

walnuts purchased and the quantity inspected and certified as merchantable walnuts.

7. Section 984.476 is revised to read as follows:

§ 984.476 Report of walnut receipts from outside of the United States.

Each handler who receives walnuts from outside of the United States shall 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: August 24, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Docket No. AMS-FV-09-0045; FV09-987-2 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 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 would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by September 28, 2009.

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:

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 proposed herein would be applicable to all assessable dates beginning October 1, 2009, 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 would increase 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.

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 the higher 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.

By comparison, expenditures recommended by the Committee for the 2008–09 crop year include \$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:

$$\begin{aligned} A &= 2008-09 \text{ estimated reserve on } 09/30/09 \\ &\quad (\$65,566); \\ B &= 2009-10 \text{ estimated reserve on } 09/30/10 \\ &\quad (\$39,566); \\ C &= 2009-10 \text{ expenses } (\$200,000); \\ D &= \text{Cull Surplus Fund } (\$1,500); \\ F &= 2009-10 \text{ expected shipments } (23,000,000 \\ &\quad \text{pounds}). \\ &[(C-A+B-D)/F] \times 100. \end{aligned}$$

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 2009–10 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, 2008, indicates that about 3.34 tons, or 6,680 pounds, of dates were produced per acre. The 2008 grower price published by NASS was \$1,470 per ton, or \$.735 per pound. Thus, the value of date production in 2008 averaged about \$4,909 per acre (6,680 pounds per acre times \$.735 per pound). At that average price, a producer would have to have over 152 acres to receive an annual income from dates of \$750,000 (\$750,000 divided by \$4,909 per acre equals 152.7 acres).

According to committee staff, the majority of California date producers farm less 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 would increase 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 proposed 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 23,000,000 pounds. 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 as a contingency reserve for other marketing and promotion projects that it may wish to support later in the year.

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 season average grower price for 2008 crop dates is projected at \$1,470 per ton, or \$73.50 per hundredweight. No official NASS estimate is available yet for 2009. The average grower price for the period of 2005–08 is \$1,833.00 per ton, or \$91.65 per hundredweight.

To calculate the percentage of grower revenue represented by the assessment rate for 2009, the assessment rate of \$0.75 (per hundredweight) divided by the estimated average grower price. This results in estimated assessment revenue for 2008 crop dates as a percentage of grower revenue of 1.02 percent (\$0.75 divided by \$73.50 per hundredweight). As previously mentioned, NASS data for 2009 is not yet available.

However, applying the same calculations above using the average grower price for the period of 2005–08 would result in estimated assessment revenue as percentage total grower revenue of 0.82 percent for the 2008–09 crop year (\$0.75 divided by \$91.65 per hundredweight). Thus, the assessment revenue should be less than 1 percent of estimated grower revenue in 2009.

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 9, 2009, 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/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.

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 2009–10 crop year begins on October 1, 2009, 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 amended as follows:

PART 997—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: August 24, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

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DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2008–BT–STD–0019]

RIN 1904–AB90

Energy Conservation Standards for Residential Clothes Washers: Public Meeting and Availability of the Framework Document

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

ACTION: Notice of public meeting and availability of the framework document.

SUMMARY: The U.S. Department of Energy (DOE) will hold an informal public meeting to discuss and receive comments on issues that it will address in this rulemaking proceeding. The Department is requesting information from interested parties to assist in establishing energy conservation standards for residential clothes washers. The Department also encourages written comments on any subject within the scope of this proceeding. To inform interested parties and facilitate this process, DOE has prepared a draft framework document, available at http://www1.eere.energy.gov/buildings/appliance_standards/residential/clothes_washers.html.