

# Proposed Rules

Federal Register

Vol. 86, No. 163

Thursday, August 26, 2021

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–SC–21–0056; SC21–987–1 PR]

#### Domestic Dates Produced or Packed in Riverside County, California; Increased Assessment Rate

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would implement a recommendation from the California Date Administrative Committee to increase the assessment rate for the 2020–21 and subsequent crop years. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by September 10, 2021.

**ADDRESSES:** Interested persons are invited to submit comments concerning this proposed rule. Comments must be submitted via the internet at: <http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this proposed rule will be included in the record and 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:** Barry Broadbent, Senior Marketing Specialist, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, or Email: [Barry.Broadbent@usda.gov](mailto:Barry.Broadbent@usda.gov).

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence

Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, or Email: [Richard.Lower@usda.gov](mailto:Richard.Lower@usda.gov).

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 987, as amended (7 CFR part 987), regulating the handling of domestic dates produced or packed in Riverside County, California. Part 987, (referred to as 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 California Date Administrative Committee (Committee) locally administers the Order and is comprised of producers and producer-handlers operating within the area of production.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in

effect, California date handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate would be applicable to all assessable dates for the 2020–21 crop year, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act (7 U.S.C. 608(15)(A)), 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.

The Order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. Members are familiar with the Committee’s needs and costs of goods and services in their local area, and they can formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

This proposed rule would increase the assessment rate from \$0.15 per hundredweight, the rate that was established for the 2018–19 and subsequent crop years, to \$0.20 per hundredweight of dates handled for the 2020–21 and subsequent crop years. The Committee met on June 25, 2020, and unanimously recommended increasing the assessment rate to fund necessary administrative expenses and maintain a sufficient operating reserve. The rate increase should provide sufficient funds to cover most of the Committee’s 2020–21 crop year budgeted expenses, with the balance coming from other revenue sources and reserve funds.

The Committee estimates the 2020–21 domestic date crop to be 32,000,000 pounds (320,000 hundredweight), which would generate \$64,000 in assessment income at the recommended \$0.20 per hundredweight assessment rate. The Committee expects other income of approximately \$5,000. Total income of \$69,000, combined with \$6,250 from the financial reserve, should provide enough funds to cover 2020–21 crop year budgeted expenditures. Reserve funds remaining at the end of the 2020–21 crop year are expected to be \$28,750.

The Committee's budget for the 2020–21 crop year is estimated to be \$75,250. Committee's expenses include \$47,000 for management, \$19,250 for office administration, and \$9,000 for the financial audit. In comparison, the previous crop year's total budget was \$74,200, and the administrative expenses were \$43,000, \$21,200, and \$10,000, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, the expected volume of dates handled, and the amount of funds available in the operating reserve. Income derived from handler assessments of \$64,000 (320,000 hundredweight assessed at the proposed rate of \$0.20) should be adequate to cover most budgeted expenses of \$75,250, with the balance covered from \$5,000 in other income and \$6,250 from reserve funds. After expending \$6,250, the ending 2020–21 crop year balance in the financial reserve is expected to be \$28,750, which would be less than the average of the annual expenses of the preceding five years, as mandated by § 987.72(d).

The assessment rate proposed in this rule would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. Dates and times of Committee meetings are available from the Committee or USDA. Meetings are public and held virtually or in a hybrid style with participants having a choice whether to attend in person or virtually. All interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the

assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's budget for subsequent crop years would be reviewed and, as appropriate, approved by USDA.

#### 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 proposed 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 date producers in the production area and 11 date handlers subject to regulation under the Order. The Small Business Administration defines small agricultural producers as those having annual receipts of less than \$1,000,000, and small agricultural service firms as those whose annual receipts are less than \$30,000,000. (13 CFR 121.201)

According to the National Agricultural Statistics Service (NASS), data for the most-recently completed crop year (2019) shows that producer price for fresh market California dates was \$4,130 per ton. With the estimated 16,000-ton crop, the total farm gate value for California date producers was approximately \$66,080,000 (16,000 times \$4,130). Therefore, the average fresh market date revenue for the 70 producers within the production area would be about \$944,000 (\$66,080,000 divided by 70). Thus, assuming a normal bell-curve distribution of receipts among producers, AMS estimates the majority of producers would qualify as small businesses under the SBA definition.

Furthermore, USDA Market News reported an average terminal market price of \$50.88 per 11-pound carton for the 2019–20 crop year. With approximately 32,000,000 pounds handled, the industry would have shipped an estimated 2,909,091 11-pound cartons (32,000,000 divided by 11) of packaged dates for a total value of \$148,014,550 (2,909,091 times \$50.88). With 11 date handlers within the production area, the average revenue per handler is estimated to be

\$13,455,868 for the 2019–20 crop year (\$148,014,550 divided by 11). Thus, most California date handlers would be considered small businesses under the SBA definition.

This proposed rule would increase the assessment rate collected from handlers for the 2020–21 and subsequent crop years from \$0.15 to \$0.20 per hundredweight of dates handled. The Committee unanimously recommended 2020–21 crop year expenditures of \$75,250 and an assessment rate of \$0.20 per hundredweight of dates, which is \$0.05 higher than the rate currently in effect. The quantity of assessable dates for the 2020–21 crop year is estimated to be 32,000,000 pounds (320,000 hundredweight). The proposed \$0.20 rate should provide \$64,000 in assessment income. Income derived from handlers' assessments, plus \$5,000 of other income and \$6,250 from the Committee's authorized reserve, should be adequate to cover the Committee's budgeted expenses for the 2020–21 crop year.

The total budget recommended by the Committee for the 2020–21 crop year is \$75,250, compared to \$74,200 for the 2019–20 crop year. The Committee recommended the higher assessment rate to fully fund ongoing program expenses without depleting its operating reserve.

The income generated from the proposed higher assessment rate, combined with other income and a small amount from the financial reserve, should be sufficient to cover anticipated 2020–21 expenses and to maintain a financial reserve within the limit specified by the Order.

Section 987.72(d) states that the Committee may maintain an operating monetary reserve 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. The Committee estimated that funds in its reserve would be approximately \$35,000 at the beginning of the 2020–21 crop year. It expects to utilize \$6,250 of the reserve during the year, leaving a reserve of approximately \$28,750 to start the 2021–22 crop year, which would be within the limit specified in the Order.

The Committee reviewed and unanimously recommended 2020–21 crop year expenditures of \$75,250. The Committee considered several factors before making its recommendation, including the size of the anticipated 2020–21 crop, the Committee's estimated 2020–21 reserve carry-in,

other sources of income, and its anticipated expenses. Further, the Committee considered several alternative expenditure levels and assessment rates, including not changing the assessment rate or adjusting expenses. Ultimately, the Committee recommended the \$0.20 per hundredweight assessment rate to fund the program's expenses and maintain its reserve at a reasonable level.

A review of historical and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2020–21 crop year is estimated to be \$201.50 per hundredweight of dates. Utilizing that price, the estimated crop size, and the proposed assessment rate of \$0.20 per hundredweight, the estimated assessment revenue for the 2020–21 crop year as a percentage of total producer revenue will be approximately 0.1 percent (\$0.20 per hundredweight divided by \$201.50 per hundredweight).

This proposed action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the Order. In addition, the Committee's and the Subcommittee's meetings were widely publicized throughout the California date industry. All interested persons were invited to attend the meetings and encouraged to participate in Committee deliberations on all issues. The June 25, 2020 Committee meeting was a virtually held public meeting and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this action on small businesses.

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 these requirements would be necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large California date handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce

information requirements and duplication by industry and public sector agencies.

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

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

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For 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 part 987 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 987.339 is revised to read as follows:

#### **§ 987.339 Assessment rate.**

On and after October 1, 2020, an assessment rate of \$0.20 per hundredweight is established for dates produced or packed in Riverside County, California.

**Erin Morris,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2021–17912 Filed 8–25–21; 8:45 am]

**BILLING CODE 3410–02–P**

#### **FARM CREDIT ADMINISTRATION**

##### **12 CFR Part 628**

**RIN 3052–AD42**

#### **Risk Weighting of High Volatility Commercial Real Estate (HVCRE) Exposures**

**AGENCY:** Farm Credit Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Farm Credit Administration (FCA, we, or our) is

seeking comments on this proposed rule that would revise our regulatory capital requirements for Farm Credit System (FCS or System) institutions to define and establish risk-weightings for High Volatility Commercial Real Estate (HVCRE) exposures.

**DATES:** Please send us your comments on or before November 24, 2021.

**ADDRESSES:** For accuracy and efficiency reasons, please submit comments by email or through FCA's website. We do not accept comments submitted by facsimiles (fax), as faxes are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act of 1973. Please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- **Email:** Send us an email at [reg-comm@fca.gov](mailto:reg-comm@fca.gov).

- **FCA Website:** <http://www.fca.gov>. Click inside the "I want to. . ." field near the top of the page; select "comment on a pending regulation" from the dropdown menu; and click "Go." This takes you to an electronic public comment form.

- **Mail:** Kevin J. Kramp, Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of comments we receive on our website at <http://www.fca.gov>. Once you are on the website, click inside the "I want to. . ." field near the top of the page; select "find comments on a pending regulation" from the dropdown menu; and click "Go." This will take you to the Comment Letters page where you can select the regulation for which you would like to read the public comments.

We will show your comments as submitted, including any supporting data provided, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce internet spam. You may also review comments at our office in McLean, Virginia. Please call us at (703) 883–4056 or email us at [reg-comm@fca.gov](mailto:reg-comm@fca.gov) to make an appointment.

#### **FOR FURTHER INFORMATION CONTACT:**

*Technical information:* Ryan Leist, [LeistR@fca.gov](mailto:LeistR@fca.gov), Senior Accountant, or Jeremy R. Edelstein, [EdelsteinJ@fca.gov](mailto:EdelsteinJ@fca.gov), Associate Director, Finance and Capital Markets Team, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4414, TTY (703) 883–4056 or [ORPMailbox@fca.gov](mailto:ORPMailbox@fca.gov); or