

change to a different dental or vision plan that serves that area.

(ii) If you have since gained or lost an eligible *family member*, you may change your *type of enrollment* consistent with the change in the number of eligible *family members*.

(3) If you return to Federal service as a new hire after a break in service of 30 *days* or more, you may enroll if you were not previously enrolled, change your dental or vision plan, and/or change your *type of enrollment*.

#### Subpart F—Termination or Cancellation of Coverage

##### § 894.601 When does my FEDVIP coverage stop?

(a) If you no longer meet the definition of an eligible *employee* or *annuitant*, your FEDVIP coverage stops at the end of the pay period in which you were last eligible.

(b) If you go into a period of nonpay or insufficient pay, and you do not make direct premium payments, your FEDVIP coverage stops at the end of the pay period for which your agency, retirement system, or *OWCP* last made a premium allotment from your pay.

(c) If you are making direct premium payments, and you stop making the payments, your FEDVIP coverage stops at the end of the pay period for which you last made a payment.

(d) If you cancel your enrollment during an open season, your FEDVIP coverage stops at midnight of the *day* before the effective date of an open season change as set by OPM.

(e) If you are enrolled with a combination dental and vision *carrier* with a restricted service area, and you move outside the *carrier's* service area to a service area that does not offer a combination *carrier* and you change to a dental only or vision only *carrier*, your existing combination plan coverage will stop at midnight of the *day* before the effective date of your new plan coverage.

(f) If your FEDVIP carrier discontinues participation in the program at the end of the contract year, then you must change to another *carrier* during the open season, unless OPM establishes a different time. If the discontinuance is at a time other than the end of the contract year, OPM will establish a time and effective date for you to change your carrier. If you do not change your carrier within the time set by OPM, your coverage will stop at midnight of the *day* before the effective date set by OPM for coverage with another *carrier*.

##### § 894.602 May I cancel my enrollment at any time?

No. You may only cancel your enrollment during an open season. *Exceptions:* You may cancel your dental and/or vision enrollment if you transfer to an eligible position with a Federal agency that provides dental and/or vision coverage with 50 percent or more employer-paid premiums. You may also cancel upon your deployment or your spouse's deployment to active military duty. These cancellations will become effective at the end of the pay period that you submit your request.

##### § 894.603 Is there an extension of coverage and right to convert when my coverage stops or when a covered family member loses eligibility?

No. There is no extension of coverage or right to convert to an individual policy or Temporary Continuation of Coverage (TCC) when your FEDVIP coverage stops or when a *family member* loses eligibility under the Program.

#### Subpart G—Annuitants and Compensationers

##### § 894.701 May I keep my dental and/or vision coverage when I retire or start receiving workers' compensation?

(a) Your FEDVIP coverage continues if you retire on an immediate annuity or on a disability annuity, or start receiving *compensation* from *OWCP*.

(b) If you retire on a Minimum Retirement Age +10 annuity that you elect to postpone in accordance with 5 U.S.C. 8412(g), your FEDVIP coverage will stop when you separate from service. However, you may enroll again within 60 *days* of when your annuity starts.

(c) If you retire on a deferred annuity in accordance with 5 U.S.C. 8413, your FEDVIP coverage stops and you are not eligible to enroll.

##### § 894.702 May I participate in open season and make changes to my enrollment as an annuitant or compensationer?

Yes. *Annuitants* and *compensationers* may participate in open season and make enrollment changes under the same circumstances as active *employees*.

##### § 894.703 How long does my coverage as an annuitant or compensationer last?

Your coverage as an *annuitant* or *compensationer* continues as long as you continue receiving an annuity or *compensation* and pay your premiums, unless you cancel your coverage during an open season or terminate coverage due to insufficient annuity or *compensation*.

##### § 894.704 What happens if I retire and then come back to work for the Federal Government?

(a) If you have FEDVIP coverage as an *annuitant*, and you become reemployed in an eligible position in Federal service, you must contact the *Administrator* so it can send the request for allotments to your agency so your agency can start making the allotments from your pay.

(b) If you did not enroll in FEDVIP coverage as an *annuitant* and become reemployed in an eligible Federal position, you have 60 *days* to enroll in FEDVIP.

(c) If you enroll as an employee the *Administrator* will stop sending requests for allotments from your annuity.

(d) If your reemployment terminates, you must notify the *Administrator* within 30 days to have your allotments withheld from your annuity payments. Otherwise, your FEDVIP coverage will terminate due to non-payment of premiums.

#### Subpart H—Benefits in Underserved Areas

##### § 894.801 Will benefits be available in underserved areas?

(a) Dental and vision plans under FEDVIP will include underserved areas in their service areas and provide benefits to enrollees in underserved areas.

(b) In any area where a FEDVIP dental or vision plan does not meet OPM access standards, including underserved areas, enrollees may receive services from non-network providers.

(c) Contracts under FEDVIP shall include access standards as defined by OPM and payment levels for services to non-network providers in areas that do not meet access standards.

[FR Doc. E8–19761 Filed 8–25–08; 8:45 am]

BILLING CODE 6325–39–P

---

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 987

[Docket No. AMS–FV–08–0056; FV08–987–1 IFR]

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

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

**ACTION:** Interim final rule with request for comments.

---

**SUMMARY:** This rule decreases 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 begins October 1 and ends September 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective August 27, 2008. Comments received by October 27, 2008, will be considered prior to issuance of a final rule.

**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>.

**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.”

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, 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 decreases 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 \$0.60 is \$0.15 lower than the rate currently 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.

#### Initial 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 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 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 \$6,500,000.

According to the National Agricultural Statistics Service (NASS), data for the most recently completed crop year (2006) 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 decreases 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, currently in effect. The quantity of assessable dates for the 2008–09 crop year is estimated at 22,000,000 pounds. Thus, the \$0.60 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 \$1,800 per ton, or \$90 per hundredweight. No official NASS estimate is available yet for 2008. The average grower price for 2005–07 is \$1,517 per ton, or \$76 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 .83 percent (\$0.75 divided by \$90 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 .79 percent for the 2008–09 crop year (\$0.60 divided by \$76 per hundredweight). Thus, the assessment revenue should be well below 1 percent of estimated grower revenue in 2008.

This action decreases 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. Finally, interested persons are invited to submit comments on this interim final rule, including the regulatory and informational impacts of this action on small businesses.

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.

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.

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 is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2008–09 crop year begins on October 1, 2008, and the marketing order requires that the rate of assessment for each crop year applies to all assessable dates handled during such crop year; (2) the action decreases the assessment rate for assessable dates beginning with the 2008–09 crop year; (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; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this 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—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, 2008, an assessment rate of \$0.60 per hundredweight is established for California dates.

Dated: August 20, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E8–19697 Filed 8–25–08; 8:45 am]

**BILLING CODE 3410–02–P**

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 993**

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

#### **Dried Prunes Produced in California; Decreased Assessment Rate**

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule decreases 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 that 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 August 27, 2008. Comments received by October 27, 2008, will be considered prior to issuance of a final rule.

**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>.

#### **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.”

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 dried prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is