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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 987**

**[Docket No. AMS-FV-13-0090; FV14-987-2 PR]**

**Domestic Dates Produced or Packed in Riverside County,  
California; Revision of Assessment Requirements**

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule invites comments on proposed rules and regulations necessary for the California Date Administrative Committee (committee) to exercise its authority to impose interest and late payment charges on overdue handler assessments. The California date marketing order (order) regulates the handling of dates produced or packed in Riverside County, California, and is administered locally by the committee. Assessments upon date handlers are used to fund the reasonable and necessary expenses of the committee. These changes are expected to assist in the financial administration of the order by encouraging handlers to pay their assessments in a timely manner.

**DATES:** Comments must be received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division,

Fruit and Vegetable Program, 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 docket number, and the date and page number of this issue of the **Federal Register**, and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this proposal 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 comments will be made public on the internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Terry Vawter, Senior Marketing Specialist, or Martin Engeler, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, 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 [Martin.Engeler@ams.usda.gov](mailto:Martin.Engeler@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237,

Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax:  
(202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This proposal is issued under Marketing Agreement and Order No. 987, as amended (7 CFR Part 987), regulating the handling of 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 proposed rule in conformance with Executive Orders 12866, 13563, and 13175.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed 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. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule

on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule invites comments on proposed rules and regulations necessary for the committee to exercise its authority to impose interest and late payment charges on overdue handler assessments. Interest and late payment charges would encourage California date handlers to pay their assessments promptly when billed by the committee.

The order was amended on June 25, 2012, [77 FR 37762], to provide authority for the committee to recommend these proposed actions, thereby permitting these changes through informal rulemaking, with the approval of the Secretary.

Section 987.72 of the order establishes the authority for the committee to collect assessments from handlers. Paragraph (b) of that section specifically authorizes the committee to establish rules and regulations regarding delinquent assessment payments, including subjecting overdue assessments to an interest or late payment charge, or both; and authorizes the committee to recommend to USDA the period of time at which assessments become late, the rate of

interest, and the late payment charge to be imposed on such delinquent assessments.

The California date industry is a small industry with 70 producers and 11 handlers. If a handler withholds an assessment payment, it has an impact on the committee's ability to administer the order. The committee believes that adding the authority to charge interest and late payment fees 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 fees 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, thus, creating a more level playing field for the industry.

For those reasons, the committee unanimously recommended an interest rate of 1.5 percent per month, a late payment charge of 10 percent on the unpaid balance, and specified that assessment payments become overdue at 60 days

after the date on the assessment invoice. This recommendation was made at a committee meeting on October 31, 2013. Based upon the above considerations, this action proposes interest and late payment charges for delinquent payment of assessments.

### **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 rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 70 producers of dates in the production area and 11 handlers subject to regulation under the marketing order. The Small Business Administration defines small agricultural producers as those having annual receipts less than \$750,000, and small agricultural service

firms as those whose annual receipts are less than \$7,000,000. (13 CFR 121.201)

According to the National Agricultural Statistics Service (NASS), data for the most recently completed crop year (2012) shows that about 3.70 tons, or 7,400 pounds, of dates were produced per acre. The 2012 grower price published by NASS was \$1,340 per ton, or \$0.67 per pound. Thus, the value of date production per acre in the 2012-13 crop year averaged about \$4,958 (7,400 pounds times \$0.67 per pound). At that average price, a producer would have to farm over 151 acres to receive an annual income from dates of \$750,000 (\$750,000 divided by \$4,958 per acre equals 151.2 acres). According to committee staff, the majority of California date producers farm less than 151 acres. Thus, it can be concluded that the majority of date producers could be considered small entities.

In addition, according to data from the committee staff, the majority of California dates handlers have receipts of less than \$7,000,000, and may also be considered small entities.

This proposal would implement an interest charge of 1.5 percent monthly, and a late payment charge of 10 percent on the unpaid balance on handler assessments owed to the committee 60 days after the date on the assessment invoice.

At the meeting, the committee discussed the impact of these changes on handlers. They noted that the greatest impact would only be on handlers who may not pay their assessments on time. Such charges would provide an incentive for all handlers to pay their assessments in a timely manner.

The committee also discussed alternatives to these changes, including not implementing them at all. It was determined that not implementing interest and late payment charges would allow the current problem to continue. Late or delinquent assessment payments negatively impact the committee's ability to efficiently manage the program's resources and meet budget obligations. The committee concluded that encouraging timely assessment payment through the imposition of interest and late payment charges would benefit the administration of the order. Thus, the committee unanimously recommended these changes.

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 Crop Marketing Orders." No changes in those requirements as a result of this action are

necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Riverside County, California, date handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

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

In addition, the committee's meeting was widely publicized throughout the California date industry, and all interested persons were invited to attend the meeting and encouraged to participate in committee deliberations on all issues. Like all committee meetings, the October 31, 2013, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments

on this 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/MarketingOrdersSmallBusinessGuide>.

Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is provided to allow interested persons to respond to this proposal. 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.

2. Section 987.172 is amended by revising the section heading, designating the existing paragraph as paragraph (a), and adding new paragraphs (b) and (c) to read as follows:

§ 987.172 Adjustment of assessment obligation, and late payment and interest charges.

\* \* \* \* \*

(b) Pursuant to §987.72, the committee shall impose an interest charge on any handler whose assessment payment has not been received in the committee's office, or the envelope containing the payment legibly postmarked by the U.S. Postal Service, within 60 days of the invoice date shown on the handler's statement. The interest charge shall be a rate of one and one half percent per month, and shall be applied to the unpaid assessment balance for the number of days all or any part of the unpaid balance is delinquent beyond the 60-day payment period.

(c) In addition to the interest charge specified in paragraph (b) of this section, the committee shall impose a late payment charge on any handler whose payment has not been received in the committee's office, or the envelope

containing the payment legibly postmarked by the U.S. Postal Service, within 60 days of the invoice date. The late payment charge shall be 10 percent of the unpaid balance.

Dated: April 2, 2014.

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Rex A. Barnes,  
Associate Administrator,  
Agricultural Marketing Service.

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