

# Proposed Rules

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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

[Doc. No. AMS-FV-09-0035; FV09-987-1 PR]

#### Domestic Dates Produced or Packed in Riverside County, CA; Changes to Nomination Procedures and a Reporting Date

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on revisions to the nomination procedures and a change to a reporting date under the California date marketing order (order). The order regulates the handling of domestic dates produced or packed in Riverside County, California, and is administered locally by the California Date Administrative Committee (CDAC or committee). This rule would change the method of polling for nominees to the committee and the date on which CDAC Form 6 is due. These changes are expected to assist in the administration of the order by updating and streamlining committee program operations.

**DATES:** Comments must be received by October 15, 2009.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. 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>. All comments should reference the document number, and the date and page number of this issue of the **Federal Register**, and will be made 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](mailto:Terry.Vawter@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 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](mailto:Jay.Guerber@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This proposal is issued under Marketing Agreement and Order No. 987, both as amended (7 CFR part 987), regulating the handling of domestic dates produced 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 proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

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. A 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 proposal invites comments on revisions to the nomination procedures and a reporting date under the California date marketing order. This rule would permit the committee to conduct nominations for member and alternate member positions on the committee through the mail or equivalent electronic means (including, but not limited to fax, or other technology, as available) rather than limit balloting to in-person polling on a specific date or absentee balloting.

This rule would also change the date on which CDAC Form 6 is due to the committee. Currently, the form is due by the 10th day of each month, but this rule would relax the reporting requirement by changing the due date to the 16th day of each month or such other date as the committee may prescribe. These changes were recommended unanimously by the committee at a meeting on October 30, 2008. A meeting of the Marketing Order Policy Review Subcommittee was held on October 21, 2008. At that meeting, the subcommittee discussed various proposals for improving committee operations, including these two proposed changes.

Section 987.24 of the order specifies that nominations shall be made no later than June 15 of every other year, and establishes procedures for nominations for membership on the committee by requiring the committee to establish a polling day for receiving committee nominations, and procedures for requesting and returning absentee ballots. This section also provides authority for the committee, with the approval of the Secretary, to recommend rules and regulations on the manner in which nominees may be obtained.

Section 987.124 of the order's rules and regulations further specifies the date, time, and procedure for polling, as well as for obtaining and casting absentee ballots.

At its meeting on October 30, 2008, the committee recommended that nominations be permitted through the mail or by other electronic means equivalent to the mail. When the order

was promulgated, there were a number of absentee date garden owners, and the advent of the polling day permitted the owners to travel to the area to vote on nominees to the committee.

Section 987.62 of the date order provides authority for the committee to require reports of dates shipped from handlers. In § 987.162 of the order's rules and regulations, CDAC Form 6 is specified as the handler acquisition and disposition report, and is currently due by the 10th day of each month.

There also is a California State marketing program, administered by the California Date Commission (commission). Under that program, the due date for the same type of information is the 16th of each month. Changing the due date of the CDAC Form 6 would simplify reporting by handlers as well as coordinate the operations of the committee and commission, since the committee staff is also the commission staff.

#### **Deliberations on the Proposed Changes**

In its deliberations on mail balloting, the committee commented that the current system is outmoded and cumbersome. Authorizing the committee to conduct nominations via mail or equivalent electronic means could result in greater industry participation in the nomination process, with the possible result being greater committee outreach and diversity of committee representation.

In their deliberations regarding the due date for CDAC Form 6, the committee discussed the confusion created by the State and Federal programs' differing due dates. Handlers report to the committee on the 10th day of the month and to the commission on the 16th day of the month. By making both reports due the same day, handlers could report more conveniently, and committee and commission operations would be coordinated and streamlined.

#### **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 proposal would authorize the committee to conduct nominations via mail or equivalent electronic means, and would revise the due date for CDAC Form 6 from the 10th day each month to the 16th day of each month or such other date as the committee may prescribe.

The committee unanimously recommended these changes at their meeting on October 30, 2008. At the meeting, the committee discussed the impact of these changes on handlers and producers in terms of cost. Handlers and producers would be positively impacted by mail balloting, as they would not have to set aside time to drive to the committee offices to vote for committee members and alternate members, nor would they have to plan ahead to request absentee ballots.

Handlers would also be positively impacted by the change in the due date of the CDAC Form 6, since changing the due date of the committee form brings the requirement into line with the due date of the commission form, which seeks identical information. Handlers will simply be able to file the forms on the same day. Committee and commission operations would, thus, be streamlined.

The benefits for this rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

The committee discussed alternatives to these changes, including not conducting mail balloting or changing the due date of the CDAC Form 6. However, mail balloting would provide the industry with increased flexibility, outreach, and convenience by offering an opportunity for polling on more than just one day. A change of the due date for the CDAC Form 6 would also increase the reporting handlers' convenience. Both changes would improve the administration of the program and keep informational data filing uniform between the committee and the commission. For those reasons, the changes are advantageous to all entities, as well as to the committee staff. As a result, the committee members unanimously agreed that these changes should be recommended and should be in effect for the 2009–10 crop year, beginning on October 1, 2009.

A meeting of the Marketing Order Policy Review Subcommittee was held on October 21, 2008. At that meeting, the subcommittee discussed various proposals for improving committee operations, including these two proposed changes.

This proposed rule would provide more flexibility on committee polling procedures and change the due date for CDAC Form 6 under the date marketing order. Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large date handlers.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements contained in this rule have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. 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, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this 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.

In addition, the committee's meeting was widely publicized throughout the date industry, and all interested persons were invited to attend the meeting and

encouraged to participate in committee deliberations on all issues. Like all committee meetings, the October 30, 2008, meeting was a public meeting and all entities, both large and small, were encouraged to express their views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

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 proposal. Thirty days is deemed appropriate because: (1) This rule should be in place at the beginning of the crop year, October 1, 2009; (2) this rule was unanimously recommended at a public meeting; and (3) this rule is a relaxation of nomination procedures and reporting requirements. All written comments timely received will be considered before a final determination is made on this matter.

#### 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—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.

#### **§ 987.124 [Amended]**

2. In § 987.124, paragraph (a) is revised to read as follows:

#### **§ 987.124 Nomination and polling.**

(a) Date producers and producer-handlers shall be provided an opportunity to nominate and vote for individuals to serve on the committee. For this purpose, the committee shall, no later than June 15 of each even-numbered year, provide date producers and producer-handlers nomination and balloting material by mail or equivalent electronic means, upon which producers and producer-handlers may

nominate candidates and cast their votes for members and alternate members of the committee in accordance with the requirements in paragraphs (b) and (c) of this section, respectively. All ballots are subject to verification. Balloting material should be provided to voters at least 2 weeks before the due date and should contain, at least, the following information:

(1) The names of incumbents who are willing to continue to serve on the committee;

(2) The names of other persons willing and eligible to serve;

(3) Instructions on how voters may add write-in candidates;

(4) The date on which the ballot is due to the committee or its agent; and

(5) How and where to return ballots.

\* \* \* \* \*

3. Section 987.162 is revised to read as follows:

#### **§ 987.162 Handler acquisition and disposition.**

(a) Handlers shall file CDAC Form No. 6 with the committee by the 16th of each month or such other date as the committee may prescribe, reporting at least the following for the preceding month:

(1) Their acquisitions of field run dates;

(2) Their shipments of marketable dates in each outlet category;

(3) Their shipments of free dates and disposition of restricted dates, whenever applicable; and

(4) Their purchases from other handlers of DAC, export, product, graded, and field run dates.

(b) In addition, this report shall include the names and addresses of any producers not previously identified pursuant to § 987.38, the quantity of dates acquired from each producer, the location of such producer's date garden, the acreage of that garden, and the estimated current season's production from that garden.

Dated: September 9, 2009.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E9–22065 Filed 9–14–09; 8:45 am]

**BILLING CODE 3410–02–P**

## **NUCLEAR REGULATORY COMMISSION**

### **10 CFR Part 72**

[NRC–2008–0361]

RIN 3150–A109

#### **License and Certificate of Compliance Terms**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations that govern licensing requirements for the independent storage of spent nuclear fuel. These proposed amendments include changes that would enhance the effectiveness and efficiency of the licensing process for spent nuclear fuel storage. Specifically, they would clarify the term limits for dry storage cask Certificates of Compliance (CoCs) and independent spent fuel storage installation (ISFSI) specific licenses. The proposed amendments would also provide consistency between the general and specific ISFSI license requirements, and allow general licensees subject to these regulations to implement changes authorized by an amended CoC to a cask loaded under the initial CoC or an earlier amended CoC (a “previously loaded cask”).

**DATES:** The comment period expires November 30, 2009. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include Docket ID NRC–2008–0361 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in