



Agricultural Marketing Service

7 CFR Part 987

[Doc. No. AMS-SC-24-0049]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the California Date Administrative Committee (Committee) to decrease the assessment rate established for the 2024-2025 and subsequent crop years from \$0.15 to \$0.05 per hundredweight for domestic dates produced or packed in Riverside County, California. The proposed assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments can be sent to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237. Comments can also be sent to the Docket Clerk electronically by Email: MarketingOrderComment@usda.gov or via the internet at: <https://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the *Federal Register*. Comments submitted in response to this proposed rule will be included in the record, will be made available to the public, and can be viewed at: <https://www.regulations.gov>.

Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Bianca Bertrand, Marketing Specialist, or Abigail Maharaj, Chief, West Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487-5901, or Email: BiancaM.Bertrand@usda.gov or Abigail.Maharaj@usda.gov.

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-8085, or Email: Antoinette.Carter@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed 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 handlers of dates operating within the area of production.

The Agricultural Marketing Service (AMS) is issuing this rule in conformance with Executive Order 12866, as amended by Executive Order 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 proposed rule has been reviewed under Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, which requires federal agencies to consider whether their rulemaking actions would have tribal implications. 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 proposed 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 would be applicable to all assessable dates for the 2024-2025 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 the U.S. Department of Agriculture (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 proposed rule would decrease the assessment rate for California dates handled under the Order from \$0.15 per hundredweight, the rate that was established for the 2023-2024 and subsequent crop years, to \$0.05 per hundredweight for the 2024-2025 and subsequent crop years.

Sections 987.71 and 987.72 of the Order authorize 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 and 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 2023-2024 and subsequent crop years, the Committee recommended, and AMS approved, an assessment rate of \$0.15 per hundredweight of California dates within the production area. 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, 2024, and unanimously recommended 2024-2025 crop year expenditures of \$89,410 and an assessment rate of \$0.05 per hundredweight of California dates handled for the 2024-2025 and subsequent crop years. In comparison, last crop year's budgeted expenditures were \$75,800. The proposed assessment rate of \$0.05 per hundredweight is \$0.10 lower than the rate currently in effect. The Committee recommended decreasing the assessment rate to draw down its reserve funds to within a level authorized under the marketing order. The Committee projects 300,000 hundredweight of assessable California dates for the 2024-2025 crop year, down from the 426,000 hundredweight that the Committee initially projected for the 2023-2024 crop year.

The major expenditures recommended by the Committee for the 2024-2025 crop year include \$58,500 for management services, \$19,410 for office administration, and \$11,500 for the financial audit. For comparison, budgeted expenses for these items during the 2023-2024 crop year were \$48,000; \$16,800; and \$11,000, respectively.

The Committee derived the recommended assessment rate by considering anticipated crop year expenses, expected volume of assessable dates, and the amount of funds available in the authorized reserve. The expected 300,000 hundredweight of assessable California dates would generate \$15,000 in assessment revenue at the proposed rate (300,000 hundredweight multiplied by the \$0.05 assessment rate). The income generated from handler assessments, along with approximately \$68,310 in reserve funds and \$6,100 of surplus allocation income from the date cull program would be sufficient to meet the Committee's estimated program expenditures of \$89,410 for the 2024-2025 crop year. Funds available in the financial reserve (currently about \$129,000) would be kept within the maximum permitted by the Order (not to exceed the average of annual expenses for the preceding five years, as authorized in § 987.72).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by AMS 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 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 2024-2025 crop year budget, and those for subsequent crop years, will be reviewed and, as appropriate, approved by AMS.

Initial 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 proposed 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 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 11 handlers of California dates subject to regulation under the Order and 70 producers of California dates in the production area. At the time this analysis was prepared, the Small Business Administration (SBA) defined small agricultural service firms as those having annual receipts of equal to or less than \$34,000,000 (North American Industry Classification System (NAICS) code 115114, Postharvest Crop Activities), and small agricultural producers of dates are defined as those having annual receipts equal to or less than \$3,500,000 (NAICS code 111339, Other Noncitrus Fruit Farming) (13 CFR 121.201).

According to the USDA's National Agricultural Statistics Service (NASS), data for the most-recently completed crop year (2023) shows that the average price producers received for California dates was \$2,630 per ton, with an estimated production of 35,300 tons. Using the average price producers received, production information, and the number of producers, the majority of producers have estimated annual receipts of less than \$3,500,000 ($\$2,630 \text{ multiplied by } 35,300 \text{ tons equals } \$92,839,000$, divided by 70 producers equals $\$1,326,271$ per producer). Thus, the majority of California date

producers may be classified as small entities according to the SBA definition.

In addition, USDA Market News reported an average terminal market price of \$43.09 per 11-pound carton for the 2023 calendar year (California origin, Medjool variety, non-organic, all terminal markets, all grades and sizes). With approximately 70,600,000 pounds handled, the industry would have shipped an estimated 6,418,182, 11-pound cartons (70,600,000 divided by 11-pound carton) of packaged dates for a total value of \$276,559,462 (6,418,182 multiplied by \$43.09). With 11 date handlers within the production area, the 2023 average revenue per handler is estimated to be \$25,141,769 (\$276,559,462 divided by 11), which is below the \$34.5 million SBA size threshold for handlers. Thus, assuming a normal distribution, most California date handlers may be classified as small entities.

This proposal would decrease the assessment rate collected from handlers for the 2024-2025 and subsequent crop years from \$0.15 to \$0.05 per hundredweight of assessable California dates. The Committee unanimously recommended 2024-2025 crop year expenditures of \$89,410 and an assessment rate of \$0.05 per hundredweight of California dates. The proposed assessment rate of \$0.05 is \$0.10 lower than the rate currently in effect. The Committee expects the industry to handle 300,000 hundredweight of assessable California dates during the 2024-2025 crop year. Thus, the \$0.05 per hundredweight rate should provide \$15,000 in assessment income (300,000 hundredweight multiplied by \$0.05 per hundredweight). Income derived from handler assessments along with reserve funds should be sufficient to meet budgeted expenditures for the 2024-2025 crop year.

The major expenditures recommended by the Committee for the 2024-2025 crop year include \$58,500 for management services, \$19,410 for office administration, and \$11,500 for the financial audit. In comparison, budgeted expenses for these items during the 2023-2024 crop year were \$48,000; \$16,800; and \$11,000, respectively.

The Committee recommended decreasing the assessment rate to utilize funds from its reserve to meet necessary expenses for the 2024-2025 crop year, and ensure the reserve is maintained at a level in compliance with order requirements.

Prior to arriving at this budget and assessment rate recommendation, the Committee discussed various alternatives, including reducing the assessment rate more and/or less than the rate proposed herein. However, the Committee determined that the recommended assessment rate would achieve its goals of both adequately funding Committee operations and reducing the reserve to an appropriate level. Consequently, those alternatives were rejected.

A review of historical and preliminary information pertaining to the upcoming crop year indicates the average producer price for the 2024-2025 crop year should be approximately \$2,847 per ton (\$142.35 per hundredweight) of California dates. Therefore, the estimated assessment revenue for the 2024-2025 crop year as a percentage of total producer revenue would be about 0.04 percent ($\$0.05$ per hundredweight assessment rate divided by $\$142.35$ and multiplied by 100).

This proposed action would decrease the assessment obligation imposed on California date 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 California date industry and all interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the June 27, 2024, 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 comments on this 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 OMB and assigned OMB No. 0581-0178, Vegetable and Specialty Crops. No changes in those requirements would be necessary as a result of this proposed rule. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would 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 proposed rule.

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 Antoinette Carter 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, AMS has determined that this proposed rule is consistent with and would effectuate the purposes of the Act.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. All written comments timely received will be considered before a final determination is made on this rulemaking.

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 proposes to amend 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, 2024, an assessment rate of \$0.05 per hundredweight is established for dates produced or packed in Riverside County, California.

Erin Morris,

Administrator,

Agricultural Marketing Service.

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