

Rules and Regulations

Federal Register

Vol. 47, No. 21

Monday, February 1, 1982

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

Domestic Dates Produced or Packed in Riverside County, California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule will establish a revision of the container regulations prescribed for DAC dates of any variety handled in the United States and Canada under the Federal marketing order for California dates. This action will allow handlers to ship such dates to Canadian markets free of the container regulations and give handlers more shipping flexibility.

EFFECTIVE DATE: February 1, 1982.

FOR FURTHER INFORMATION CONTACT: J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA guidelines implementing Executive Order No. 12291 and Secretary's Memorandum 1512-1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities because it would result in only minimal costs being incurred by the 17 regulated handlers.

It is found that good cause exists for not postponing the effective time of this action until 30 days after publication in the Federal Register (5 U.S.C. 553),

because (1) This action would allow handlers to ship DAC dates to Canadian markets free of container requirements and should be in effect promptly to enable them to compete more effectively in Canadian markets; (2) this action relieves restrictions on handlers; and (3) no useful purpose would be served by delaying the effective date of this action.

Notice inviting written comments on this action was published in the Federal Register on December 23, 1981 (46 FR 62280). None was received.

This action would revise § 987.112a(b)(3) of Subpart—Administrative Rules (7 CFR 987.101–987.172). This section is issued under §§ 987.12, 987.43, and 987.48 of the 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. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action was recommended unanimously by the California Date Administrative Committee, hereinafter referred to as the "Committee" which works with USDA in administering the order.

Section 987.112a(b)(3) prescribes consumer sizes of plastic containers, in terms of net weight content, that handlers must use when they package DAC dates in such containers for handling in domestic and Canadian markets. Some foreign competitors have been selling consumer-sized plastic containers of dates in Canada weighing slightly less than the containers of dates domestic handlers are required to ship under the current regulation. This places domestic handlers at a competitive disadvantage because the foreign competitors are able to sell at a slightly lower price.

Section 987.12 of the order defines DAC dates to be marketable whole or pitted dates that are inspected and certified as meeting the grade, size, container, and identification requirements established by the Committee, with the approval of the Secretary, for a specific variety for handling in the United States and Canada.

Section 987.43 of the order authorizes the Committee, with the approval of the Secretary, to modify the designations

specified in § 987.12 to reflect new regulatory requirements needed because of changes in marketing conditions. To give domestic handlers more shipping flexibility and to allow them to compete more effectively with other foreign suppliers in Canadian markets, the container regulation in § 987.112a(b)(3) should not apply to DAC dates of any variety shipped to Canada.

After consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by the Committee, and other available information, it is further found that the revision of § 987.112a(b)(3) of Subpart—Administrative Rules (7 CFR 987.101–987.172) will tend to effectuate the declared policy of the act.

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

Therefore, § 987.112a(b)(3) of Subpart—Administrative Rules (7 CFR 987.101–987.172) is revised to read as follows:

§ 987.112a Grade, size, and container requirements for each outlet category.

* * * * *

(b) * * *

(3) DAC dates of any variety, when packed in plastic containers, other than bags and master shipping containers, shall contain a net weight (i) for whole dates, of either eight ounces, twelve ounces, 1 pound 8 ounces, or more than two pounds, and (ii) for pitted dates, of either ten ounces, one pound, one pound eight ounces, or more than two pounds. DAC dates packed in other than plastic containers may be handled without regard to the net weight content. For the purpose of this subparagraph, "plastic container" means any containers of any shape made from plastic and in which dates are packed without the use of cardboard boats, trays, or other like stiffening material: *Provided*, That DAC dates shipped for sale in Canada in plastic containers are exempt from the net weight requirements of this subparagraph.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: January 27, 1982.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 82-2511 Filed 1-29-82; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Amendment To Provide Exception From Procedural Rules for Adjudications Involving Conduct of Military or Foreign Affairs

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is readopting that part of its "Rules of General Applicability" for the conduct of adjudicatory proceedings in 10 CFR Part 2 which provides an exception from those rules for adjudications involving the conduct of military or foreign affairs functions. The rule, 10 CFR 2.700a, has been restated to reflect the Commission's intent that the exception it provides may be applied to pending proceedings. This exception permits the Commission to exercise greater flexibility in fashioning procedures for proceedings involving military or foreign affairs functions pursuant to the exception stated in the Administrative Procedure Act (APA) at 5 U.S.C. 554(a)(4).

EFFECTIVE DATE: February 1, 1982.

FOR FURTHER INFORMATION CONTACT: Marjorie S. Nordlinger, Office of the General Counsel, Nuclear Regulatory Commission, Washington, D.C. 20555, phone 202-634-3214.

SUPPLEMENTARY INFORMATION: The Commission has readopted that part of its rules governing procedure for adjudications in subpart G of 10 CFR Part 2 which provides an exception from those rules for proceedings to the extent that there is involved the conduct of military or foreign affairs functions. In readopting that exception stated at 10 CFR 2.700a, the Commission has explicitly provided that the rule shall apply to Nuclear Regulatory Commission (NRC) proceedings in progress where hearings have already been requested or ordered.

On September 30, 1981 the Commission published notice of its intent to reconsider 10 CFR 2.700a. 46 FR 47799. The Commission specifically requested comment on the exception itself and regarding the issue of whether

the rule, if readopted, is applicable to pending proceedings. *Id.* at 47800.

Five commenters responded to the Commission's notice. They are: Americans for Democratic Action (ADA); Natural Resources Defense Council (NRDC); Ms. Suzanne Sherbondy, an individual who is affiliated with NRDC; the Department of Energy (DOE); and Nuclear Information and Resource Service (NIRS).

The Department of Energy favored retention of the rule and its application to pending proceedings. DOE supported this view with specific reference to several facilities regulated by NRC where military functions of the United States are involved and thus where procedural flexibility is desirable. In DOE's view the Commission correctly applied its rule to a pending proceeding and reconsideration was not warranted. ADA commented that the rule was unnecessary because the APA exception which it duplicates is already applicable to NRC proceedings. ADA commented further that on the facts stated by NRDC it believed the rule was "probably not applicable" to the Erwin matter and would be likely to be similarly misapplied in the future. The three other commenters flatly opposed the rule, taking the further position that if retained it should be clarified and limited in application and in any event should not be applied to pending matters. NIRS recommended specifically that the rule should require as a condition for application that "the commercial plant in question has, under rare and unusual circumstances, direct military involvement, such as may be the case in time of war; or, if the Department of State or the President should deem a certain activity necessary to conduct foreign affairs at a particular point in time."

On consideration of these comments the Commission has not been persuaded to repeal its rule or to bar its application to the already noticed hearing on NFS Erwin's license amendment which has been stayed by order of the United States Court of Appeals for the District of Columbia, in *Natural Resources Defense Council v. Nuclear Regulatory Commission*, Nos. 80-1845 and 1846. Accordingly, the Commission readopts the rule as stated to apply to pending proceedings.

Readoption of the Rule

The essential point made by the Commission in originally adopting the rule was that doing so explicitly provided the administrative flexibility intended for any or every government agency when military or foreign affairs of the United States are involved in

administrative adjudications. Two arguments that go to the merits of NRC's adopting such a rule have been made by commenters opposing the rule: (1) That NRC has no military or foreign affairs functions to which it is applicable, (2) that the rule is unnecessary because it duplicates and exception already available in the Administrative Procedure Act. Also, some commenters suggested that if NRC should decide to include the APA exception in its rules, some restrictive language going beyond the bare language of the APA should be included.

Regarding the first, as DOE has argued in its comments, NRC licensing actions at several facilities present at least the possibility of involvement of military functions of the United States. NRC licensing proceedings may, depending on the nature of the licensed activity, "involve" military or foreign affairs functions even though licensing itself is not actually regarded as a military or foreign affairs function. In the NFS Erwin matter the Commission has specifically decided that military functions are involved. Although export decisions are not subject to the agency's adjudicatory process, regulatory proceedings at domestic facilities admit the possibility of foreign affairs involvement, for example, where facilities are subject to International Atomic Energy Agency (IAEA) inspection or where materials in transit are covered by our rules. See e.g., 10 CFR Part 75.

Moreover, whether or not it now appears that NRC has regulatory responsibilities involving military or foreign affairs functions, it is entirely reasonable for the Commission to incorporate in its rules the full flexibility provided by the APA and made applicable to its proceedings by Section 181 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2231. This is true so that it will be clear that this exception is applicable in the event of a military or foreign affairs involvement.

Regarding the second argument, we concur with both ADA's statement that the rule duplicates a provision of the APA and ADA's implication that therefore it not only is but has been available to the Commission. Nonetheless, in order to clarify that this is the case and to have all rules including exceptions for adjudicatory procedures available in one place, the Commission adheres to the course of retaining rule § 2.700a in its rules of practice.

Just as there can be no serious doubt about the appropriateness of the Commission's incorporating an APA