

pound equivalent of onions. Therefore, the estimated assessment revenue for the 2009–10 fiscal period as a percentage of total f.o.b. revenue could range between 0.1 and 0.25 percent.

This rule continues in effect the action that decreased 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 South Texas onion production area 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.

This action imposes no additional reporting or recordkeeping requirements on either small or large South Texas onion 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.

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

Comments on the interim final rule were required to be received on or before October 5, 2009. No comments were received. Therefore, for the reasons given in the interim final rule, we are adopting the interim final rule as a final rule, without change.

To view the interim final rule, go to <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a0086c>.

This action also affirms information contained in the interim final rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (74 FR 38505, August 4, 2009) will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

#### PART 959—ONIONS GROWN IN SOUTH TEXAS

■ Accordingly, the interim final rule amending 7 CFR part 959, which was published at 74 FR 38505 on August 4, 2009, is adopted as a final rule, without change.

Dated: November 17, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–28144 Filed 11–23–09; 8:45 am]

BILLING CODE 3410–02–P

#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

##### 7 CFR Part 987

[Doc. No. AMS–FV–09–0035; FV09–987–1 FR]

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

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

**ACTION:** Final rule.

**SUMMARY:** This rule revises the nomination procedures and changes 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 changes the method of polling for nominees to the Committee and the date on which CDAC Form 6 is due. These changes will assist in the administration of the order by updating and streamlining Committee program operations.

**DATES:** *Effective Date:* November 25, 2009.

**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 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 final rule 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 final rule 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 rule revises the nomination procedures and changes a reporting date under the order. This rule changes the method of polling for nominees to the Committee and the date on which CDAC Form 6 is due for the California Date Administration Committee. These changes will assist in the administration of the order by updating and streamlining Committee program operations. This final rule permits 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 final rule also changes 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

final rule relaxes 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 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 will 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 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 can report more conveniently, and Committee and commission operations will be coordinated and streamlined.

#### **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 revised 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 \$1,580 per ton). At that average price, a producer would have to have over 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 133 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 final rule authorizes the Committee to conduct nominations via mail or equivalent electronic means, and revises 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 will be positively impacted by mail balloting, as they will not have to set aside time to drive to the Committee offices to vote for Committee members and alternate members, nor will they have to plan ahead to request absentee ballots.

Handlers will 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 will, thus, be streamlined.

The benefits for this final 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 provides the industry with increased flexibility, outreach, and convenience by offering an opportunity for polling on more than just one day. Changing the due date for the CDAC Form 6 will also increase the reporting handlers' convenience. Both changes 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 changes.

This final rule provides more flexibility on Committee polling procedures and changes the due date for CDAC Form 6 under the date marketing order. Accordingly, this action will 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. As noted in the initial regulatory flexibility analysis, 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 able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on September 15, 2009 (74 FR 47124). The proposed regulatory text that was published in the **Federal Register** contained incorrect references that have been corrected in this final rule. Copies of the rule were mailed or sent via facsimile to all Committee members and date handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending October 15, 2009, was provided to allow 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 matters 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.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are already shipping dates for the 2009-2010 crop. Therefore, this rule should be implemented as soon as possible. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, 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. 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)(1) and (b)(2) 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: November 17, 2009.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E9-28153 Filed 11-23-09; 8:45 am]

BILLING CODE 3410-02-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Bureau of Customs and Border Protection**

## **DEPARTMENT OF THE TREASURY**

### **19 CFR Part 24**

[CBP Dec. 09-44; Docket No. USCBP 2007-0111]

RIN 1505-AB97

### **Electronic Payment and Refund of Quarterly Harbor Maintenance Fees**

**AGENCIES:** Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends title 19 of the Code of Federal Regulations by