

# Proposed Rules

Federal Register

Vol. 75, No. 178

Wednesday, September 15, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 987

[Docket No. AMS-FV-10-0059; FV10-987-2 PR]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate established for the California Date Administrative Committee (Committee) for the 2010–11 and subsequent crop years from \$0.75 to \$1.00 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 begins October 1 and ends September 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by October 15, 2010.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: <http://www.regulations.gov>. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this

rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Jeff Smutny, 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: [Jeffrey.Smutny@ams.usda.gov](mailto:Jeffrey.Smutny@ams.usda.gov) or [Kurt.Kimmel@ams.usda.gov](mailto:Kurt.Kimmel@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, 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: [Antoinette.Carter@ams.usda.gov](mailto:Antoinette.Carter@ams.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.”

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, Riverside County, 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 proposed herein would be applicable to all assessable dates beginning October 1, 2010, and would continue until amended, suspended, or terminated.

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 would increase the assessment rate established for the Committee for the 2010–11 and subsequent crop years from \$0.75 to \$1.00 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 2009–10 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 24, 2010, and unanimously recommended 2010–11 expenditures of \$245,000 and an assessment rate of \$1.00 per hundredweight of California dates. In comparison, last year’s budgeted expenditures were \$200,000. The modified assessment rate of \$1.00 is \$0.25 higher than the rate currently in effect. The Committee recommended a higher assessment rate to offset the 2010–11 budgeted increases in salaries, operating expenses, and promotion programs, and to build their operating reserve. The higher assessment rate should be sufficient to cover the 2010–

11 budgeted expenses and meet their financial goals.

Section 987.72(c) authorizes the Committee to establish and maintain an operating reserve not to exceed 50 percent of an average year's expenses. Funds from the reserve are available for the Committee's use during the crop year to cover budgeted expenses as necessary or for other purposes deemed appropriate by USDA. The Committee expects to carry a \$40,000 reserve into the 2010–11 crop year. They expect to add \$16,500 to the reserve during the year, for a desired carryout of approximately \$56,000, which is well below the limit specified in the order.

Income from the sale of cull dates is deposited in a surplus account for subsequent use by the Committee to cover 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 2010–11 crop year, the Committee estimated that \$1,500 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 2010–11 crop year include \$85,000 for general and administrative programs, \$127,875 for promotional programs, \$17,900 for nutritional research, and \$14,225 for marketing and media consulting. The budgeted amount for promotional programs includes a \$29,000 contingency fund that would allow the Committee to take advantage of unexpected marketing opportunities that may present themselves during the year.

By comparison, expenditures recommended by the Committee for the 2009–10 crop year included \$60,000 for general and administrative programs, \$97,000 for promotional programs, \$15,000 for nutritional research, and \$28,000 for marketing and media consulting.

The assessment rate of \$1.00 per hundredweight of assessable dates was derived by applying the following formula where:

A = 2009–10 estimated reserve on 09/30/10 (\$40,000);

B = 2010–11 estimated reserve on 09/30/11 (\$56,500);

C = 2010–11 expenses (\$245,000);

D = Cull Surplus Fund (\$1,500);

F = 2010–11 expected shipments (26,000,000 pounds).

$[(C - A + B - D)/F] \times 100$ .

The assessment rate proposed in this rule would 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 proposed assessment rate would be in effect for an indefinite period, the Committee would 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 2010–11 budget and those for subsequent crop years would be reviewed and, as appropriate, approved by USDA.

#### Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial 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.

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 most-recently completed crop year, 2009–10, indicates that about 3.8 tons, or 7,600 pounds, of dates were produced per acre. The 2009–10 producer price published by NASS was \$1,450 per ton, or \$0.725 per pound. Thus, the value of date production in 2009–10 averaged about \$5,510 per acre (7,600 pounds per acre times \$0.725 per pound). At that average price, a producer would have to farm more than 136 acres to receive an annual income from dates of \$750,000 (\$750,000 divided by \$5,510 per acre equals 136.1 acres). According to the Committee's staff, the majority of California date producers farm fewer than 136 acres. Thus, it can be concluded that the majority of date producers could be considered small entities. According to data from the Committee, the majority of California date handlers may also be considered small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2010–11 and subsequent crop years from \$0.75 to \$1.00 per hundredweight of dates handled. The Committee unanimously recommended 2010–11 expenditures of \$245,000 and an assessment rate of \$1.00 per hundredweight of dates. The proposed assessment rate is \$0.25 higher than the 2009–10 rate currently in effect. The quantity of assessable dates for the 2010–11 crop year is estimated at 26,000,000 pounds. Thus, the \$1.00 rate should provide approximately \$260,000 in assessment income and will be adequate to meet the budgeted expenses.

The major expenditures recommended by the Committee for the 2010–11 crop year include \$85,000 for general and administrative programs, \$127,875 for promotional programs, \$17,900 for nutritional research, and \$14,225 for marketing and media consulting. The Committee also hopes to add \$16,500 to its operating reserve. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Marketing Subcommittee. Alternative expenditure levels were discussed, but the Committee ultimately decided that the recommended levels were reasonable to properly administer the order. The assessment rate of \$1.00 per hundredweight of dates was then derived, based upon the Committee's estimates of the available operating reserve, projected crop size, and anticipated expenses.

As previously noted, NASS reported that the average producer price for 2009–10 crop dates was \$1,450 per ton, or \$72.50 per hundredweight. No

official NASS estimate is available yet for 2010–11. However, the average grower price for the 3-year period between 2007–08 and 2009–10 was \$1,756.67 per ton, or \$87.83 per hundredweight.

Assuming that the average producer price for 2010–11 will range between \$72.50 and \$87.83 per hundredweight, the estimated assessment revenue, stated as a percentage of producer revenue, would range between 1.38 and 1.14 percent (\$1.00 per hundredweight divided by either \$72.50 or \$87.83 per hundredweight). Thus, assessment revenue should be less than 1.5 percent of estimated producer revenue for 2010–11.

This action would increase the assessment obligation imposed on handlers. 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 24, 2010, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this rule, including the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose 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.

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

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/MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned

address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2010–11 crop year begins on October 1, 2010, 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.

#### 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 proposed to be amended as follows:

#### **PART 987—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, 2010, an assessment rate of \$1.00 per hundredweight is established for California dates.

Dated: September 10, 2010.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2010–22981 Filed 9–14–10; 8:45 am]

**BILLING CODE 3410–02–P**

#### **DEPARTMENT OF ENERGY**

#### **10 CFR Part 430**

[Docket No. EERE–2008–BT–STD–0005]

**RIN 1904–AB57**

#### **Energy Conservation Standards for Battery Chargers and External Power Supplies: Public Meeting and Availability of the Preliminary Technical Support Document**

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of public meeting and availability of preliminary technical support document.

**SUMMARY:** The U.S. Department of Energy (DOE) will hold a public meeting to discuss and receive comments on the following: the product classes DOE plans to analyze for the purposes of amending energy conservation standards for Class A external power supplies (EPSs) and establishing energy conservation standards for battery chargers (BCs) and non-Class A EPSs; the analytical framework, models, and tools DOE is using to evaluate standards for these products; the results of preliminary analyses performed by DOE for these products; and potential energy conservation standard levels derived from these analyses that DOE could consider for these products. DOE also encourages interested parties to submit written comments on these subjects. To inform stakeholders and facilitate the public meeting and comments process, DOE has prepared an agenda, a preliminary technical support document (TSD), and briefing materials, which are available at: [http://www1.eere.energy.gov/buildings/appliance\\_standards/residential/battery\\_external.html](http://www1.eere.energy.gov/buildings/appliance_standards/residential/battery_external.html).

**DATES:** The Department will hold a public meeting on Wednesday, October 13, 2010, from 9 a.m. to 5 p.m. in Washington, DC. Any person requesting to speak at the public meeting should submit such request, along with an electronic copy of the statement to be given at the public meeting, before 4 p.m., Wednesday, September 29, 2010. Written comments are welcome, especially following the public meeting, and should be submitted by October 15, 2010.

**ADDRESSES:** The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 so that the necessary procedures can be completed.

Interested persons may submit comments, identified by docket number EERE–2008–BT–STD–0005, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.