

# Rules and Regulations

Federal Register

Vol. 73, No. 13

Friday, January 18, 2008

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 987

[Docket No. AMS-FV-07-0104; FV07-987-1 FIR]

#### Domestic Dates Produced or Packed in Riverside County, CA; Decreased Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate established for the California Date Administrative Committee (committee) for the 2007-08 and subsequent crop years from \$0.95 to \$0.75 per hundredweight of dates handled. The committee locally administers the marketing order which 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 began October 1 and ends September 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** *Effective Date:* February 19, 2008.

**FOR FURTHER INFORMATION CONTACT:** Terry Vawter, Senior 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: [Terry.Vawter@usda.gov](mailto:Terry.Vawter@usda.gov) or [Kurt.Kimmel@usda.gov](mailto:Kurt.Kimmel@usda.gov).

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 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."

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 October 1, 2007, 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 continues in effect the action that decreased the assessment rate established for the committee for

the 2007-08 and subsequent crop years from \$0.95 per to \$0.75 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 2005-06 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 21, 2007, and unanimously recommended 2007-08 expenditures of \$209,182 and an assessment rate of \$0.75 per hundredweight of California dates. In comparison, last year's budgeted expenditures were \$127,485. The assessment rate of \$0.75 is \$0.20 lower than the rate currently in effect. The committee believes that the assessment rate should be reduced, because the 2006-07 crop was 3 million pounds larger than expected, resulting in \$105,652 in accumulated cash reserves available for 2007-08 expenditures. Section 987.72(c) states that the reserve may not exceed 50 percent of the average of expenses incurred during the most recent five preceding crop years. The committee believes the decreased assessment rate will allow it to reduce the amount it holds in cash reserves to \$30,115, by September 30, 2008, the end of the 2007-08 crop year. That reserve amount would be within the limits provided in § 987.72(c).

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 2007–08 crop year, the committee estimated that \$2,000 from the surplus account would be needed temporarily to defray committee expenses incurred in disposing of surplus dates.

The major expenditures recommended by the committee for the 2007–08 crop year include \$87,312 for general and administrative programs, \$67,870 for promotional programs, \$24,000 for marketing and media consulting, \$5,000 for moving expenses, and \$5,000 for updating marketing materials. The committee also budgeted \$20,000 as a contingency reserve for other marketing and promotion projects that it may wish to support later in the year.

By comparison, expenditures for the 2006–07 crop year were \$127,485. Major expenditures recommended by the committee included \$75,095 for general and administrative expenses, \$22,390 for promotional expenses, and \$30,000 for date nutritional analysis.

The assessment rate of \$0.75 per hundredweight of assessable dates was derived by applying the following formula where:

A= 2006–07 reserve on 10/1/07 (\$105,652);

B= 2007–08 reserve on 9/30/07 (\$30,115);

C= 2007–08 expenses (\$209,182);

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

E= Assessment Refund (\$10,855); and  
F= 2007–08 expected shipments (190,000 hundredweight).

$(B - A + C - D + E) / F$ .

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 is effective 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 2007–08 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.

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 (SBA) (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 \$6,500,000.

An industry profile shows that four of the 10 handlers (40 percent) had date sales over \$6,500,000 and could be considered large handlers by the SBA. Six of the 10 handlers (60 percent) had date sales of less than \$6,500,000 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 rule continues in effect the action that decreased the assessment rate established for the committee and collected from handlers for the 2007–08 and subsequent crop years from \$0.95 to \$0.75 per hundredweight of dates handled. The committee unanimously recommended 2007–08 expenditures of \$209,182 and an assessment rate of \$0.75 per hundredweight of dates, which is \$0.20 lower than the 2005–06

rate, currently in effect. The committee recommended decreasing the assessment rate to reduce its cash reserve levels.

The quantity of assessable dates for the 2007–08 crop year is estimated at 19,000,000 pounds. Thus, the \$0.75 rate should provide \$142,500 in assessment income and, with reserve funds of \$105,652 and the \$2,000 contribution from the surplus program, will be adequate to meet the 2007–08 crop year expenses.

The major expenditures recommended by the committee for the 2007–08 crop year include \$87,312 for general and administrative programs, \$67,870 for promotional programs, \$24,000 for marketing and media consulting, \$5,000 for moving expenses, and \$5,000 for updating marketing materials. The committee also budgeted \$20,000 as a contingency reserve for other marketing and promotion projects that it may wish to support later in the year.

The committee recommended a reduced assessment rate because the unanticipated increased date production during the 2006–07 crop year resulted in a larger carry-in of funds than the committee prefers. The decrease in the assessment rate would allow the committee to reduce its cash reserves to an appropriate level.

The committee reviewed and unanimously recommended 2007–08 crop year expenditures of \$209,182. Prior to arriving at this budget, the committee considered information from various sources, such as the committee's Marketing Subcommittee. Alternative expenditure levels were an option available to the committee, but given the windfall from the larger-than-expected 2006–07 crop, it was ultimately determined that a \$209,182 budget would be most beneficial to the industry. The assessment rate of \$0.75 per hundredweight of dates was then derived, based upon the committee's estimates of the available reserve, income, handler assessment refund, and anticipated expenses.

A review of historical information and preliminary information pertaining to the 2007–08 crop year indicates that the grower price for the 2007–08 crop year could range between \$45 and \$50 per hundredweight of dates. Therefore, the estimated assessment revenue for the 2007–08 crop year as a percentage of total grower revenue is approximately 1.67 to 1.5 percent, respectively.

This action continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may

be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. 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 21, 2007 meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action 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. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this 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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on September 7, 2007 (72 FR 51354). Copies of that rule were also mailed or sent via facsimile to all date handlers. Finally, the interim final rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on November 6, 2007, and 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.

#### List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

#### PART 987—DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 987 which was published at 72 FR 51354 on September 7, 2007, is adopted as a final rule without change.

Dated: January 15, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8-878 Filed 1-17-08; 8:45 am]

BILLING CODE 3410-02-P

#### DEPARTMENT OF AGRICULTURE

#### Animal and Plant Health Inspection Service

#### 9 CFR Parts 93, 94, and 95

[Docket No. APHIS-2006-0026]

RIN 0579-AC45

#### Bovine Spongiform Encephalopathy; Minimal-Risk Regions; Identification of Ruminants, and Processing and Importation of Commodities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

**SUMMARY:** We are amending the regulations regarding the importation of animals and animal products to remove several restrictions regarding the identification of animals and the processing of ruminant materials from regions that present a minimal risk of introducing bovine spongiform encephalopathy into the United States. We are removing these restrictions because they are not necessary to prevent the introduction of bovine spongiform encephalopathy into the United States.

**DATES:** *Effective Date:* February 19, 2008.

**FOR FURTHER INFORMATION CONTACT:** For information regarding ruminant products, contact Dr. Karen James-Preston, Director, Technical Trade Services, Animal Products, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737-1231; (301) 734-4356.

For information concerning live ruminants, contact Dr. Freeda Isaac,

Director, AOVSA, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737-1231; (301) 734-8364.

#### SUPPLEMENTARY INFORMATION:

#### Background

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases not currently present or prevalent in this country. The regulations in 9 CFR parts 93, 94, and 95 prohibit or restrict the importation into the United States of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including bovine spongiform encephalopathy (BSE).

In a final rule published in the **Federal Register** on January 4, 2005 (70 FR 460-553, Docket No. 03-080-3), we amended the regulations regarding the importation of animals and animal products to establish a category of regions that present a minimal risk of introducing BSE into the United States via live ruminants and ruminant products and byproducts, and added Canada to this category. We also established conditions for the importation of certain live ruminants and ruminant products and byproducts from such regions. These regulations are in 9 CFR parts 93, 94, 95, and 96.

On November 28, 2005, we published in the **Federal Register** an interim rule (70 FR 71213-71218, Docket No. 03-080-8) that (1) broadened who is authorized to break the seals on a means of conveyance carrying certain ruminants from Canada and (2) amended the provisions regarding the transiting through the United States of certain ruminant products from Canada to allow for limited direct transloading of the products from one means of conveyance to another in the United States.

On March 14, 2006, we published in the **Federal Register** a technical amendment (71 FR 12994-12998, Docket No. 03-080-9) that clarified our intent with regard to certain provisions in the January 2005 final rule and corrected several inconsistencies within the rule.

On August 9, 2006, we published in the **Federal Register** a proposed rule<sup>1</sup> (71 FR 45439-45444, Docket No.

<sup>1</sup> To view the proposed rule and the comments we received, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0026>.