

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 457

#### Common Crop Insurance Regulations

##### *CFR Correction*

In Title 7 of the Code of Federal Regulations, Parts 400 to 699, revised as of January 1, 2005, in § 457.8, on page 101, under "Definitions" remove the first definition of *Approved yield*.

[FR Doc. 05-55516 Filed 11-3-05; 8:45 am]

**BILLING CODE 1505-01-D**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 987

[Docket No. FV05-987-1 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 2005-06 and subsequent crop years from \$0.85 to \$0.95 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. Assessments upon date handlers are used by the committee to fund reasonable and necessary expenses of the program. The committee recommended increasing the assessment rate because additional revenues are needed to fund program operations and build up its financial reserve to a more

satisfactory level. The crop year began October 1 and ends September 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** *Effective Dates:* November 5, 2005.

**FOR FURTHER INFORMATION CONTACT:** Toni Sasselli, Program Analyst, or Terry Vawter, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA; 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 final rule is issued under Marketing Agreement 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 final 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 herein would be applicable to all assessable dates beginning on October 1, 2005, and continue until amended, suspended, or terminated. This final rule will not preempt any State or local laws,

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regulations, or policies, unless they present an irreconcilable conflict with this final 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 2005-06 and subsequent crop years from \$0.85 to \$0.95 per hundredweight of assessable dates handled.

The 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 at a public meeting. Therefore, all directly affected persons had an opportunity to participate and provide input.

For the 2004-05 and subsequent crop years, the committee recommended, and USDA approved, an assessment rate that will 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 16, 2005, and unanimously recommended 2005-06 crop year expenditures of \$169,197 and an assessment rate of \$0.95 per hundredweight of dates handled. In

comparison, last year's budgeted expenditures were \$223,000. The recommended assessment rate of \$0.95 is \$0.10 higher than the rate currently in effect. The increase in the assessment rate is needed to fund the committee's budget and maintain an acceptable operating reserve.

Proceeds from sales of cull dates are deposited in a 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. 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 2005–06 crop year, the committee estimated that \$2,000 from the surplus account would be needed to refund assessments used in paying committee expenses incurred in disposing of surplus dates.

The budgeted administrative expenses for the 2005–06 crop year include \$85,697 for labor and office expenses. This compares to \$90,427 in labor and office expenses in 2004–05. In addition, \$70,000 has been budgeted for marketing and promotion under the program for the 2005–06 crop year. This compares to \$112,499 in budgeted marketing and promotion expenses for the 2004–05 crop year. The committee also proposed that \$10,000 be included in its 2005–2006 budget for an economic analysis of its promotion activities. Last year's budget did not include funds for this purpose.

The proposed rule erroneously indicated that the committee's 2005–06 budget included a line item for a contingency reserve. However, the \$14,303 figure is the committee's estimate of reserve funds that would be available at the end of the 2005–06 crop year. Additionally, last year's budget included a line item for a contingency reserve of \$20,074.

The assessment rate of \$0.95 per hundredweight of assessable dates was derived by applying the following formula where:

A = 2004–05 reserve on 10/1/05 (\$1,000).

B = 2005–06 reserve on 9/30/06 (\$14,303).

C = 2005–06 expenses (\$169,197).

D = Cull Surplus Fund (\$2,000).

$E = 2005\text{--}06 \text{ expected shipments}$   
(190,000 hundredweight).

$(B - A + C - D) \div E = \$0.95 \text{ per hundredweight.}$

Estimated shipments should provide \$180,500 in assessment income. Income derived from handler assessments and \$2,000 from the cull surplus fund will be adequate to cover budgeted expenses. Funds in the reserve are expected to total about \$14,303 by September 30, 2006, and therefore would 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 would 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 2005–06 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 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 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 \$6,000,000.

An industry profile shows that four of the 10 handlers (40 percent) had date sales over \$6,000,000 and could be considered large handlers by the Small Business Administration. Six of the 10 handlers (60 percent) had date sales of less than \$6,000,000 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 remaining producers have incomes less than \$750,000. The majority of handlers and producers of California dates may be classified as small entities.

This final rule increases the assessment rate established for the committee and collected from handlers for the 2005–06 and subsequent crop years from \$0.85 to \$0.95 per hundredweight of assessable dates handled. The committee unanimously recommended 2005–06 expenditures of \$169,197 and the \$0.95 per hundredweight assessment rate at its meeting on June 16, 2005. The assessment rate of \$0.95 is \$0.10 higher than the rate currently in effect. The quantity of assessable dates for the 2005–06 crop year is estimated at 190,000 hundredweight. Thus, the \$0.95 per hundredweight rate should provide \$180,500 in assessment income. This, along with approximately \$2,000 from the surplus account, will be adequate to meet the committee's 2005–06 crop year expenses and to augment its financial reserve.

The budgeted administrative expenses for the 2005–06 crop year include \$85,697, for labor and office expenses. This compares to \$90,427 in labor and office expenses in 2004–05. In addition, \$70,000 has been budgeted for marketing and promotion under the program for the 2005–06 crop year. This compares to \$112,499 in budgeted marketing and promotion expenses for the 2004–05 crop year. The committee also proposed that \$10,000 be included in the budget for an economic analysis of its promotion program for the 2005–06 crop year, as required by USDA. A total of \$14,303 is estimated to be carried over as a financial reserve at the end of 2005–06.

The committee reviewed and unanimously recommended 2005–06 expenditures of \$169,197 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 build up its operating reserve to a satisfactory level (\$14,303). The assessment rate of \$0.95 per hundredweight of assessable dates was then determined by applying the following formula where:

A = 2004–05 reserve on 10/1/05 (\$1,000).

B = 2005–06 reserve on 9/30/06 (\$14,303).

C = 2005–06 expenses (\$169,197).

D = Cull Surplus Fund (\$2,000).

E = 2005–06 expected shipments (190,000 hundredweight).

(B – A + C – D) ÷ E = \$0.95 per hundredweight.

Estimated shipments should provide \$180,500 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 administrative reserve are expected to total about \$14,303 by September 30, 2006, and therefore would 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 2005–06 season could range between \$45 and \$50 per hundredweight of dates. Therefore, the estimated assessment revenue for the 2005–06 crop year as a percentage of total grower revenue is approximately 2 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 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 16, 2005, meeting was a public meeting and all entities 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 September 12, 2005 (70 FR 53737). Copies of the rule were mailed or sent via facsimile to all date handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending October 12, 2005, was provided to allow 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: (1) The 2005–06 crop year began on October 1, 2005, and the marketing order requires that the rate of assessment for each crop year apply to all assessable dates handled during such crop year; (2) the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the committee at a public meeting and is similar to other assessment rate actions issued in past years. 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, 2005, an assessment rate of \$0.95 per hundredweight is established for California dates.

Dated: October 31, 2005.

**Lloyd C. Day,**  
*Administrator, Agricultural Marketing Service.*

[FR Doc. 05–22046 Filed 11–3–05; 8:45 am]

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#### DEPARTMENT OF HOMELAND SECURITY

##### **8 CFR Parts 236, 239, 241 and 287**

[ICE No. 2298–03]

**RIN 1653-AA27**

#### **Powers and Authority of Officers and Employees**

**AGENCY:** Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** This rule continues the process of conforming the text of the Code of Federal Regulations to the governmental structures established in the Homeland Security Act and Reorganization Plan. This rule is not intended to and does not restrict or otherwise limit the authority of any Department of Homeland Security officer.

**DATES:** This final rule is effective November 4, 2005.

**FOR FURTHER INFORMATION CONTACT:** Jack Penca, Chief Counsel, Law Enforcement Support Center; 188 Harvest Lane, Williston, Vermont 05495; telephone number: (802) 872–6056.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On November 25, 2002, the President signed into law the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2135) (HSA), 6 U.S.C. 101 *et seq.*, which created the new Department of Homeland Security (Department or DHS). Pursuant to the provisions of the HSA, DHS came into existence on January 24, 2003. The functions of the