

8. In § 917.459, paragraph (a)(5)(iii) is amended by adding the words "except for Peento type peaches" after the words "76 peaches"

9. In § 917.459, paragraph (a)(6) is amended by revising the words "Earli Rich" to read "Earlirich;" and

10. In § 917.459, paragraph (a)(6)(iii) is amended by removing the words "(Donut) Varieties of" and adding the word "Type" in their place.

Dated: August 8, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02-20684 Filed 8-14-02; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 967

[Docket No. FV98-967-1 FR]

#### Celery Grown in Florida; Termination of Marketing Order No. 967

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

**ACTION:** Final rule.

**SUMMARY:** This rule terminates the Federal marketing order regulating the handling of celery grown in Florida (order) and the rules and regulations issued thereunder. The Florida celery industry has not operated under the order since its provisions were suspended January 12, 1995. The celery industry has experienced a loss of market share; a significant reduction in the number of producers and handlers has diminished the need for regulating Florida celery; and there is no industry support for reactivating the order. Therefore, there is no need to continue this order.

**EFFECTIVE DATE:** September 16, 2002.

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884; telephone (863) 324-3375, Fax: (863) 325-8793; or Anne M. Dec, 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 complying 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 final rule is issued under the provisions of section 8(16)(A) of 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This final 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 8c(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. A 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 final rule terminates the order covering celery grown in Florida.

The order was initially established in 1965 to help the Florida celery industry solve specific marketing problems and maintain orderly marketing conditions. It was the responsibility of the Florida Celery Committee (committee), the agency established for local administration of the marketing order, to periodically investigate and assemble data on the growing, harvesting, shipping, and marketing conditions of Florida celery. The committee tried to achieve orderly marketing and improve acceptance of Florida celery through the establishment of volume regulations and promotion activities.

The Florida celery industry has not operated under the marketing order for a number of years. The order and all of

its accompanying rules and regulations were suspended on January 12, 1995 (60 FR 2873). Regulations have not been applied under the order since that time, and no committee has been appointed since then.

In 1965, when the marketing order was issued, there were over 40 producers of Florida celery. The earliest handling figures available indicate that in 1983 there were 11 handlers. As of the date of suspension of the order (January 12, 1995), there were six handlers of Florida celery who were subject to regulation under the marketing order and five celery producers within the production area. Currently, there is one producer who is also a handler.

When the order was suspended, all of the committee members and their alternates were named as trustees to oversee the administrative affairs of the order. USDA contacted as many of these trustees as it could with respect to the need for reinstating the marketing order. All of the individuals contacted (10 of the 18 trustees) were in favor of terminating the order.

#### 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 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. Thus, both statutes have small entity orientation and compatibility.

There is one handler of Florida celery who would be subject to regulation under the marketing order. This handler is also a producer within the production area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. The Florida celery producer-handler may be classified as a small entity.

This final rule terminates the order regulating the handling of celery grown in Florida. The order and its accompanying rules and regulations were suspended on January 12, 1995.

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.*

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## 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