

due recognition to the differences in the production and marketing of tart cherries grown in the production area; and

5. All handling of tart cherries grown in the production area as defined in the marketing order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because these proposed changes have been widely publicized and implementation of the changes, if adopted, would be desirable to benefit the industry prior to the next crop year which begins on July 1, 2012. All written exceptions timely received will be considered and a grower referendum will be conducted before any of these proposals are implemented.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Revise the introductory paragraph in § 930.10 to read as follows:

§ 930.10 Handle.

Handle means the process to brine, can, concentrate, freeze, dehydrate, pit, press or puree cherries, or in any other way convert cherries commercially into a processed product, or divert cherries pursuant to § 930.59, or to otherwise place cherries into the current of commerce within the production area or from the area to points outside thereof: Provided, That the term handle shall not include:

\* \* \* \* \*

3. Revise paragraphs (d) and (e) of § 930.50 to read as follows:

§ 930.50 Marketing Policy.

\* \* \* \* \*

(d) Final percentages. No later than September 15 of each crop year, the Board shall review the most current information available including, but not limited to, processed production and grower diversions of cherries during the current crop year. The Board shall make

such adjustments as are necessary between free and restricted tonnage to achieve the optimum supply and recommend such final free market tonnage and restricted percentages to the Secretary and announce them in accordance with paragraph (h) of this section. The difference between any final free market tonnage percentage designated by the Secretary and 100 percent shall be the final restricted percentage. With its recommendation, the Board shall report on its consideration of the factors in paragraph (e) of this section.

(e) Factors. When computing preliminary and interim percentages, or determining final percentages for recommendation to the Secretary, the Board shall give consideration to the following factors:

- (1) The estimated total production of cherries;
(2) The estimated size of the crop to be handled;
(3) The expected general quality of such cherry production;
(4) The expected carryover as of July 1 of canned and frozen cherries and other cherry products;
(5) The expected demand conditions for cherries in different market segments;
(6) Supplies of competing commodities;
(7) An analysis of economic factors having a bearing on the marketing of cherries;
(8) The estimated tonnage held by handlers in primary or secondary inventory reserves;
(9) Any estimated release of primary or secondary inventory reserve cherries during the crop year; and
(10) The quantity of grower-diverted cherries during the crop year.

\* \* \* \* \*

4. Revise paragraph (a) of § 930.58 to read as follows:

§ 930.58 Grower Diversion privilege.

(a) In general. Any grower may voluntarily elect to divert, in accordance with the provisions of this section, all or a portion of the cherries which otherwise, upon delivery to a handler, would become restricted percentage cherries. Upon such diversion and compliance with the provisions of this section, the Board shall issue to the diverting grower a grower diversion certificate which such grower may deliver to a handler. Any grower diversions completed in accordance with this section, but which are undertaken in districts subsequently exempted by the Board from volume

regulation under § 930.52(d), shall qualify for diversion credit.

\* \* \* \* \*

Dated: November 3, 2011.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Doc. No. AMS-FV-10-0025; FV10-987-1 PR]

Domestic Dates Produced or Packed in Riverside County, CA; Proposed Amendments to Marketing Order 987 and Referendum Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This rule proposes seven amendments to Marketing Agreement and Order No. 987 (order), which regulates the handling of domestic dates produced or packed in Riverside County, California, and provides growers with the opportunity to vote in a referendum to determine if they favor the changes. Five amendments were proposed by the California Date Administrative Committee (CDAC or committee), which is responsible for local administration of the order. These proposed amendments are intended to improve administration of and compliance with the order and reflect current industry practices.

In addition to the committee's proposals, the Agricultural Marketing Service (AMS) proposes two amendments that would provide for a continuance referendum every six years, and would establish term limits of up to six consecutive years for committee members. These proposals would allow producers to indicate continued support for the order and provide all interested industry members the opportunity to serve on the committee.

DATES: The referendum will be conducted from January 16, 2012, through February 3, 2012. The representative period for the purpose of the referendum is October 1, 2010, through September 30, 2011.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Senior Marketing Specialist, Marketing Order and Agreement Division, Fruit and

Vegetable Programs, AMS, USDA; Telephone: (559) 487-5110, Fax: (559) 487-5906, or Kathleen M. Finn, Rulemaking Team Program Manager, 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 Email: [Martin.Engeler@ams.usda.gov](mailto:Martin.Engeler@ams.usda.gov) or [Kathy.Finn@ams.usda.gov](mailto:Kathy.Finn@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Laurel May, 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 Email: [Laurel.May@ams.usda.gov](mailto:Laurel.May@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This 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 applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900) authorize amendment of the order through this informal rulemaking action.

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.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110-246) made changes to section 18c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August, 21, 2008). The additional supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend federal fruit, vegetable, and nut marketing agreements and orders if certain criteria are met.

AMS has considered the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and other relevant matters, and has determined that amending the order as proposed by the committee could appropriately be accomplished through informal rulemaking.

The committee's proposed amendments were recommended following deliberations at public meetings on October 30, 2008; October 29, 2009; and February 25, 2010. The proposed amendments were first submitted to AMS on May 29, 2009. After further discussions with AMS, the committee submitted revised proposals to AMS on March 2, 2010.

A proposed rule soliciting comments on the proposed amendments was issued on June 6, 2011, and published in the **Federal Register** on June 14, 2011 (76 FR 34618). No comments were received. AMS will conduct a producer referendum to determine support for the proposed amendments. If appropriate, a final rule will then be issued to effectuate the amendments favored by producers in the referendum.

The committee's proposed amendments would: (1) Authorize the committee to recommend regulatory exemptions for certain date varieties if market conditions warrant such exemption. Currently the order only provides for exemptions for handlers who sell dates directly to consumers in limited market outlets; (2) Increase the terms of office for committee members and alternates from two to three years; (3) Authorize the committee to conduct business by means of telephone or video conference technologies. Currently all committee meetings must be assembled; (4) Authorize the committee to collect interest charges and late fees on delinquent assessment payments. Currently, the order does not provide authority for the collection of interest and late fees; and (5) Authorize the committee to build and maintain an operating monetary reserve not to exceed one year's average expenses.

Currently, the committee is authorized to maintain an operating reserve not to exceed 50 percent of an average year's expenses.

AMS further proposes to amend the order by: (1) Requiring that a producer referendum be conducted every six years to determine continued support for the order; and (2) establishing term limits of no longer than two consecutive terms of office or six consecutive years for committee members and alternates. Finally, AMS proposes to make conforming changes to the order as may be necessary to conform to any amendment to the order that may result from this rulemaking action.

### Proposal Number 1—Regulatory Exemptions

Section 987.5 of the order defines the date varieties that are regulated under the order. Regulated varieties are subject to the minimum grade, size, inspection, certification, volume control, interhandler transfer, container, reporting, and assessment requirements authorized under §§ 987.39 through 987.51, §§ 987.61 through 987.68, and § 987.72 of the order.

Currently, § 987.5 lists four date varieties for regulation under the order, including the Deglet Noor, Zahidi, Halawy, and Khadrawy varieties. At the time the order was established, these four varieties were produced or handled in Riverside County in sufficient quantities to warrant regulation. At times, production of some varieties may decline to the point that the committee believes that the cost to handlers of inspecting and reporting those varieties outweighs the benefits of doing so. For instance, the committee reports that the cost of regulating two date varieties currently outweighs the benefit of doing so as very little assessment revenue is generated by the handling of those two varieties. In such cases, the committee believes it should have the authority to recommend regulatory exemption of those varieties until such time as it is again appropriate to regulate them.

To address this issue, the committee proposed amending the order by temporarily suspending the varieties currently produced in minimal quantities from inclusion in § 987.5—Dates. However, AMS believes that the committee would have greater flexibility if it were authorized to recommend regulatory exemptions for varieties produced, with the approval of the Secretary, through the informal rulemaking process. In this way, any future changes in production levels or other market considerations for any variety could be addressed through informal rulemaking.

Section 987.52 authorizes the committee to exempt handlers of dates for sale in certain market outlets from regulation if those sales are unlikely to interfere with the objectives of the order. However, the section does not authorize the exemption of dates sold into regular markets by variety. Such authority would allow the committee to recommend, subject to approval of the Secretary, that certain varieties be exempted from the order's regulations through informal rulemaking. Such authority should be broad enough to include exemptions for a variety of reasons, including periods of minimal production. This flexibility would allow the committee to respond to changes in the production and marketing environment in a timely manner. As production and market conditions change, the committee could recommend lifting the regulatory exemptions, as appropriate.

For example, two varieties regulated under the order are currently being produced in very small quantities. New date garden plantings of those varieties are still immature, and have not reached full production. Under the proposed amendment, the committee could recommend, through the informal rulemaking process, that those two varieties be exempted from the order's regulations. When the trees of each variety mature and are producing in sufficient quantities to warrant regulation, the committee could recommend that the variety-specific exemptions be removed.

For the reasons stated above, it is proposed that § 987.52, Exemption, be amended by designating the current text of that section as paragraph (a) and adding a new paragraph (b) providing authority for the committee to recommend that any variety may be exempt from regulations established pursuant to §§ 987.39 through 987.51, §§ 987.61 through 987.68, and § 987.72.

#### **Proposal Number 2—Terms of Office**

Section 987.23 of the order specifies that the terms of office for committee members and alternates are two years, beginning on August 1. Section 987.24 of the order specifies that nominations for committee positions are held by June 15, every other year. The committee proposed amending the order to extend member and alternate terms of office from two to three years.

The terms of office for another California date industry program, the California Date Commission (commission), are three years. Some committee members may also serve on the commission. Nominations for the two programs occasionally, but not

always, take place within a few weeks of each other. Because nominations coincide in some years and don't coincide in others, the committee believes that voters can become confused about whether or not they have submitted ballots, and thus are less likely to participate in the committee's nomination process. The committee believes that extending terms of office to three years and synchronizing nominations with those of the commission would improve the nomination process and encourage greater participation in committee nominations.

Additionally, the number of date producers and handlers in the production area has declined over time, making it increasingly difficult to find new candidates to serve as members and alternates on the nine-member committee every other year. The committee believes that extending the terms of office for one year would give the industry more time to identify and recruit potential new committee members between nomination periods.

The current committee was nominated in 2010 and is expected to serve until 2012. If this amendment is adopted, terms of office of the current committee members and alternates would be extended until 2014, or whenever a new committee is selected by the Secretary. Thereafter, the three-year terms of office would commence with the new committee selected in 2014. This would coincide with the commission's nomination cycle.

For the reasons stated above, it is proposed that § 987.23 of the order be amended to change committee member and alternate terms of office from two to three years. The section should also specify that the terms of office of members and alternates serving at the time the amendment is effectuated would end on July 31, 2014. Further, Section 987.24 should be amended to specify that nominations for committee positions are held by June 15 of every third year rather than every other year.

#### **Proposal Number 3—Committee Meetings**

Section 987.31 of the order specifies procedures for conducting committee business. Quorum requirements are defined, and the minimum voting requirements for various matters are specified. The section specifies that votes cast at assembled meetings shall be cast in person. The section also authorizes the committee to vote on any proposition by mail, telephone, or telegram after all members and alternates acting as members have received identical explanations about

the proposition. Telephone votes must be confirmed in writing within two weeks. Actions approved by mail, telephone, or telegram voting must be unanimous to be valid.

Currently, the order does not authorize the committee to conduct business meetings by telephone or other means of modern communication technology, such as video conference. The committee proposed amending the order to authorize the use of such technology in certain situations.

The use of telephone conference and video conference capability has become standard in the date industry, as well as in other marketing order programs. Use of such technology allows producers and handlers to address urgent committee business with minimal disruption to their individual business responsibilities. Telephone and video conferences also bolster participation by other interested parties who would otherwise be unable to participate in industry meetings due to the constraints of time and distance.

The committee believes that the use of telephone and video conference technology would be appropriate in certain situations, such as when the matters to be discussed are minor, or when emergencies demand immediate decisions by the committee. The committee also believes that some business matters should be addressed at assembled meetings, and that alternate meeting formats would not be appropriate for all situations. The committee proposed that the chairperson should have the discretion to determine the appropriate format for any committee meeting.

There could be some situations in which the chairperson determines that members may participate in assembled meetings by telephone or other means of communication. Although the member's alternate may be present at the same assembled meeting, the committee believes that the member should retain the right to vote on any issue that comes before the committee in that meeting, even if he or she is participating via telephone or videoconference. Therefore, the requirement that votes at assembled meetings shall be cast in person should be removed. Nevertheless, the committee believes that votes cast by telephone should continue to be confirmed in writing within two weeks of the meeting. Finally, because telegrams are no longer in standard use, authority to vote by telegram should be removed.

For the reasons stated above, it is proposed that § 987.31, Procedure, be amended by: Revising paragraph (d) to provide for participation in assembled

committee meetings as well as telephone, video conference, or other types of meetings; providing the committee chairperson with discretion to determine the appropriate meeting format and whether members may participate in assembled meetings by telephone or other means; clarifying that members attending assembled meetings by alternate means of communication retain the same voting privileges they would otherwise have; and removing the requirement that votes at assembled meetings shall be cast in person. Paragraph (e) of § 987.31 would be amended by removing the words “or telegram.”

#### **Proposal Number 4—Interest and Late Payment Charges**

Section 987.72 requires date handlers to pay the committee assessments upon merchantable and utility dates they have certified as such. Funds to administer the order are derived from such assessments. The committee, with USDA approval, formulates annual budgets of expenses and recommends appropriate assessment rates. The committee's budgeted expenditures include those for general administration of the program, as well as the cost of promotional programs and marketing and media consultants.

Currently, the order does not authorize the committee to charge interest or late payment charges for delinquent assessment payments. The committee believes that adding such authority would provide greater incentive for handlers to make assessment payments on time. This in turn would help ensure that the committee is able to meet its financial obligations and continue to fund its programs on a continuing basis.

Charging interest and late payment charges on unpaid financial obligations is commonplace in the business world, and implementation of such charges would bring the committee's financial operations in line with standard business practices. Such charges would remove any financial advantage for those who do not pay on time while they benefit from committee programs, creating a more level playing field for the industry.

The committee recommended amending the order to authorize the collection of interest and late payment charges for delinquent payments. Such authority would allow the committee to establish, through informal rulemaking, parameters for implementation, including timeframes and appropriate interest and late payment charges that would be imposed if necessary. This authority is intended to strengthen

compliance with the order's assessment requirements.

For the reasons stated above, it is proposed that paragraphs (b) through (d) of § 987.72 be redesignated paragraphs (c) through (e), respectively, and that a new paragraph (b) be added to the order to specify that any assessment not paid by a handler within a period of time specified by the committee may be subject to an interest or late payment charge, or both. The new paragraph would further specify that the period of time, interest rate, and late payment charge shall be as recommended by the committee and approved by the Secretary.

#### **Proposal Number 5—Operating Reserve**

Paragraph (c) of § 987.72 currently authorizes the committee to establish and maintain a monetary operating reserve in an amount not to exceed 50 percent of an average year's expenses. The average year's expenses are calculated using the actual expenses of the five most recent crop years. Should the existing reserve ever exceed the recalculated average, there is no requirement to lower the reserve to meet that average. Funds in the reserve are available for use by the committee to meet its financial obligations in connection with administration of the order and its programs. Annual budgets and assessment rates are revised as appropriate in an effort to maintain the authorized operating reserve balance.

The committee occasionally uses reserve funds when the assessment revenues they have collected are not sufficient to meet their budgeted expenses. This may happen when the date crop is smaller than expected, which reduces the total amount of assessments paid by handlers. In other instances, the committee may desire later in the year to take advantage of a promotional opportunity for which it had not budgeted at the beginning of the year. With the approval of the Secretary, the committee could revise their budget to include the promotional program and use reserve funds to cover its costs without increasing the current assessment rate.

In crop years with unexpectedly high production, the approved assessment rate may generate excess funds. Under the order's current provisions, the committee is only authorized to retain an amount not to exceed 50 percent of an average year's expenses. Any excess funds must be returned to handlers or applied as a credit against their accounts for the upcoming year.

The committee proposed raising the operating reserve limit from 50 percent of an average year's expenses to an

amount not to exceed one year's average expenses. This would allow the committee to retain more surplus assessment revenues they may collect. A larger operating reserve would strengthen the committee's continuity and confidence in managing committee business. A larger reserve would provide sufficient funds to meet the committee's budgeted financial obligations, including the maintenance of strategic marketing programs, in short crop years as well as provide the flexibility to respond to unexpected opportunities. The committee could recommend annual assessment rates. Over a number of years, the reserve could gradually increase until the balance approximates one year's average expenses, as calculated using the five most recent years' actual expenses.

For the reasons stated above, it is proposed that paragraph (c) of § 987.72, which would be redesignated paragraph (d) as described under amendment Proposal Number 4 above, be further amended to authorize the committee to build and maintain an operating monetary reserve not to exceed one year's average expenses, based upon the actual expenses of the five most recent crop years.

#### **Proposal Number 6—Continuance Referenda**

AMS proposes to amend the order by adding a provision for continuance referenda every six years. Provision for periodic continuance referenda would offer producers the opportunity to indicate ongoing support for the order and its programs. Experience has shown that marketing order programs need significant industry support to operate effectively. Continuance of the date order would require the favorable vote of at least two-thirds of those voting, or of those representing at least two-thirds of the production volume represented in the referendum. This is the same support that is typically required for issuance or amendment of an order.

The order was last amended on February 1, 1978 (43 FR 4253). Since that time, USDA has recommended that producers of commodities regulated under federal marketing orders be offered the opportunity to participate in periodic continuance referenda. The California date marketing order does not currently provide for continuance referenda. Therefore, it is recommended that § 987.82—Effective time, suspension, or termination, be amended by redesignating paragraph (b)(3) as paragraph (b)(4) and adding a new paragraph (b)(3) to provide that a continuance referendum shall be conducted six years after the

amendment becomes effective and every six years thereafter.

In paragraph (b)(2) of § 987.82, the word “growers,” which appears in the heading and in the text of that paragraph, should be replaced with the word “producers” to conform with the definition provided in § 987.7 of the order; and the word “he,” in reference to the Secretary, should be replaced by the words “he or she” to modernize the section.

#### **Proposal Number 7—Term Limits**

AMS proposes to amend the order by establishing term limits on the number of consecutive terms a person may serve on the committee.

Currently, the term of office for each member and alternate member of the committee is two years. Committee members and alternates continue to serve until their successors have been selected by the Secretary and have qualified. The order does not specify any term limits for members or alternates. Members and alternates may be selected to serve consecutive terms in those positions, as long as they continue to be eligible and willing to do so.

As explained under Proposal number 2 above, the committee has proposed to amend the order to provide for three-year terms of office. AMS is proposing to further amend the order to specify that members may serve up to two consecutive three-year terms, not to exceed six consecutive years. This proposal for a limitation on tenure would not apply to alternates. Once a member has served on the committee for two consecutive terms, or six years, the member would be required to step down for at least one year before being eligible to serve as a member again. The member could serve as an alternate during that time.

AMS's experience with similar marketing programs is that establishing tenure limits is a means to increase industry participation on the committee and in its programs. By inviting potential new members to serve, small and large entities who have not been actively involved previously may be encouraged to take part in the order's activities and gain committee experience.

For the reasons stated above, it is proposed that § 987.23 be further amended by specifying that members may serve up to two consecutive three-year terms, not to exceed six consecutive years as members. There would be no such limitation for alternates. After serving for six consecutive years, members would be required to step down for at least one year before being eligible to serve again.

If the order is amended to allow three-year terms of office, members who were appointed in 2010 and continued to serve until 2014 would be allowed to serve one additional three-year term of office before being required to step down. Any other service prior to the order amendment would not count toward the term limit.

#### **Conforming Changes to Administrative Rules and Regulations**

Adoption of two of the proposed amendments to the order would require that conforming changes be made to § 987.124 of the order's administrative rules and regulations. These changes would not be voted upon by producers in the referendum, but would be made as conforming changes if Proposal Number 2, to make terms of office three years long, and/or Proposal Number 7, to add term limits, are approved by voters participating in the referendum.

Currently, paragraph (a) of § 987.124 specifies that nominations materials are provided to producers and producer-handlers no later than June 15 of each even numbered year. If the order is amended to provide for three-year terms of office as explained in Proposal number 2 above, nominations would be conducted every three years, rather than every two years. Therefore, § 987.124(a) should be changed to specify that ballot materials are provided to producers and producer handlers no later than June 15 of every third year.

Paragraph (a)(1) of § 987.124 currently specifies that the ballots should contain the list of incumbents who are willing to continue serve on the committee. As explained above, some incumbents may no longer be eligible to serve in their positions if the proposal to add term limits is adopted. Therefore, § 987.124(a)(1) should be revised to clarify that the names of incumbents who are both willing and eligible to continue serving should be listed on the ballots.

#### **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 8 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), the 2010 crop yield was approximately 7,080 pounds, or 3.54 tons, of dates per acre. NASS estimates that the 2010 grower price was approximately \$0.585 per pound, or \$1,170 per ton. Thus, the value of date production in 2010 averaged about \$4,142 per acre (7,080 pounds per acre times \$0.585 per pound). At that average price, a producer would have to farm over 181 acres to receive an annual income from dates of \$750,000 (\$750,000 divided by \$4,142 per acre equals 181.1 acres). According to committee staff, the majority of California date producers farm fewer than 181 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.

The amendments proposed by the committee would authorize the committee to recommend regulatory exemptions for dates by variety, provide for three year terms of office for committee members, provide for committee meetings by telephone and other means of communication, authorize an operating monetary reserve not to exceed one year's average expenses, and authorize the collection of interest and late payment charges on delinquent assessment payments.

Amendments proposed by AMS would provide for continuance referenda every six years, and would specify term limits of not more than six consecutive years for committee positions. Conforming changes to the order's administrative rules and regulations would be made as necessary to facilitate implementation of any amendments approved by voters in the referendum. Specifically, the committee's nomination and polling procedures would be modified to require that balloting materials be provided to producers by June 15 of every third year.

The committee's proposed amendments were unanimously recommended at public meetings held

on October 30, 2008; October 29, 2009; and February 25, 2010. The committee believes that each of their proposed amendments would benefit producers and handlers of all sizes.

If granted authority to temporarily exempt certain date varieties from regulation, the committee could determine whether the costs of collecting assessments and reports on individual varieties are warranted. Handler burden related to those functions would be reduced for exempted varieties. Decreases in handler assessment obligation and reporting costs could be passed on to producers. Administrative costs related to enforcing regulatory compliance for those varieties would also be reduced.

Producer and handler participation in committee nominations is expected to improve if member terms of office are extended from two to three years. Extending the terms of office would afford the committee more time to identify and develop potential new members between committee selections. Coordinating committee nomination periods with those of other industry programs is expected to reduce voter confusion and increase the number of ballots returned, thus improving producer and handler representation on the committee.

Adding authority for alternative meeting formats is expected to improve participation in committee deliberations by industry members of all sizes. Such authority would minimize the time that committee members would be required to be away from their individual businesses. Authorizing the chairperson to determine the format for each meeting would ensure that critical committee business is addressed appropriately. By providing greater flexibility for meeting attendance and participation, the committee hopes to benefit from the input of a greater number of interested persons whose perspectives and ideas could improve the marketing of California dates, which would in turn benefit both producers and handlers.

Authorizing the committee to impose interest and late payment charges on delinquent assessments is intended to encourage handlers to make payments on a timely basis. There would be no additional cost to handlers who comply with the order's assessment requirements. Timely assessment payments allow the committee to make and keep financial obligations with regard to operation of its programs, including marketing and promotion, which are intended to benefit all producers and handlers.

If authority to build and maintain an operating reserve equal to one year's average expenses is added to the order, the committee could recommend increases to their assessment rate in order to gradually build the reserve. During high production years, excess assessments could be added to the reserve until the fund's limit is reached. The larger operating reserve would help ensure that the committee has sufficient funds to meet its financial obligations and maintain critical marketing programs, even during short crop years. Such stability is expected to allow the committee to conduct programs that will benefit all entities, regardless of size.

AMS's proposal to add provision for continuance referenda is expected to afford producers the opportunity to indicate ongoing support for the order and its programs. The proposal to add term limits is expected to encourage participation on the committee by all interested industry members. Support for the program, and active participation on the committee by a diverse group of industry members, are expected to benefit all producers and handlers by ensuring that the program continues to meet the industry's evolving needs.

Proposed changes to the order's nomination and polling regulations are administrative in nature and are intended to facilitate implementation of the proposed amendments, if adopted.

Where measurable, the costs outlined in this analysis are expected to be proportional to the size of business, so smaller businesses should not be unduly burdened. Benefits associated with improved efficiencies and greater representation on the committee should accrue to all entities, regardless of size.

Alternatives to these proposals include making no changes at this time. However, the proposed changes are necessary to update administration of the order to reflect current industry practices, provide consistent funding that will enable the committee to maintain valuable marketing programs, and provide greater opportunity for committee participation.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178, Vegetable and Specialty Crops. No changes in those requirements as a result of this proceeding are anticipated. Should any changes become necessary, they would be submitted to OMB for approval.

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.

The committee's meetings, at which these proposals were discussed, were widely publicized throughout the date industry. All interested persons were invited to attend the meetings and encouraged to participate in committee deliberations on all issues. Like all committee meetings, the meetings were public, and all entities, both large and small, were encouraged to express their views on these proposals.

A proposed rule concerning this action was published in the **Federal Register** on June 14, 2011 (76 FR 34618). 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 July 14, 2011, was provided to allow interested persons to respond to the proposal. No comments were received in response to the proposal.

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/MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

### Findings and Conclusions

The findings and conclusions and general findings and determinations included in the proposed rule set forth in the June 14, 2011, issue of the **Federal Register** are hereby approved and adopted.

### Marketing Order

Annexed hereto and made a part hereof is the document entitled "Order Amending the Order Regulating the Handling of Dates Produced or Packed in Riverside County, California." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and

conclusions. *It is hereby ordered*, That this entire rule be published in the **Federal Register**.

**Referendum Order**

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR part 900.400–407) to determine whether the annexed order amending the order regulating the handling of dates produced or packed in Riverside County, California is approved by growers, as defined under the terms of the order, who during a representative period were engaged in the production of dates in the production area. The representative period for the conduct of such referendum is hereby determined to be October 1, 2010, through September 30, 2011.

The agents of the Secretary to conduct such referendum are designated to be Terry Vawter and Jeff Smutny, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, or Email: *Terry.Vawter@ams.usda.gov* or *Jeffrey.Smutny@ams.usda.gov*, respectively.

**List of Subjects in 7 CFR Part 987**

Dates, Marketing agreements, Reporting and recordkeeping requirements.

Dated: November 3, 2011.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

**Order Amending the Order Regulating the Handling of Dates Produced or Packed in Riverside County, California <sup>1</sup>**

*Findings and Determinations*

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof,

would tend to effectuate the declared policy of the Act;

2. The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of dates produced or packed in the production area (Riverside County, California) in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order;

3. The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. The marketing agreement and order, as amended, and as hereby proposed to be further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of dates produced or packed in the production area; and

5. All handling of dates produced or packed in the production area as defined in the marketing agreement and order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

**Order Relative to Handling**

*It is therefore ordered*, That on and after the effective date hereof, all handling of dates grown or packed in Riverside County, California shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing order amending the order contained in the proposed rule issued by the Administrator on June 6, 2011, and published in the **Federal Register** (76 FR 34618) on June 14, 2011, will be and are the terms and provisions of this order amending the order and are set forth in full herein.

**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. Revise § 987.23 to read as follows:

**§ 987.23 Term of office.**

The term of office for members and alternate members shall be three years beginning August 1, except that such term may be shorter if the Committee composition is changed in the interim pursuant to § 987.21. *Provided*, That the terms of office of all members and alternates currently serving at the time of the amendment will end on July 31, 2014. Commencing with the term of office that begins on August 1, 2014, members may serve up to two consecutive three-year terms, not to exceed six consecutive years as members: *Provided*, That members who were serving at the time of the amendment and who continued to serve until 2014 may serve only one additional three-year term of office. Members who have served two consecutive terms or six years may not serve as members for at least one year before becoming eligible to serve again. Except as provided above, the limitation on consecutive terms of office and years of service does not apply to service on the committee prior to enactment of the amendment, and does not apply to alternates. Each member and alternate member shall, unless otherwise ordered by the Secretary, continue to serve until his or her successor has been selected and has qualified.

3. Revise paragraph (a) of § 987.24 to read as follows:

**§ 987.24 Nomination and selection.**

(a) Nomination for members and alternate members of the Committee shall be made not later than June 15 of every third year.

\* \* \* \* \*

4. Amend § 987.31 by revising paragraphs (d) and (e) to read as follows:

**§ 987.31 [Amended]**

\* \* \* \* \*

(d) At the discretion of the chairperson, Committee meetings may be assembled or conducted by means of teleconference, video conference, or other means of communication that may be developed. Assembled meetings may also allow for participation by means of teleconference or video conference or other communication methods, at the discretion of the chair. Members participating in meetings via any of these alternative means retain the same voting privileges that they would otherwise have.

(e) The Committee may vote upon any proposition by mail, or by telephone when confirmed in writing within two weeks, upon due notice and full and identical explanation to all members, including alternates acting as members, but any such action shall not be

<sup>1</sup> This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

considered valid unless unanimously approved.

\* \* \* \* \*

5. Amend § 987.52 by designating the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

**§ 987.52 [Amended]**

(a) \* \* \*

(b) The Committee may, with the approval of the Secretary, recommend that the handling of any date variety be exempted from regulations established pursuant to §§ 987.39 through 987.51 and §§ 987.61 through 987.72.

6. Amend § 987.72 by redesignating paragraphs (b) through (d) as paragraphs (c) through (e), respectively; by adding a new paragraph (b); and by revising redesignated paragraph (d) to read as follows:

**§ 987.72 [Amended]**

\* \* \* \* \*

(b) *Delinquent payments.* Any assessment not paid by a handler within a period of time prescribed by the Committee may be subject to an interest or late payment charge, or both. The period of time, rate of interest, and late payment charge shall be as recommended by the Committee and approved by the Secretary.

(c) \* \* \*

(d) *Operating reserve.* The Committee, with the approval of the Secretary, may establish and maintain during one or more crop years an operating monetary reserve in an amount not to exceed the average of one year's expenses incurred during the most recent five preceding crop years, except that an established reserve need not be reduced to conform to any recomputed average. Funds in reserve shall be available for use by the Committee for expenses authorized pursuant to § 987.71.

\* \* \* \* \*

7. Amend § 987.82 by revising paragraph (b)(2), redesignating paragraph (b)(3) as paragraph (b)(4), and adding a new paragraph (b)(3) to read as follows:

**§ 987.82 [Amended]**

\* \* \* \* \*

(b) \* \* \*

(2) *When favored by producers.* The Secretary shall terminate the provisions of this part at the end of any crop year whenever he or she finds that such termination is favored by a majority of the producers of dates who, during that crop year, have been engaged in the production for market of dates in the area of production: *Provided*, That such majority have, during such period, produced for market more than 50

percent of the volume of such dates produced for market within said area; but such termination shall be effective only if announced on or before August 1 of the then current crop year.

(3) *Continuance referendum.* The Secretary shall conduct a referendum six years after the effective date of this section and every sixth year thereafter to ascertain whether continuance of this part is favored by producers. The Secretary may terminate the provisions of this part at the end of any crop year in which he or she has found that continuance of this part is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of dates in the production area.

\* \* \* \* \*

8. Revise § 987.124(a) 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 every third 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 two weeks before the due date and should contain, at least, the following information:

(1) The names of incumbents who are willing and eligible 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.

[FR Doc. 2011-29032 Filed 11-8-11; 8:45 am]

**BILLING CODE 3410-02-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2011-1168; Directorate Identifier 2010-NM-239-AD]

**RIN 2120-AA64**

**Airworthiness Directives; The Boeing Company Model 767-200 and -300 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 767-200 and -300 series airplanes. This proposed AD was prompted by reports of cracks in the inner chords at both left-side and right-side stations 859.5, 883.5, and 903.5. This proposed AD would require repetitive inspections of the frame inner chord transition radius for cracks, and related investigative and corrective actions if necessary. We are proposing this AD to prevent large cracks in the frames and adjacent structure that can adversely affect the structural integrity of the airplane.

**DATES:** We must receive comments on this proposed AD by December 27, 2011.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H-65, Seattle, Washington 98124-2207; telephone (206) 544-5000, extension 1; fax (206) 766-5680; email [me.boecom@boeing.com](mailto:me.boecom@boeing.com); Internet <https://www.myboeingfleet.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of