hundredweight to \$0.25 per hundredweight of assessable dates handled.

The California date marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and producer-handlers of California dates. They are familiar with the Committee's needs and with the costs for 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.

For the 1998-99 and subsequent crop years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on August 16, 2001, and unanimously recommended 2001-02 expenditures of \$90,800 and an assessment rate of \$0.25 per hundredweight of dates handled. In comparison, last year's budgeted expenditures were \$116,800. The recommended assessment rate of \$0.25 is \$0.15 higher than the rate currently in effect. The higher assessment rate is needed to offset a reduction in the

Committee's reserve funds and a reduction in surplus funds available to the Committee from the sale of cull dates. Proceeds from the sales of cull dates are deposited into the surplus account for subsequent use by the Committee in covering the surplus pool share of the Committee's expenses. Handlers may also dispose of cull dates of their own production within their own livestock-feeding operation; otherwise, such cull dates must be shipped or delivered to the Committee for sale to non-human food product outlets.

Last year, the Committee applied \$15,000 of surplus account monies to cover surplus pool expenses. Based on a recent trend of declining sales of cull dates over the past few years, the Committee expects the surplus pool share of expenses during 2001–02 to be \$5,000, or \$10,000 less than expected during 2000–01. Hence, the revenue available from the surplus pool to cover Committee expenses during 2001–02 is expected to be less than last year. To offset this reduction in income, the Committee recommended increasing the assessment rate, using \$20,550 from its administrative reserves, and \$250 in interest income to fund the 2001–02 budget.

The major expenditures recommended by the Committee for the 2001–02 year include \$54,700 in salaries and benefits, \$3,900 in office administration, \$30,200 in office expenses, \$2,000 for contingencies. Budgeted expenses for these items in 2000–01 were \$54,100 in salaries and benefits, \$18,000 in office administration, \$39,700 in office expenses, and \$5,000 for contingencies.

The assessment rate recommended by the Committee was derived from applying the following formula where:
 A = 2001–02 surplus account (\$5,000);
 B = amount taken from administrative reserves (\$20,550);
 C = 2001–02 interest income (\$250);
 D = 2001–02 expenses (\$90,800);
 E = 2001–02 expected shipments (260,000 hundredweight); (D – (A + B + C) ÷ E = \$0.25 per hundredweight.

Estimated shipments should provide \$65,000 in assessment income. Income derived from handler assessments, the surplus account (which contains money from cull date sales), and the administrative reserves would be adequate to cover budgeted expenses. Funds in the reserve are expected to total about \$20,800 by September 30, 2001, and therefore would be less than the maximum permitted by the order (not to exceed 50% of the average of expenses incurred during the most

recent five preceding crop years; § 987.72(c)).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would 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 the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department 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 2001–02 budget and those for subsequent crop years would be reviewed and, as appropriate, approved by the Department.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial 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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 producers of dates in the production area and approximately 10 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 of less than \$750,000, and small agricultural service firms are defined as those having annual receipts are less than \$5,000,000. Five of the 10 handlers (50%) shipped over \$5,000,000 of dates and could be considered large handlers by the Small Business Administration. Five of the 10 handlers shipped under

\$5,000,000 of dates and could be considered small handlers. The majority of California date producers may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2001–02 and subsequent crop years from \$0.10 per hundredweight to \$0.25 per hundredweight of assessable dates handled. The Committee unanimously recommended 2001–02 expenditures of \$90,800 and an assessment rate of \$0.25 per hundredweight. The proposed assessment rate of \$0.25 is \$0.15 higher than the rate currently in effect. The quantity of assessable dates for the 2001–02 crop year is estimated at 260,000 hundredweight. Thus, the \$0.25 per hundredweight rate should provide \$65,000 in assessment income and, in conjunction with other funds available to the Committee, be adequate to meet this year's expenses. Funds available to the Committee include income derived from assessments, the surplus account (which contains money from cull date sales), and the administrative reserves.

The higher assessment rate is needed to offset a reduction in the Committee's reserve funds and an expected reduction in surplus funds available to the Committee from the sale of cull dates. Proceeds from the sales of cull dates are deposited into the surplus account for subsequent use by the Committee. Last year the Committee applied \$15,000 of surplus account monies to cover surplus pool expenses. Based on a recent trend of declining sales of cull dates over the past few years, this year the Committee expects to apply \$5,000 to the budget from the sale of cull dates.

The major expenditures recommended by the Committee for the 2001–02 year include \$54,700 in salaries and benefits, \$3,900 in office administration, \$30,200 in office expenses, and \$2,000 for contingencies. Budgeted expenses for these items in 2000–01 were \$54,100 in salaries and benefits, \$18,000 in office administration, \$39,700 in office expenses, and \$5,000 for contingencies.

The Committee reviewed and unanimously recommended 2001–02 expenditures of \$90,800 which included increases in salaries and benefits and administrative expenses. Prior to arriving at this budget, the Committee considered alternative expenditure levels, including a proposal to not fund a compliance officer position, but determined that expenditures for the position were necessary to promote compliance with program requirements. The assessment rate of \$0.25 per hundredweight of assessable dates was

then determined by applying the following formula where:

A = 2001–02 surplus account (\$5,000);

B = amount taken from administrative reserves (\$20,550);

C = 2001–02 interest income (\$250);

D = 2001–02 expenses (\$90,800)

E = 2001–02 expected shipments (260,000 hundredweight);

$(D - (A + B + C)) \div E = \0.25 per hundredweight.

Estimated shipments should provide \$65,000 in assessment income.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 2001–02 season could range between \$30 and \$75 per hundredweight of dates. Therefore, the estimated assessment revenue for the 2001–02 crop year as a percentage of total grower revenue would be less than one percent.

This action would increase 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 marketing order. 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 August 16, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose 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.

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

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/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2001–02 crop year begins on October 1, 2001, and the marketing order requires that the rate of assessment for each crop year apply to all assessable dates handled during such crop year; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

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 proposed to be amended 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. Section 987.339 is proposed to be revised to read as follows:

§ 987.339 Assessment rate.

On and after October 1, 2001, an assessment rate of \$0.25 per hundredweight is established for California dates.

Dated: October 5, 2001.

Kenneth C. Clayton,

Associate Administrator Agricultural Marketing Service.

[FR Doc. 01–25782 Filed 10–12–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–148]

RIN 2115–AA97

Safety and Security Zones; Newport Naval Station, Newport, RI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety and security zones in the vicinity of Newport Naval Station, Newport, Rhode Island, which will be enforced during

times when U.S. or foreign naval vessels make port visits to and are berthed at Newport Naval Station, Newport, Rhode Island. The safety and security zones are needed to safeguard the public, the area encompassing Coddington Cove, and visiting vessels and their crews, from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into these zones during times in which visiting vessels are berthed is prohibited unless previously authorized by the Captain of the Port, Providence, Rhode Island, or by his authorized patrol representative. The Coast Guard will announce via Broadcast Notice to Mariners when visiting naval vessels will be present in the zones.

DATES: This rule is effective from October 2, 2001, to March 31, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection and copying at Marine Safety Office Providence, 20 Risho Avenue, East Providence, Rhode Island between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT David C. Barata at Marine Safety Office Providence, (401) 435–2335.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after publication in the **Federal Register**. Due to the catastrophic nature and extent of damage realized from the aircraft crashes into the World Trade Center towers on September 11, 2001, this rulemaking is urgently necessary to protect the national security interests of the United States and its allies against future potential terrorist strikes against governmental targets. Any delay in the establishment and enforcement of this regulation's effective date would be unnecessary and contrary to public interest and national security since immediate action is needed to protect U.S. and foreign naval vessels intending to visit Newport Naval Station in the immediate future, as well as their crews, the public, and the area adjoining Coddington Cove.

Background and Purpose

From June 25 through September 30, 2001, safety and security zones were established around the Newport Naval Station to protect U.S. Navy vessels visiting Newport Naval Station between that time period, as well as their crews,