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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 987

[Doc. No. AMS-FV-10-0059; FV10-987-2 FR]

#### Domestic Dates Produced or Packed in Riverside County, CA; 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 2010–11 and subsequent crop years from \$0.75 to \$1.00 per hundredweight of dates handled. The Committee locally administers the marketing order that regulates the handling of dates grown or packed in Riverside County, California. Assessments upon date handlers are used by the Committee to fund reasonable and necessary expenses of 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.

**DATES:** *Effective Date:* November 19, 2010.

**FOR FURTHER INFORMATION CONTACT:** Jeff Smutny, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: [Jeffrey.Smutny@ams.usda.gov](mailto:Jeffrey.Smutny@ams.usda.gov) or [Kurt.Kimmel@ams.usda.gov](mailto:Kurt.Kimmel@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, 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: [Antoinette.Carter@ams.usda.gov](mailto:Antoinette.Carter@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 987, as amended (7 CFR part 987), regulating the handling of dates grown or packed in Riverside County, California, hereinafter referred to as the “order.” 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 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, Riverside County, 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 issued herein will be applicable to all assessable dates beginning October 1, 2010, 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, 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 2010–11 and subsequent crop years from \$0.75 to \$1.00 per hundredweight of dates.

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 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 2009–10 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 June 24, 2010, and unanimously recommended 2010–11 expenditures of \$245,000 and an assessment rate of \$1.00 per hundredweight of California dates. In comparison, last year’s budgeted expenditures were \$200,000. The modified assessment rate of \$1.00 is \$0.25 higher than the rate currently in effect. The Committee recommended a higher assessment rate to offset the 2010–11 budgeted increases in salaries, operating expenses, and promotion programs, and to build their operating reserve. The higher assessment rate should be sufficient to cover the 2010–11 budgeted expenses and meet their financial goals.

Section 987.72(c) authorizes the Committee to establish and maintain an operating reserve not to exceed 50 percent of an average year’s expenses. Funds from the reserve are available for the Committee’s use during the crop year to cover budgeted expenses as necessary or for other purposes deemed appropriate by USDA. The Committee expects to carry a \$40,000 reserve into the 2010–11 crop year. They expect to add \$16,500 to the reserve during the year, for a desired carryout of approximately \$56,000, which is well below the limit specified in the order.

Income from the sale of cull dates is deposited in a surplus account for subsequent use by the Committee to cover 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. Pursuant to § 987.72(b), the Committee is authorized to temporarily use funds derived from assessments to defray expenses incurred in disposing of surplus dates. All such expenses are required to be deducted from proceeds obtained by the Committee from the disposal of surplus dates. For the 2010–11 crop year, the Committee estimated that \$1,500 from the surplus account will be needed to temporarily defray expenses incurred in disposing of surplus dates.

The major expenditures recommended by the Committee for the 2010–11 crop year include \$85,000 for general and administrative programs, \$127,875 for promotional programs, \$17,900 for nutritional research, and \$14,225 for marketing and media consulting. The budgeted amount for promotional programs includes a \$29,000 contingency fund that will allow the Committee to take advantage of unexpected marketing opportunities that may present themselves during the year.

By comparison, expenditures recommended by the Committee for the 2009–10 crop year included \$60,000 for general and administrative programs, \$97,000 for promotional programs, \$15,000 for nutritional research, and \$28,000 for marketing and media consulting.

The assessment rate of \$1.00 per hundredweight of assessable dates was derived by applying the following formula where:

A = 2009–10 estimated reserve on 09/30/10 (\$40,000);

B = 2010–11 estimated reserve on 09/30/11 (\$56,500);

C = 2010–11 expenses (\$245,000);

D = Cull Surplus Fund (\$1,500);

F = 2010–11 expected shipments (26,000,000 pounds).

$[(C - A + B - D)/F] \times 100$ .

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 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. 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 2010–11 budget and those 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), the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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 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 85 producers of dates in the production area and 9 handlers subject to regulation under the marketing order. The Small Business Administration (13 CFR 121.201) defines small agricultural producers as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those having annual receipts of less than \$7,000,000.

According to the National Agricultural Statistics Service (NASS), data for the most-recently completed crop year, 2009–10, indicates that about 3.8 tons, or 7,600 pounds, of dates were produced per acre. The 2009–10 producer price published by NASS was \$1,450 per ton, or \$0.725 per pound. Thus, the value of date production in 2009–10 averaged about \$5,510 per acre (7,600 pounds per acre times \$0.725 per pound). At that average price, a producer would have to farm more than 136 acres to receive an annual income from dates of \$750,000 (\$750,000 divided by \$5,510 per acre equals 136.1 acres). According to the Committee's staff, the majority of California date producers farm fewer than 136 acres. Thus, it can be concluded that the majority of date producers could be considered small entities. According to data from the Committee, the majority of

California date handlers may also be considered small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2010–11 and subsequent crop years from \$0.75 to \$1.00 per hundredweight of dates handled. The Committee unanimously recommended 2010–11 expenditures of \$245,000 and an assessment rate of \$1.00 per hundredweight of dates. The assessment rate of \$1.00 is \$0.25 higher than the 2009–10 rate currently in effect. The quantity of assessable dates for the 2010–11 crop year is estimated at 26,000,000 pounds. Thus, the \$1.00 rate should provide approximately \$260,000 in assessment income and will be adequate to meet the budgeted expenses.

The major expenditures recommended by the Committee for the 2010–11 crop year include \$85,000 for general and administrative programs, \$127,875 for promotional programs, \$17,900 for nutritional research, and \$14,225 for marketing and media consulting. The Committee also hopes to add \$16,500 to its operating reserve. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Marketing Subcommittee. Alternative expenditure levels were discussed, but the Committee ultimately decided that the recommended levels were reasonable to properly administer the order. The assessment rate of \$1.00 per hundredweight of dates was then derived, based upon the Committee's estimates of the available operating reserve, projected crop size, and anticipated expenses.

As previously noted, NASS reported that the average producer price for 2009–10 crop dates was \$1,450 per ton, or \$72.50 per hundredweight. No official NASS estimate is available yet for 2010–11. However, the average grower price for the three year period between 2007–08 and 2009–10 was \$1,756.67 per ton, or \$87.83 per hundredweight.

Assuming that the average producer price for 2010–11 will range between \$72.50 and \$87.83 per hundredweight, the estimated assessment revenue, stated as a percentage of producer revenue, will range between 1.38 and 1.14 percent (\$1.00 per hundredweight divided by either \$72.50 or \$87.83 per hundredweight). Thus, assessment revenue should be less than 1.5 percent of estimated producer revenue for 2010–11.

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 will 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 June 24, 2010, 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. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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.

A proposed rule concerning this action was published in the **Federal Register** on September 15, 2010 (75 FR 56019). Copies of the proposed rule were also mailed or sent via facsimile to all California date handlers. Finally, the proposal was made available through the Internet by USDA and the Office of Federal Register. A 30-day comment period ending October 15, 2010, 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/MarketingOrdersSmallBusinessGuide>. 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 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.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of

this rule until 30 days after publication in the **Federal Register** because handlers have already received 2010 dates from growers, the crop year began on October 1, 2010, and the assessment rate applies to all dates received during the 2010–11 and subsequent seasons. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule.

#### 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—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, 2010, an assessment rate of \$1.00 per hundredweight is established for California dates.

Dated: November 10, 2010.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2010–29107 Filed 11–17–10; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1221

[Doc. No. AMS–LS–10–0003]

#### Sorghum Promotion and Research Program: Procedures for the Conduct of Referenda

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

**ACTION:** Final rule.

**SUMMARY:** The Commodity Promotion, Research, and Information Act of 1996 (Act) authorizes a program of promotion, research, and information to be developed through the promulgation of the Sorghum Promotion, Research, and Information Order (Order). The Act requires that the Secretary of Agriculture (Secretary) conduct a referendum among persons subject to assessments who, during a

representative period established by the Secretary, have engaged in the production or importation of sorghum. This final rule establishes procedures the Department of Agriculture (USDA) will use in conducting the required referendum as well as future referenda. Eligible persons will be provided the opportunity to vote during a specified period announced by USDA. For the program to continue, it must be approved, with an affirmative vote, by at least a majority of those persons voting who were engaged in the production or importation of sorghum during the representative period.

**DATES:** *Effective Date:* December 20, 2010.

#### FOR FURTHER INFORMATION CONTACT:

Kenneth R. Payne, Chief, Marketing Programs Branch on 202/720–1115, fax 202/720–1125, or by e-mail at [Kenneth.Payne@ams.usda.gov](mailto:Kenneth.Payne@ams.usda.gov) or Rick Pinkston, USDA, FSA, DAFO, on 202/690–8034, fax 202/720–5900, or by e-mail on [rick.pinkston@wdc.usda.gov](mailto:rick.pinkston@wdc.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This final rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

##### Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the Act, a person subject to the Order may file a petition with the Secretary stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not established in accordance with the law, and may request a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within 2 years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to