

Washington potato producers and handlers may be classified as small entities. Although it is not known how many importers of potatoes may be classified as small entities, we believe that many of the importers of potatoes can be classified as such.

This rule continues in effect the action that decreased the minimum size required for all fresh market red, yellow fleshed, and white types of potatoes produced under the order from 1 inch to ¾ inch in diameter, if they otherwise meet the requirements of U.S. No. 1 grade. This change enables handlers with the ability to respond to the consumer demand for small potatoes. As provided under section 8e of the Act, this change will also apply to all imported red-skinned, round type potatoes between July 1 through September 30 of each year. While no change will be required in the language of § 980.1, all imported red-skinned, round type potatoes from July 1 through September 30 will be required to meet the minimum size requirement of ¾ inch in diameter.

The authority for the grade and size requirements is provided in § 946.52 of the order. Section 946.336(a)(2) of the order's administrative rules and regulations prescribes the size requirement. Relevant import regulations are contained in § 980.1 and § 980.501 of the vegetable import regulations.

Regarding the impact of this rule on affected entities, relaxing the size required for these potatoes is expected to benefit handlers, importers and growers. There should be no extra cost to producers or handlers because current harvesting and handling methods can accommodate the sorting of these smaller potatoes. By relaxing the minimum size required for these potatoes, a greater quantity of potatoes will meet the order's handling regulations and the import regulations. This could translate into an increased market for small potatoes and greater returns for handlers, importers, and growers.

As small potatoes have grown in popularity with consumers, the market demand has outpaced the quantity of small, high quality potatoes available from Washington. The Committee believes that a relaxation in the size requirement will increase the available supply of small potatoes. The small potato market is a minor segment of the Washington potato market. As such, the Committee believes that these small potatoes do not compete directly with most of the fresh market potatoes and that this action will not adversely affect the overall Washington potato market.

By providing Washington handlers the flexibility to pack the smaller red, yellow fleshed, and white types of potatoes, the Committee believes the industry will remain competitive in the marketplace. The Creamer potato market is a premium market and this action is expected to further increase sales of Washington Creamer potatoes to benefit the Washington potato industry. The benefits of this rule are not expected to be disproportionately greater or lesser for small entities than large entities.

The Committee discussed several alternatives to this recommendation, including not changing the minimum size requirement. However, the Committee believes that it is important that the Washington potato handling regulations be consistent with the revised Standards to reduce confusion during the inspection and marketing of these types of potatoes. The Committee also determined that relaxing the minimum size requirement for these potatoes will provide the greatest benefit to the industry by augmenting the developing market for small potatoes and increasing grower returns.

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.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large potato 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.

Further, the Committee's meeting was widely publicized throughout the Washington potato industry and all interested persons were invited to participate in Committee deliberations. Like all Committee meetings, the April 16, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. In addition, the World Trade Organization and known importers of potatoes will be notified of this action.

An interim final rule concerning this action was published in the **Federal Register** on September 10, 2008. Copies of this rule were mailed by Committee staff to all Committee members and potato handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal

Register. That rule provided for a 60-day comment period which ended November 10, 2008. 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/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (73 FR 52573, September 10, 2008) will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

#### PART 946—IRISH POTATOES GROWN IN WASHINGTON

■ Accordingly, the interim final rule amending 7 CFR part 946 which was published at 73 FR 52573 on September 10, 2008, is adopted as a final rule without change.

Dated: December 8, 2008.

**James E. Link,**  
Administrator, Agricultural Marketing Service.

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#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

#### 7 CFR Part 987

[Docket No. AMS-FV-08-0056; FV08-987-1 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 2008–09 and subsequent crop years from \$0.75 to \$0.60 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:* January 14, 2009.

**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, 2008, 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 2008–09 and subsequent crop years from \$0.75 per to \$0.60 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 2007–08 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 May 29, 2008, and unanimously recommended 2008–09 expenditures of \$176,384 and an assessment rate of \$0.60 per hundredweight of California dates. In comparison, last year’s budgeted expenditures were \$209,182. The assessment rate of \$0.75 is \$0.15 lower than the rate previously in effect. The Committee recommended a lower assessment rate because the 2007 crop was larger than expected, resulting in excess assessment income and thus a

larger reserve. Income generated through the lower assessment rate combined with reserve funds should be sufficient to cover anticipated 2008–09 expenses.

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. With the larger 2007 crop, the reserve at the end of the 2007–08 crop year is projected to exceed this limit. Excess assessment funds will be refunded to handlers to reduce the reserve and bring it in line with order requirements.

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 2008–09 crop year, the Committee estimated that \$4,500 from the surplus account would be needed to temporarily defray expenses incurred in disposing of surplus dates.

The major expenditures recommended by the Committee for the 2008–09 crop year include \$66,384 for general and administrative programs, \$82,000 for promotional programs, and \$28,000 for marketing and media consulting. The Committee also budgeted \$10,000 as a contingency reserve for other marketing and promotion projects that it may wish to support later in the year. By comparison, 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 budgeted \$20,000 as a contingency reserve for other marketing and promotion projects.

The assessment rate of \$0.60 per hundredweight of assessable dates was derived by applying the following formula where:

A = 2007–08 estimated reserve on 09/30/08 (\$134,757);

B = 2008–09 estimated reserve on 10/01/09 (\$78,996);

C = 2008–09 expenses (\$176,384);  
 D = Cull Surplus Fund (\$4,500);  
 E = Assessment Refund (\$15,877); and  
 F = 2008–09 expected shipments (22,000,000  
 pounds).  
 $[(B - A + C - D + E) / F] * 100$ .

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 2008–09 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 85 producers of dates in the production area and 9 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 \$7,000,000.

According to the National Agricultural Statistics Service (NASS), data for the 2006 crop year shows that about 3.12 tons, or 6,240 pounds, of

dates were produced per acre. The 2006 grower price published by the NASS was \$1,320 per ton, or \$.66 per pound. Thus, the value of date production per acre in 2006 averaged about \$4,118 (6,240 pounds times \$.66 per pound). At that average price, a producer would have to farm over 182 acres to receive an annual income from dates of \$750,000 (\$750,000 divided by \$4,118 per acre equals 182 acres). According to Committee staff, the majority of California date producers farm less than 182 acres. Thus, it can be concluded that the majority of date producers could be considered small entities. The majority of handlers of California dates may also be considered small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2008–09 and subsequent crop years from \$0.75 to \$0.60 per hundredweight of dates handled. The Committee unanimously recommended 2008–09 expenditures of \$176,384 and an assessment rate of \$0.60 per hundredweight of dates, which is \$0.15 lower than the 2007–08 rate, previously in effect. The quantity of assessable dates for the 2008–09 crop year is estimated at 22,000,000 pounds. Thus, the \$0.60 per hundredweight assessment rate should provide \$132,000 in assessment income and, with reserve funds of \$39,884 and the \$4,500 contribution from the surplus program, will be adequate to meet the 2008–09 crop year expenses.

The major expenditures recommended by the Committee for the 2008–09 crop year include \$66,384 for general and administrative programs, \$82,000 for promotional programs, and \$28,000 for marketing and media consulting. The Committee also budgeted \$10,000 as a contingency reserve for other marketing and promotion projects that it may wish to support later in the year.

The Committee recommended a lower assessment rate because the 2007 crop was larger than expected, resulting in excess assessment income and thus a larger reserve. Income generated through the lower assessment rate combined with reserve funds should be sufficient to cover anticipated 2008–09 expenses.

The Committee reviewed and unanimously recommended 2008–09 crop year expenditures of \$176,384. 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 extra assessment income

generated from the larger-than-expected 2007–08 crop, it was ultimately determined that a \$176,384 budget would be appropriate. The assessment rate of \$0.60 per hundredweight of dates was then derived, based upon the Committee's estimates of the incoming reserve, income, and anticipated expenses.

According to the NASS, the season average grower price for 2007 crop dates is projected at \$2,290 per ton, or \$114 per hundredweight. No official NASS estimate is available yet for 2008. The average grower price for 2005–07 is \$1,953 per ton, or \$98 per hundredweight.

To calculate the percentage of grower revenue represented by the assessment rate for 2007, the assessment rate of \$0.75 (per hundredweight) is divided by the estimated average grower price. This results in estimated assessment revenue for the 2007–08 crop year as a percentage of grower revenue of 0.66 percent (\$0.75 divided by \$114 per hundredweight). As previously mentioned, NASS data for 2008 is not yet available. However, applying the same calculations above using the average grower price for 2005–07 would result in estimated assessment revenue as a percentage total grower revenue of .61 percent for the 2008–09 crop year (\$0.60 divided by \$98 per hundredweight). Thus, the assessment revenue should be well below 1 percent of estimated grower revenue in 2008.

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 May 29, 2008, 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.

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.

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.

An interim final rule concerning this action was published in the **Federal Register** on August 26, 2008 (73 FR 50188). 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 October 27, 2008, 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/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. 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 73 FR 50188 on August 26, 2008, is adopted as a final rule without change.

Dated: December 8, 2008.

**James E. Link,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E8–29597 Filed 12–12–08; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 993

[Docket No. AMS–FV–08–0060; FV08–993–1 FIR]

#### Dried Prunes Produced in California; 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 Prune Marketing Committee (Committee) for the 2008–09 and subsequent crop years from \$0.60 to \$0.30 per ton of salable dried prunes. The Committee locally administers the marketing order which regulates the handling of dried prunes in California. Assessments upon dried prune handlers are used by the Committee to fund reasonable and necessary expenses of the program. The crop year began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** *Effective Date:* January 14, 2009.

#### FOR FURTHER INFORMATION CONTACT:

Maureen Pello, Assistant Regional Manager, or Kurt 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: [Maureen.Pello@usda.gov](mailto:Maureen.Pello@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 Agreement No. 110 and Marketing Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes grown in 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.”

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 dried prune 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 dried prunes beginning on August 1, 2008, 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 2008–09 and subsequent crop years from \$0.60 to \$0.30 per ton of salable dried prunes handled.

The California dried prune 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 of California dried prunes. 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. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2007–08 and subsequent crop years, the Committee recommended, and USDA approved, an assessment rate