

No regulations have been implemented since then, and there is no indication that such regulations will again be needed.

The industry has been operating without a marketing order since its suspension. Reestablishing the order would mean additional cost to the industry stemming from assessments to maintain the order (the last assessment was \$0.01 per crate) and any associated costs generated by regulation. By not reinstating the marketing order, the industry benefits from avoiding these costs. Regulatory authorities that will be terminated include authority to implement grade, size, container, and inspection requirements and provisions for research and development and volume regulation. Because the industry has been operating without an order, termination of the order would have no noticeable effect on either small or large operations.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements under the order were approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0145. When the order was suspended on January 12, 1995, these information collection requirements were also suspended. Now that the order is being terminated, these requirements are eliminated.

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 October 9, 1998, issue of the **Federal Register** (63 FR 54382) giving interested persons until December 8, 1998, to file written comments. No comments were received.

Therefore, pursuant to section 8c(16)(A) of the Act, USDA has determined that Marketing Order No. 967, covering celery grown in Florida, and the rules and regulations issued thereunder, no longer tend to effectuate the declared policy of the Act, and are hereby terminated.

Section 8c(16)(A) of the Act requires USDA to notify Congress 60 days in advance of the termination of a Federal marketing order. Congress was so notified.

#### List of Subjects in 7 CFR Part 967

Celery, Marketing agreements, Reporting and recordkeeping requirements.

#### PART 967—[REMOVED]

For the reasons set forth in the preamble, and under authority of 7

U.S.C. 601-674, 7 CFR part 967 is removed.

Dated: August 8, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02-20685 Filed 8-14-02; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 987

[Docket No. FV02-987-1 FR]

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

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the California Date Administrative Committee (Committee) for the 2002-03 and subsequent crop years from \$0.25 to \$0.90 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 crop year begins October 1 and ends September 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** October 1, 2002.

**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, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250-0237; 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, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-

2491, Fax: (202) 720-8938, or e-mail: [Jay.Guerber@usda.gov](mailto: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 (USDA) 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 issued herein will be applicable to all assessable dates beginning on October 1, 2002, 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 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 rule increases the assessment rate established for the Committee for the 2002-03 and subsequent crop years from \$0.25 to \$0.90 per hundredweight of assessable dates handled.

The California date marketing 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 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 at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2001–02 and subsequent crop years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on April 8, 2002, and unanimously recommended 2002–03 expenditures of \$273,450 and an assessment rate of \$0.90 per hundredweight of dates handled. In comparison, last year's budgeted expenditures were \$90,800. The recommended assessment rate of \$0.90 is \$0.65 higher than the rate currently in effect. The higher assessment rate is needed to fund the industry's marketing and promotion programs under the Committee budget. These programs have been implemented under a State marketing order. However, the date industry concluded that it was in its best interest to implement the programs under the Federal marketing order because recent court actions have been filed against several California State marketing orders under which similar programs have been implemented.

Proceeds from the sales of cull dates are usually deposited in a 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 \$5,000 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 and reduced surplus pool costs, the Committee decided not to apply any of the surplus pool funds toward the 2002–03 Committee budget. The Committee, instead, recommended assessing handlers for the full amount of the increased budget that includes marketing and promotion programs.

The budgeted administrative expenses for the 2002–03 year include \$123,450

for labor and office expenses. This compares to \$90,800 in budgeted expenses in 2000–01. In addition, \$150,000 has been budgeted for marketing and promotion under the program for the 2002–03 crop year.

The assessment rate of \$0.90 per hundredweight of assessable dates was derived by applying the following formula where:

- A = Administrative Reserve (\$39,450 of the anticipated \$50,000 Administrative Reserve)  
 B = 2002–03 expected shipments (260,000 hundredweight in pounds)  
 C = 2002–03 expenses (\$273,450);  
 (C – A) ÷ B = \$0.90 per hundredweight.

Estimated shipments should provide \$234,000 in assessment income. Income derived from handler assessments and the administrative reserves would be adequate to cover budgeted expenses. Funds in the reserve are expected to total about \$10,550 by September 30, 2003, and therefore would be less than the maximum permitted by the order (not to exceed 50 percent of the average of expenses incurred during the most recent five preceding crop years; § 987.72(c)).

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 would 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 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 2002–03 budget and those 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), 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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 producers of dates in the production area and approximately 9 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 9 handlers (55 percent) shipped over \$5,000,000 of dates and could be considered large handlers by the Small Business Administration. Four of the 9 handlers (45 percent) 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 increases the assessment rate established for the Committee and collected from handlers for the 2002–03 and subsequent crop years from \$0.25 to \$0.90 per hundredweight of assessable dates handled. The Committee unanimously recommended 2002–03 expenditures of \$273,450 and the \$0.90 per hundredweight assessment rate. The recommended assessment rate is \$0.65 higher than the rate currently in effect. The quantity of assessable dates for the 2002–03–crop year is estimated at 260,000 hundredweight. Thus, the \$0.90 per hundredweight rate should provide \$234,000 in assessment income and, together with the administrative reserve funds available to the Committee, be adequate to meet this year's expenses.

The higher assessment rate is needed to fund marketing and promotion programs under the Committee budget. The programs have been implemented under a State marketing order for several years. However, because of legal challenges recently brought against several State marketing order programs implementing marketing and promotion programs, the date industry has decided to implement these programs under the Federal marketing order.

In addition, proceeds from the sales of cull dates are usually deposited in a 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. The Committee anticipates a reduction in surplus funds available to the Committee from the sale of cull dates. As a consequence, it decided to fund all of the Committee's expenses with assessment funds during 2002–03.

The budgeted administrative expenses for the 2002–03 year include \$123,450 for labor and office expenses. This compares to \$90,800 in budgeted expenses in 2000–01. In addition, \$150,000 has been budgeted for marketing and promotion under the marketing order for the 2002–03 crop year.

The Committee reviewed and unanimously recommended 2002–03 expenditures of \$273,450, which include marketing and promotion programs. Prior to arriving at this budget, the Committee considered alternative expenditure levels, including a proposal to not have a budget. The assessment rate of \$0.90 per hundredweight of assessable dates was then determined by applying the following formula where:

A = Administrative Reserve (\$39,450 of the anticipated \$50,000 Administrative Reserve)  
 B = 2002–03 expected shipments (260,000 hundredweight in pounds)  
 C = 2002–03 expenses (\$273,450);  
 $(C - A) \div B = \$0.90$  per hundredweight.

Estimated shipments should provide \$234,000 in assessment income. Income derived from handler assessments and the administrative reserves would be adequate to cover budgeted expenses. Funds in the administrative reserve are expected to total about \$10,550 by September 30, 2003, and therefore would be less than the maximum permitted by the order (not to exceed 50 percent of the average of expenses incurred during the most recent five preceding crop years; § 987.72(c)).

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 2002–03 season could range between \$30 and \$75 per hundredweight of dates. Therefore, the estimated assessment revenue for the 2002–03 crop year as a percentage of total grower revenue could range between 1 and 3 percent.

This action increases the assessment obligation imposed on handlers under the Federal marketing order. While assessments impose some additional costs on handlers under the Federal

marketing order, 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 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 April 8, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This 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.

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

A proposed rule concerning this action was published in **Federal Register** on June 14, 2002 (67 FR 40876). Copies of the proposed rule were also mailed or sent via facsimile to date handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending July 15, 2002, was provided for interested persons to respond to the proposal. No comments were received.

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.

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, as hereinafter set forth, 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 7 CFR 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, 2002, an assessment rate of \$0.90 per hundredweight is established for California dates.

Dated: August 8, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 993

[Docket No. FV02–993–4 IFR]

#### Dried Prunes Produced in California; Decreased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule decreases the assessment rate established for the Prune Marketing Committee (Committee) under Marketing Order No. 993 for the 2002–03 and subsequent crop years from \$2.80 to \$2.60 per ton of salable dried prunes. The Committee locally administers the marketing order which regulates the handling of dried prunes grown in California. Authorization to assess dried prune handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The crop year begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** August 16, 2002. Comments received by October 15, 2002, will be considered prior to issuance of a final rule.

**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, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202)