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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Docket No. FV04-987-2 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 2004-05 and subsequent crop years from \$0.75 to \$0.85 per hundredweight of dates handled. The committee locally administers the marketing order which 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 committee recommended increasing the assessment rate because additional revenues are needed to fund program operations. 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:* October 15, 2004.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Program Analyst, 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 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.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 127 and Marketing 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 as issued herein will be applicable to all assessable dates beginning on October 1, 2004, 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 2004-05 and subsequent crop years from \$0.75 to \$0.85 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 in the production area and are familiar with the committee's needs and with the costs for goods and services in their local area. As such, they are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting, and all directly affected persons have an opportunity to participate in the deliberations and provide input.

For the 2003-04 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 30, 2004, and unanimously recommended 2004-05 crop year expenditures of \$223,000 and an assessment rate of \$0.85 per hundredweight of dates handled. In comparison, last year's budgeted expenditures were \$225,365. The recommended assessment rate of \$0.85 is \$0.10 higher than the rate currently in effect. The increase in the assessment rate is needed to fund the committee's current budget, and maintain its financial operating reserve at about \$36,000, a level which the committee deems satisfactory.

The budgeted administrative expenses for the 2004-05 crop year include \$90,427 for labor and office expenses. This compares to \$123,710 in budgeted expenses in 2003-04. In addition, \$112,499 has been budgeted for marketing and promotion under the program for the 2004-05 crop year. This compares to \$101,655 in budgeted marketing and promotion expenses for the 2003-04 crop year. A total of

\$20,074 is budgeted as a contingency reserve for 2004–05. A contingency reserve of \$10,000 was included in the budget for 2003–04.

The committee administers a surplus account wherein the proceeds from sales of cull dates are deposited 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. For the 2004–05 crop year, the committee voted to use \$2,000 from the surplus account to help fund the committee's budget of \$223,000.

The assessment rate of \$0.85 per hundredweight of assessable dates was derived by applying the following formula where:

$$\begin{aligned} A &= \text{Cull Surplus Fund} (\$2,000); \\ B &= 2004-05 \text{ expected shipments} \\ &\quad (260,000 \text{ hundredweight}); \\ C &= 2004-05 \text{ expenses} (\$223,000); \\ (C - A) B &= \$0.85 \text{ per hundredweight.} \end{aligned}$$

Estimated shipments should provide \$221,000 in assessment income. Income derived from handler assessments and \$2,000 from the cull surplus fund would be adequate to cover budgeted expenses. Funds in the financial operating reserve are expected to total about \$35,700 by September 30, 2005, and therefore will 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 as required under § 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 2004–05 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), 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 124 producers of dates in the production area and approximately 10 handlers subject to regulation under the marketing order. The Small Business Administration (13 CFR 121.201) defines small agricultural service firms as those having annual receipts of less than \$5,000,000, and defines small agricultural producers as those having annual receipts of less than \$750,000.

An industry profile shows that four of the 10 handlers (40 percent) shipped over \$5,000,000 of dates and could be considered large handlers by the Small Business Administration. Six of the 10 handlers (60 percent) shipped under \$5,000,000 of dates and could be considered small handlers. An estimated 7 producers, or less than 6 percent, of the 124 total producers, would be considered large producers with annual incomes over \$750,000. The majority of handlers and producers of California dates may be classified as small entities.

This rule increases the assessment rate established for the committee and collected from handlers for the 2004–05 and subsequent crop years from \$0.75 to \$0.85 per hundredweight of assessable dates handled. The committee unanimously recommended 2004–05 expenditures of \$223,000 and the \$0.85 per hundredweight assessment rate at their meeting on June 30, 2004. The assessment rate of \$0.85 is \$0.10 higher than the rate currently in effect. The quantity of assessable dates for the 2004–05 crop year is estimated at 260,000 hundredweight. Thus, the \$0.85 per hundredweight rate should provide \$221,000 in assessment income. This, along with approximately \$2,000 from the surplus account, would be adequate

to meet the committee's 2004–05 crop year expenses.

The budgeted administrative expenses for the 2004–05 crop year include \$90,427 for labor and office expenses. This compares to \$123,710 in budgeted expenses in 2003–04. In addition, \$112,499 has been budgeted for marketing and promotion under the marketing order for the 2004–05 crop year. This compares to \$101,655 in budgeted marketing and promotion expenses for the 2003–04 crop year. A total of \$20,074 is budgeted as a contingency reserve. A contingency reserve totaling \$10,000 was budgeted last year.

The committee administers a surplus account wherein the proceeds from sales of cull dates are deposited for subsequent use by the committee in covering the surplus pool share of the committee's expenses. For the 2004–05 crop year, the committee voted to use \$2,000 from the surplus account to help fund the committee's budget of \$223,000.

The committee reviewed and unanimously recommended 2004–05 expenditures of \$223,000 which include marketing and promotion programs. Prior to arriving at this budget, the committee considered alternative expenditure levels and alternative assessment levels. The committee agreed that the increased assessment rate was appropriate to cover expenses and maintain its financial operating reserve at a satisfactory level (\$35,700). The assessment rate of \$0.85 per hundredweight of assessable dates was then determined by applying the following formula where:

$$\begin{aligned} A &= \text{Cull Surplus Fund} (\$2,000); \\ B &= 2004-05 \text{ expected shipments} \\ &\quad (260,000 \text{ hundredweight}); \\ C &= 2004-05 \text{ expenses} (\$223,000); \\ (C - A) B &= \$0.85 \text{ per hundredweight.} \end{aligned}$$

Estimated shipments should provide \$221,000 in assessment income. Income derived from handler assessments and \$2,000 from the cull surplus fund would be adequate to cover budgeted expenses. Funds in the financial operating reserve are expected to total about \$35,700 by September 30, 2005, and therefore will 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 as required under § 987.72(c)).

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 2004–05 season could range between \$40 and \$120 per hundredweight of dates. Therefore, the estimated assessment revenue for the

2004–05 crop year as a percentage of total grower revenue could range between .7 and 2.1 percent.

This action increases the assessment obligation imposed on handlers under the Federal marketing order. 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 would 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 30, 2004, 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 August 16, 2004 (69 FR 50339). 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 USDA and the Office of the Federal Register. A 30-day comment period ending September 15, 2004, 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 the rule until 30 days after publication

in the **Federal Register** because the 2004–05 crop year begins October 1, 2004, and the marketing order requires that the rate of assessment for each crop year apply to assessable dates handled during such period. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. Further, handlers are aware of this rule which was unanimously recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule, and no comments were received.

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, 2004, an assessment rate of \$0.85 per hundredweight is established for California dates.

Dated: October 7, 2004.

Kenneth C. Clayton,
Associate Administrator, Agricultural Marketing Service.

[FR Doc. 04-23042 Filed 10-13-04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003-CE-56-AD; Amendment 39-13815; AD 2004-20-10]

RIN 2120-AA64

Airworthiness Directives; Valentin GmbH & Co. Taifun 17E Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for all Valentin GmbH & Co. Taifun 17E sailplanes. This AD requires you to do an operational check of the front wing

locking mechanism left and right, inspect stop key movement, inspect wing and fuselage side root ribs, inspect the wing side shear force fittings, and take any corrective actions that may be required. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to detect and correct malfunction of wing-locking mechanism, which could result in failure of the wing-locking mechanism disengagement. This failure could lead to unlocking of wing in flight and consequent loss of control of the sailplane.

DATES: This AD becomes effective on November 24, 2004.

As of November 24, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: You may get the service information identified in this AD from KORFF + CO.KG, Dieselstrasse 5, D-63128 Dietzenbach, Germany.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-CE-56-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gregory M. Davison, Aerospace Engineer, Small Airplane Directorate, ACE-112, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816-329-4130; facsimile: 816-329-4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on all Valentin GmbH & Co. Taifun 17E sailplanes. The LBA reports that during an investigation, an incorrect locked shear force fitting was found.

What is the potential impact if FAA took no action? Malfunction of wing-locking mechanism could result in failure of the wing attachment assembly. This failure could lead to unlocking of wing in flight and consequent loss of control of the sailplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Valentin GmbH & Co. Taifun 17E sailplanes. This proposal was published in the **Federal Register** as a notice of proposed