

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 987

[Docket No. FV-96-987-3 PR]

#### Domestic Dates Produced or Packed in Riverside County, California; Temporary Relaxation of Size Requirements for Deglet Noor Dates

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposal invites comments on revisions to the size requirements currently prescribed for the Deglet Noor variety of dates under the California date marketing order. The marketing order regulates the handling of domestic dates produced or packed in Riverside County, California, and is administered locally by the California Date Administrative Committee (committee). This rule would increase the current tolerance for individual, whole Deglet Noor dates weighing less than 6.5 grams (the prescribed minimum) from 10 to 15 percent. The rule would be in effect through October 31, 1997. The relaxation is necessary because dates from the 1996-97 crop are smaller in size and weight than normal. The decrease in size and weight is due to extremely high temperatures experienced last spring in the production area. This relaxation was recommended by the committee to make a larger quantity of the 1996-97 crop available for sale domestically and in Canada and is expected to benefit producers, handlers, and consumers.

**DATES:** Comments must be received by December 23, 1996.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456, Fax # (202) 720-5698. All comments

should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

#### FOR FURTHER INFORMATION CONTACT:

Maureen Pello, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487-5901, Fax # (209) 487-5906; or Valerie Emmer, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2536-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 205-2829, Fax # (202) 720-5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491; Fax # (202) 720-5698.

**SUPPLEMENTARY INFORMATION:** This proposal is issued under Marketing Agreement and Order No. 987 (7 CFR part 987), both as amended, regulating the handling of domestic dates produced or packed in Riverside County, California, hereinafter referred to as the "order." The marketing agreement and order are 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 (Department) 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. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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 the Secretary 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 the Secretary 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 the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

This proposal invites comments on revisions to the size requirements currently prescribed for the Deglet Noor variety of dates under the California date marketing order. This rule would increase the current tolerance for individual, whole Deglet Noor dates weighing less than 6.5 grams (the prescribed minimum) from 10 to 15 percent. The rule would be in effect through October 31, 1997, and was recommended by the committee.

Section 987.39 of the date marketing order provides authority for the establishment of minimum quality requirements for varieties of California dates to be handled in designated outlets. Section 987.40 of the order also provides authority for the committee to recommend to the Secretary additional grade or size requirements for any variety of dates to be handled in any designated outlet when it deems advisable. Pursuant to § 987.12, there are four designated outlet categories for California dates—"DAC" dates, "dates for further processing" (FP dates), "export" dates, and "product" dates.

Section 987.112a of the order's administrative rules prescribes grade, size, and container requirements for each of the four outlet categories of dates. Paragraph (b)(2) of that section prescribes such requirements for DAC dates. DAC dates are marketable whole or pitted dates that are inspected and certified as meeting the grade, size, container, and applicable identification requirements for handling in the United States and Canada. Currently, DAC dates must meet the requirements for U.S. Grade B, as specified in the U.S. Standards for Grades of Dates (Standards) issued by the Department. In addition, with respect to whole dates of the Deglet Noor variety, the individual dates in a sample from a lot must weigh at least 6.5 grams, with a

tolerance of 10 percent per lot for dates weighing less than 6.5 grams.

Paragraph (c)(2) of § 987.112a provides similar requirements for FP dates. FP dates are marketable whole dates acquired by one handler from another handler that are certified as meeting the same grade and size requirements for DAC dates, with the exception of moisture requirements and applicable identification requirements. Currently, FP dates must also meet the requirements for U.S. Grade B as specified in the Standards, except for moisture.

Section 987.112a also specifies requirements for the remaining two outlet categories of dates—export and product. Except for some minor differences stated in the section, export and product dates must meet the requirements for U.S. Grade C as specified in the Standards.

At its meeting on October 31, 1996, the committee recommended increasing the current tolerance for individual, whole Deglet Noor dates weighing less than 6.5 grams from 10 to 15 percent to be handled in the DAC and FP outlet categories. The committee also recommended that this relaxation be in effect through October 31, 1997. This would allow the rule to be in effect for the remainder of the 1996–97 season, which ends on September 30, plus an additional month. By the end of October 1997, as prescribed under the order, the committee is required to meet and review its marketing policy for the next season. Five committee members voted for this change, three voted against, and one abstained.

In its deliberations, the committee commented that the average fruit size for the 1996–97 crop is expected to be much smaller this season than in recent years, primarily due to the hot, dry spring. Increasing the tolerance from 10 to 15 percent for dates weighing less than 6.5 grams should allow a greater quantity of Deglet Noor dates which are of good quality but weigh less than 6.5 grams to meet the requirements for DAC and FP dates. Currently, the industry average of the number of dates packed per pound is 60. The additional five percent tolerance for undersize dates would allow handlers to include approximately two additional smaller dates per pound, bringing the average total number of dates packed per pound to 62. Thus, more of the crop would be utilized as whole dates domestically and in Canada.

The committee estimates total 1996–97 marketable date shipments at 33.5 million pounds. Of that amount, Deglet Noor shipments are estimated at approximately 32.4 million pounds,

with about 15 million pounds likely to meet the current requirements for DAC and FP dates. According to the committee, increasing the tolerance from 10 to 15 percent should allow about three to five percent more Deglet Noor dates to meet the DAC and FP requirements, or between 450,000 and 750,000 pounds. Making more Deglet Noor dates of satisfactory quality available for sale domestically and in Canada would provide for maximum utilization of the 1996–97 crop, thereby benefiting producers, handlers, and consumers.

The three committee members who opposed the recommendation believe that the overall quality of dates packed would be decreased if smaller fruit is allowed to meet the requirements for DAC and FP dates. However, other committee members commented that the smaller size dates would still have to meet all of the other characteristics DAC and FP dates must already meet. Thus, consumers would continue to receive good quality whole dates with only a slight increase in the number of smaller size dates. In addition, the majority of committee members believe that this change would only affect about three to five percent of the Deglet Noor shipments that are expected to meet DAC and FP requirements.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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

There are approximately 15 handlers of California dates who are subject to regulation under the marketing order and approximately 135 date producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000.

Last year, as a percentage, about 75 percent of the handlers shipped under 4 million pounds of dates and 25 percent shipped over 4 million. Using

an average f.o.b. price of \$1.12 per pound, about 75 percent of date handlers could be considered small businesses under SBA's definition and about 25 percent of the handlers could be considered large businesses. The majority of handlers and producers of California dates may be classified as small entities.

This proposal would revise size requirements currently prescribed for the Deglet Noor variety of dates under § 987.112a of the California date marketing order. Deglet Noor dates from the 1996–97 crop are smaller in size and weight than normal, due to extremely high temperatures experienced last spring in the production area. The committee recommended increasing the current tolerance for individual, whole Deglet Noor dates weighing less than 6.5 grams (the prescribed minimum) from 10 to 15 percent, to make a larger quantity of the 1996–97 crop available for sale domestically and in Canada, and is expected to benefit producers, handlers, and consumers. This rule would be in effect through October 31, 1997.

At the meeting, the committee discussed the impact of this change on handlers and producers in terms of cost. Handlers and producers receive higher returns for dates that meet DAC and FP requirements. As previously mentioned, dates sold as DAC or FP must meet the requirements for U.S. Grade B dates (with the exception of moisture for FP dates) as specified in the Standards and dates sold in other outlet categories such as product and export must meet requirements specified for U.S. Grade C dates. According to industry members, handlers receive about \$.50 per pound more for U.S. Grade B dates than U.S. Grade C, and growers receive about \$.30 more per pound more for U.S. Grade B dates.

In addition, as previously mentioned, 1996–97 marketable Deglet Noor shipments are estimated to be approximately 32.4 million pounds, of which about 15 million pounds should meet DAC and FP requirements. If, as the committee anticipates, increasing the tolerance for smaller size fruit would impact about three to five percent of the crop, this change would allow between about 450,000 and 750,000 pounds more Deglet Noor dates to be sold as DAC and FP dates. With a net increase to handlers and producers of about \$.50 per pound and \$.30 per pound, respectively, for U.S. Grade B dates, the proposed change could mean an increase in total net returns of \$225,000–\$375,000 for all handlers and \$135,000–\$225,000 for all producers. The benefits for this rule are not

expected to be disproportionately greater or less for small handlers or producers than for larger entities.

The committee discussed alternatives to this change, including not increasing the tolerance at all, as well as increasing the tolerance by 10 percent rather than five percent. While only a small amount of the crop is expected to be affected by increasing the tolerance, the committee believes that an increase would benefit producers and handlers with smaller fruit this season. The committee considered increasing the tolerance from 10 to 20 percent but believed that this could put too much smaller size fruit on the market. In addition, committee members commented that the tolerance was increased by five percent during the 1992–93 season and in prior seasons because of similar problems of an abundance of small size fruit due to hot temperatures, and that the five percent increase was satisfactory. Thus, the majority of committee members agreed that the tolerance for the size of Deglet Noor dates should be increased from 10 to 15 percent through October 31, 1997.

This proposed rule would relax size requirements under the date marketing order. Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large 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.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. However, as previously stated, DAC and FP dates must meet the requirements for U.S. Grade B, as specified in the U.S. Standards for Grades of Dates (7 CFR 52.1001 through 52.1011) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627). Standards issued under the Agricultural Marketing Agreement Act of 1946 are voluntary.

In addition, the committee's meeting was widely publicized throughout the date industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the October 31, 1996, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The committee itself is composed of nine members, of which six are handlers/producers and three are producers only, the majority of whom are small entities. Finally, interested persons are invited to submit information on the regulatory

and informational impacts of this action on small businesses.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule would need to be in place as soon as possible since handlers are already shipping dates from the 1996–97 crop. 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:

1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: 7 U.S.C. 601–674.

#### **PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA**

##### **§ 987.112a [Amended]**

2. In § 987.112a, paragraphs (b)(2) and (c)(2), the words “December 29, 1992, and ending October 31, 1993,” are removed and the words “[Insert date one day after final rule is published in the Federal Register], and ending October 31, 1997,” are added in their place.

Dated: December 2, 1996.

Robert C. Keeney,

*Director, Fruit and Vegetable Division.*

[FR Doc. 96–31163 Filed 12–05–96; 8:45 am]

BILLING CODE 3410–02–P

#### **7 CFR Part 1205**

[CN–96–008]

#### **Cotton Research and Promotion Program: Determination of Sign-up Eligibility, and Procedure for the Conduct of a Sign-up Period for Determination of Whether to Conduct a Referendum Regarding the 1990 Amendments to the Cotton Research and Promotion Act**

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule establishes procedures for the conduct of a sign-up period during which eligible cotton producers and importers would be offered the opportunity to request a continuance referendum on the 1991 amendments to the Cotton Research and Promotion Order (Order).

Producers would be provided the opportunity to sign-up to request a referendum in person at the Farm Services Agency (FSA) office that serves the county where their farm is located. All known and eligible importers would be mailed information about the sign-up period, along with a written request form that those persons who favor the conduct of a continuance referendum may complete and return to USDA.

**DATES:** Comments must be received by December 23, 1996.

**ADDRESSES:** Comments may be mailed to USDA, AMS, Cotton Division, Stop 0224, 1400 Independence Avenue S.W., Washington, D.C. 20250–0224. Comments will be made available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, at this address.

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

Craig Shackelford, Chief, Cotton Research and Promotion Staff, telephone number (202) 720–2259, facsimile (202) 690–1718.

#### **SUPPLEMENTARY INFORMATION:**

Regulatory Impact Analysis

Executive Orders 12866 and 12988; the Regulatory Flexibility Act and the Paperwork Reduction Act

This rule has been determined to be “not significant” for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 12 of the Act, any person subject to an order may file with the Secretary 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 laws, and requesting a modification of the order or an exemption therefrom. Such persons are given the opportunity for a hearing after which the Secretary shall issue a ruling on the petition. The Act provides that the District Court of the United States in any district where the petitioner resides, or where the petitioner's principal place of business is located, has jurisdiction to review the Secretary's ruling, provided that the petitioner files a complaint for that purpose within 20 days from the date of the issuance of the Secretary's ruling.