

file with the Board, on CWB Form No. 7, a report of the receipt of such walnuts. The report shall be filed as follows: On or before December 5 for such walnuts received during the period September 1 to November 30; on or before March 5 for such walnuts received during the period December 1 to February 28 (February 29 in a leap year); on or before June 5 for such walnuts received during the period March 1 to May 31; and on or before September 5 for such walnuts received during the period June 1 to August 31. The report shall include the quantity of such walnuts received, the country of origin for such walnuts, and whether such walnuts are inshell or shelled. With each report, the handler shall submit a copy of a product tag issued by a DFA of California inspector for each receipt of such walnuts that includes the name of the person from whom such walnuts were received, the date such walnuts were received by the handler, the number of containers and the U.S. Custom's Service entry number, whether such walnuts are inshell or shelled, the quantity of such walnuts received, the country of origin for such walnuts, the name of the DFA of California inspector who issued the product tag, and the date such tag was issued.

■ 8. Amend § 984.480 by revising paragraph (d) to read as follows:

§ 984.480 Books and other records.

* * * * *

(d) The quantities held on September 1, January 1, and April 1 of each marketing year.

Dated: October 27, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9-26368 Filed 11-2-09; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Doc. No. AMS-FV-09-0045; FV09-987-2 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 2009–10 and subsequent crop years from \$0.60 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 begins October 1 and ends September 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* November 4, 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@ams.usda.gov or Kurt.Kimmel@ams.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@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, 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, 2009, and 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 increases the assessment rate established for the Committee for the 2009–10 and subsequent crop years from \$0.60 to \$0.75 per hundredweight of 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 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 2008–09 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 9, 2009, and unanimously recommended 2009–10 expenditures of \$200,000 and an assessment rate of \$0.75 per hundredweight of California dates. In comparison, last year's budgeted expenditures were \$176,384. The assessment rate of \$0.75 is \$0.15 higher than the rate currently in effect. The Committee recommended a higher assessment rate to cover increased expenses including increased marketing and promotion efforts, and nutritional research. Income generated through the higher assessment rate combined with reserve funds should be sufficient to cover anticipated 2009–10 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 higher anticipated expenses, the reserve at the end of the 2009–10 crop year is not projected to exceed this limit.

Income from sales of cull dates are 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 2009–10 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 2009–10 crop year include \$60,000 for general and administrative programs, \$97,000 for promotional programs, and \$28,000 for marketing and media consulting. The Committee also budgeted \$15,000 to conduct nutritional research. They also plan a series of events to commemorate the tenth anniversary of their annual date Chef's competition.

By comparison, expenditures recommended by the Committee for the 2008–09 crop year included \$66,384 for general and administrative programs, \$82,000 for promotional programs, \$28,000 for marketing and media consulting.

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

Where:

A = 2008–09 estimated reserve on 09/30/09 (\$65,566);

B = 2009–10 estimated reserve on 09/30/10 (\$39,566);

C = 2009–10 expenses (\$200,000);

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

F = 2009–10 expected shipments (23,000,000 pounds).

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

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 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 2009–10 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) (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 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 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, 2008, indicates that about 3.57 tons of dates were produced per acre. The 2008 grower price published by NASS was \$1,580 per ton. Thus, the value of date production in 2008 averaged about \$5,640 per acre (3.57 tons per acre times \$1580 per ton). At that average price, a producer would have to harvest 133 acres to receive an annual income from dates of \$750,000 (\$750,000 divided by \$5,640 per acre equals 133 acres).

According to committee staff, the majority of California date producers farm fewer than 152 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 handlers of California dates may also be considered small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2009–10 and subsequent crop years from \$0.60 to \$0.75 per hundredweight of dates handled. The Committee unanimously recommended 2009–10 expenditures of \$200,000 and an assessment rate of \$0.75 per hundredweight of dates. The assessment rate of \$0.75 is \$0.15 higher than the 2008–09 rate currently in effect. The quantity of assessable dates for the 2009–10 crop year is estimated at 11,500 tons or 230,000 hundredweight of dates. Thus, the \$0.75 rate should provide \$172,500 in assessment income and, with reserve funds of \$65,566 and the \$1,500 contribution from the surplus program, will be adequate to meet the 2009–10 crop year expenses.

The major expenditures recommended by the Committee for the 2009–10 crop year include \$60,000 for general and administrative programs, \$97,000 for promotional programs, and \$28,000 for marketing and media consulting. The Committee also budgeted \$15,000 to conduct nutritional research. They also plan a series of events to commemorate the tenth anniversary of their annual date Chef's competition.

The Committee reviewed and unanimously recommended 2009–10 crop year expenditures of \$200,000. 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 the Committee ultimately decided that the recommended levels were reasonable to properly administer the order. The assessment rate of \$0.75 per hundredweight of dates was then derived, based upon the Committee's estimates of the incoming reserve, income, and anticipated expenses.

As previously noted, according to the NASS data, the average grower price for 2008 crop dates was \$1,580 per ton, or \$79 per hundredweight. The average grower price for the period of 2004–08 was \$1,750 per ton, or \$87.50 per hundredweight. No official NASS estimate is available yet for 2009.

A review of historical information and preliminary information pertaining to

the upcoming crop year indicates that the grower price for the 2009 date crop could range between \$65.50 and \$114.50 per ton. Therefore, the estimated assessment revenue for the 2009 crop year as a percentage of total grower revenue could range between 0.7 percent and 1.1 percent.

This action increases 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 are offset by the benefits derived from 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 9, 2009, meeting was a public meeting and all entities, both large and small, were encouraged 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. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final 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.

A proposed rule concerning this action was published in the **Federal Register** on August 28, 2009 (74 FR 44304). Copies of the proposed rule were also provided 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 28, 2009, 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/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.

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 the crop year began on October 1, 2009; handlers are already receiving 2009–10 dates from growers; and the assessment rate applies to all dates received during the 2009–10 and subsequent seasons. Further, handlers are aware of this rule, which was recommended at a public meeting. Finally, a 30-day comment period was provided for in the proposed rule.

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, 2009, an assessment rate of \$0.75 per hundredweight is established for California dates.

Dated: October 27, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–26369 Filed 11–2–09; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 126

RIN 3245–AF44

HUBZone and Government Contracting

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: This rule amends the U.S. Small Business Administration's (SBA's or Agency's) Historically Underutilized Business Zone (HUBZone) program's definition of the term "employee."

DATES: This rule is effective May 3, 2010.

FOR FURTHER INFORMATION CONTACT: Mariana Pardo, HUBZone Program Office, at (202) 205–2985 or by e-mail at: mariana.pardo@sba.gov.

SUPPLEMENTARY INFORMATION:

On January 26, 2007, the SBA published in the **Federal Register**, 72 FR 3750, a proposed rule to amend the HUBZone program's definition of the term "employee." In this proposed rule, SBA sought to revise the definition of the term "employee" to: (1) Delete the full-time equivalency requirement; (2) specifically allow HUBZone small business concerns (SBCs) to count leased or temporary employees or employees obtained through a temporary agency, professional employee organization (PEO) arrangement or union agreement, as employees; (3) specifically state that SBA relies on the totality of circumstances as further defined by Size Policy Statement No. 1 when determining whether individuals are employees of a concern; (4) explain that volunteers are not employees; (5) define volunteers as those persons that receive no compensation; and (6) address the status of individuals that own all or part of the SBC but receive no compensation for work performed.

The SBA received a total of eight comments on the proposed rule. Five comments supported the rule in general and three opposed the rule. These comments are discussed in detail below.

Summary of Comments and Response to Comments

The SBA received one comment stating that the definition of the term "employee" should specifically address the issue of deferred compensation. The commenter wanted the SBA to clarify that a person that has agreed to defer his or her compensation will not be considered an employee.

The SBA agrees with this comment and believes that if it permitted a non-owner individual to work for no compensation, or even deferred compensation, and be considered an employee for HUBZone program purposes, it would open up the program to potential abuse. Finding a person to be an employee where the individual has deferred compensation is contrary to the intent of the HUBZone program, which is to increase gainful employment in historically