

Rules and Regulations

Federal Register

Vol. 67, No. 7

Thursday, January 10, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Docket No. FV01-987-1 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 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 will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: January 11, 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, 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 complying 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) 720-8938, 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 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, 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 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 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 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 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 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 USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by the USDA upon recommendation and information submitted by the Committee or other information available to the USDA.

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, 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 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)) \div 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 should be adequate to cover budgeted expenses. Funds in the reserve are expected to total about \$20,800 by September 30, 2001, and therefore will 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 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 2001–02 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 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 increases 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 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 will be less than one percent.

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 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 August 16, 2001, 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 the **Federal Register** on October 15, 2001 (66 FR 52363). Copies of the proposed rule were also mailed or sent via facsimile to all date handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register. A 30-day comment period ending November 14, 2001, 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.

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 are already receiving 2001–02 crop commodity from growers, the fiscal period began October 1, and the rate applies to all dates received during the 2001–02 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—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, 2001, an assessment rate of \$0.25 per hundredweight is established for California dates.

Dated: January 3, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–580 Filed 1–9–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 381 and 441

[Docket No. 01–046N]

RIN 0583–AC87

Retained Water in Raw Meat and Poultry Products: Suspension of Regulation

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final Rule; Suspension of regulation.

SUMMARY: The Food Safety and Inspection Service (FSIS) is suspending until January 9, 2003, regulations that limit water retained by raw meat and poultry products from post-evisceration processing to the amount that is unavoidable in meeting applicable food safety requirements and that require labeling for the amount of water retained. The original effective date of

these final regulations was January 9, 2002. FSIS is taking this action in response to a petition from four trade associations representing the meat and poultry industries. The petitioners requested the effective date be extended until August, 2004. However, FSIS has decided that a one-year suspension of the regulation will allow the meat and poultry industry sufficient time to complete necessary experimentation, including microbial testing and chilling system trials under FSIS-accepted data collection protocols; to fine-tune and stabilize newly adjusted processes; and to conduct regular measurements of retained water at packaging. Suspension of the regulation also will provide members of the meat and poultry industry sufficient time to order new supplies of labels with statements reflecting the amount of retained water in their raw products.

The final rule promulgating the retained water regulations also made numerous technical amendments in the sections of the poultry products inspection regulations that concern poultry chilling practices. The effective date of these amendments will remain January 9, 2002.

DATES: The effective date of the amendments of 9 CFR 381.65 and 381.66 published January 9, 2001 (66 FR 1750), as corrected by the **Federal Register** notice published April 17, 2001, at 66 FR 19713–19714, is and remains January 9, 2002. 9 CFR part 441 is suspended from January 9, 2002, until January 9, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel L. Engeljohn, Director, Regulations and Directives Development Staff, OPPDE, FSIS, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 720–3219.

SUPPLEMENTARY INFORMATION:

Background

On January 9, 2001, FSIS published a final rule in the **Federal Register** (66 FR 1750) that, among other things, promulgated regulations limiting the amount of water that could be retained by raw, single-ingredient, meat and poultry products as a result of post-evisceration processing, such as carcass washing and chilling. Under these regulations (codified at 9 CFR 441.10), raw livestock and poultry carcasses and parts will not be permitted to retain water resulting from post-evisceration processing unless the establishment preparing those carcasses and parts demonstrates to FSIS, with data collected under a written protocol, that any water retained in the carcasses and parts is an inevitable consequence of the