

the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.931 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.931 Lemon Regulation 631.

The quantity of lemons grown in California and Arizona which may be handled during the period September 18, 1988, through September 24, 1988, is established at 286,500 cartons.

Dated: September 14, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-21289 Filed 9-15-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 926

California Tokay Grapes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule regarding California Tokay grapes will authorize expenses and establish an assessment rate under Marketing Order 926 for the 1988-89 fiscal period. Authorization of this budget will allow the Tokay Industry Committee to incur expenses reasonable and necessary to administer the program. Funds for this program will be derived from assessments on handlers.

EFFECTIVE DATES: April 1, 1988 through March 31, 1989.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and

Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-447-5331.

SUPPLEMENTARY INFORMATION:

This final rule is issued under Marketing Order No. 926 [7 CFR Part 926], regulating the handling of Tokay grapes grown in San Joaquin County, California. This 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.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

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 9 handlers of California Tokay grapes under this marketing order, and approximately 390 California Tokay grape producers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of the handlers and producers may be classified as small entities.

The marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable grapes handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of grapes. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of grapes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The Tokay Industry Committee met on July 25, 1988, and unanimously recommended a 1988-89 budget of \$73,125 and an assessment rate of \$0.175 per 23-pound lug. Last season's budget was \$55,050 with an assessment rate of \$0.16. Major expense items are market development, \$44,200 (as compared to \$26,125 for 1987-88) and administrative expenses, \$28,925. The assessment rate, when applied to anticipated shipments of 400,000 lugs will yield \$70,000 in assessment revenue. This amount along with interest income and reserve funds will be adequate to cover budgeted expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the Federal Register [53 FR 31704, August 19, 1988]. That document contained a proposal to add § 926.227 to establish expenses and an assessment rate for the Tokay Industry Committee. That rule provided that interested persons could file comments through August 29, 1988. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses will tend to effectuate the declared policy of the Act.

The action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days

after publication in the Federal Register [5 U.S.C. 553].

List of Subjects in 7 CFR Part 926

Marketing agreements and orders, Tokay grapes (California).

For the reasons set forth in the preamble, 7 CFR Part 926 is amended as follows:

PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA

1. The authority citation for 7 CFR Part 926 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 926.227 is added to read as follows:

Note: This section prescribes the annual assessment rate and will not be published in the Code of Federal Regulations.

§ 926.227 Expenses and assessment rate.

Expenses of \$73,125 by the Tokay Industry Committee are authorized and an assessment rate of \$0.175 per 23-pound lug of grapes is established for the fiscal year ending March 31, 1989. Unexpended funds may be carried over as a reserve.

Dated: September 12, 1988.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-21142 Filed 9-15-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 987

[Docket No. AMS-FV-88-049]

Domestic Dates Produced or Packed in Riverside County, California; Final Rule Disallowing Handlers to Dispose of Utility Dates in Human Consumption Outlets, and Conforming Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases the minimum quality of dates for export to Mexico, for use in date products for human consumption, and for donations to needy persons. Under the new regulations, dates exported to Mexico will have to meet U.S. Grade C requirements, dates used for products will have to meet modified U.S. Grade C requirements, and donated dates will have to be at least product date quality. The current authority allowing utility dates to be used in these outlets has been in effect since the early 1970's. The industry reports that there are sufficient supplies of better quality dates for use in

these outlets. This final rule returns the quality level to that in effect prior to the early 1970's.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Patrick A. Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone 202-475-3862.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 987 (7 CFR Part 987), regulating the handling of domestic dates produced or packed in Riverside County, California. This 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.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

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 26 handlers of dates subject to regulation under this marketing order, and there are approximately 135 producers of this commodity in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than \$500,000, and small agricultural services firms are defined as those whose gross annual revenues are less than \$3,500,000. The majority of handlers and producers of dates produced or packed in California may be classified as small entities.

Notice of this action was published in the Federal Register on July 15, 1988 (53 FR 26784). The comment period ended August 15, 1988. No comments were received.

This final rule changes § 987.112a of Subpart—Administrative Rules (7 CFR 987.101-987.172) to discontinue authority specified therein allowing handlers to ship dates inspected and certified as

utility dates to Mexico, and to dispose of such dates for use or use them in certain products for human consumption.

Section 987.152(b)(2) of that subpart also is changed disallowing donations of such dates to needy persons. These changes will raise the minimum quality requirements for these outlets from utility quality to U.S. Grade C or modifications thereof. The changes in § 987.161 and § 987.164 of the same subpart are conforming changes in recognition of the changes in § 987.112a. These changes are based upon a unanimous recommendation of the California Date Administrative Committee, which works with the Department in administering the marketing order program.

When the marketing order for dates was amended in 1978 (7 CFR Part 987, 43 FR 4249, February 1, 1978), the term "substandard dates" was changed to "utility dates." However, not all references to substandard dates were changed in the Code of Federal Regulations, including § 987.56. For the purposes of this rulemaking, all references in the order to "substandard dates" should be interpreted to mean "utility dates."

Section 987.56 specifies outlets for utility dates and cull dates. Such dates may be disposed of without inspection, but only in feed, non-table syrup, alcohol, or brandy outlets, or in such other outlets for non-human food products as the committee, with the approval of the Secretary, may specify. That section also provides that whenever the committee concludes and the Secretary finds that the use of utility dates of any variety in certain products for human consumption would tend to effectuate the declared policy of the Act, the Secretary shall specify such products, and dates of such variety that are inspected and certified as utility dates may be disposed of for use, or used, in such products. Similar procedures also are specified for the disposition of utility dates through any export outlet.

Utility dates are dates which fail to meet the minimum quality requirements for marketable dates primarily because of an excess of defects such as off-color, deformity, scarring, or broken skin. These defects detract from the dates' appearance but not their edibility. Because of this, such dates are acceptable in some seasons for donations, use in products or export outlets, as for example, when supplies of marketable dates are less than market needs.

A typical date crop consists of about 38 percent modified U.S. Grade B (for

packaged domestic market use), 20 percent export grade (somewhat better than U.S. Grade C), 35 percent product quality (U.S. Grade C), 5 percent utility, and 2 percent culls (which are not marketable for human consumption because they are unwholesome).

In the early 1970's, a strong demand existed for dates and date products domestically and in Mexico, but the supply of marketable dates to meet these and other market needs was insufficient. To augment supplies, the committee recommended that lower quality utility dates be permitted to be used for date products for human consumption and for export to Mexico. Based on the evidence presented, the Department implemented that recommendation. The California date industry enjoyed relatively strong market conditions throughout the 1970's and early 1980's. However, the demand for dates started to weaken in 1984. The industry currently has an abundant supply of product quality dates, and expects to start the 1988-89 marketing season on October 1 with a more-than-two-year supply.

Accordingly, the committee recommended that the use of utility dates in human consumption outlets be ended, effective September 30, 1988, the end of the crop year. This action will return the quality standard to the level for human consumption outlets which existed prior to the relaxation in the early 1970's, and thereby require that better quality dates be made available for products for human consumption, for export to Mexico, and for needy person donations. The committee expects this, together with its ongoing market promotion program instituted two seasons ago, to stimulate buyer interest and improve market conditions. Utility dates usually comprise such a very small part of the date crop that no shortage of dates will result from this change.

Dates inspected and certified as utility dates prior to October 1, 1988, the effective date of this action, will be eligible for needy person donations, disposal in product outlets, and for export to Mexico. On or after October 1, 1988, utility dates must be disposed of in feed, non-table syrup, alcohol, or brandy outlets, or in such other outlets for non-human food products as the committee, with the approval of the Secretary, may specify. To be eligible as product dates, dates will have to meet at least modified U.S. Grade C requirements, and for export to Mexico at least the requirements of U.S. Grade C. Dates for donations will have to be at least

product date quality, but not package date quality.

To implement the committee's recommendation, the first sentence in § 987.112a(d)(3) will specify that dates of any variety identified as "Export-Mexico," and inspected and certified as at least meeting the requirements of U.S. Grade C, may be exported to Mexico. This change raises the minimum quality for export to Mexico from utility quality to U.S. Grade C. In addition, paragraph (f) of this section, specifying that utility dates may be disposed of by handlers in the same outlets and subject to the same requirements prescribed in paragraph (e) for product dates, or may be exported to Mexico, will be removed. This change raises the minimum requirements for product dates from utility quality to U.S. Grade C, and continues the exception that mashing and mechanical injury not affecting eating quality will not be considered in determining the defect factor.

In § 987.152(b)(2), the minimum quality of donated dates will be increased from utility to at least the requirements for product dates. The committee believes this action is necessary to make better quality dates available for this purpose. For the last two seasons, no dates have been donated under this program.

In addition, conforming changes are made in § 987.161, regarding handler carryover, and § 987.164, regarding reports of shipments. References in the sections to utility dates will be removed in conformity with the regulation changes discontinuing the use of such dates in human consumption outlets.

Based on available information, the Administrator of AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities. It is the Department's view that discontinuing the use of utility dates for export to Mexico, or disposal as products for human consumption, or for manufacture into such products, will benefit the date industry by improving market conditions and fostering increased date sales with little impact on handler or grower costs. The expected market improvements contemplated by this action, and benefits resulting from them, will offset any additional costs incurred. The Department has no information to conclude that discontinuing the use of utility dates for donation would adversely affect handler or grower costs.

After consideration of the information and recommendation submitted by the committee, it is found that this action

will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553). It is important that the changes hereinafter set forth be in effect on October 1, 1988, the beginning of the 1988-89 crop year. September 30, 1988, the end of the 1987-88 crop is a logical date for ending the use of utility dates for human consumption product outlets for needy person donations or for export to Mexico. In addition, no comments were received concerning the proposed rule. The information collection requirements contained in this rule have been previously approved by the Office of Management and Budget and assigned OMB No. 0581-0077.

List of Subjects in 7 CFR Part 987

Marketing agreements and orders, Dates, California.

For the reasons set forth in the preamble, 7 CFR Part 987 is amended as follows (The following changes will be published in the Code of Federal Regulations).

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: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. In § 987.112a, the first sentence of paragraph (d)(3) is revised, paragraph (f) is removed, and paragraphs (g) and (h) are redesignated as paragraphs (f) and (g), respectively, to read as follows:

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

* * * * *

(d) * * *

(3) Dates of any variety identified as "Export-Mexico" and inspected and certified as at least meeting the requirements of U.S. Grade C may be exported only to Mexico. * * *

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§ 987.152 [Amended]

3. In the first sentence of § 987.152(b)(2), the words "Utility or" are removed.

§ 987.161 [Amended]

4. In the second sentence of § 987.161, the words "and utility dates" are removed from paragraph (c).

5. In § 987.164, the section heading and the first sentence are revised to read as follows:

§ 987.164 Shipments of product dates and disposition of restricted dates in approved product outlets.

Each handler shall file with the Committee a completed CDAC Form No. 8 showing the shipment of each lot of product dates or the disposition of restricted dates in approved product outlets. * * *

Dated: September 13, 1988.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-21218 Filed 9-15-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1065

[DA-88-116]

Milk in the Nebraska-Western Iowa Marketing Area; Temporary Revision of Supply Plant Shipping Percentage and Diversion Limitation Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of rules.

SUMMARY: This action temporarily reduces for the months of September 1988 through March 1989 the percentage of supply plant receipts that must be transferred or diverted to pool distributing plants in order for the supply plant to maintain pool status under the Nebraska-Western Iowa order. The limits on the proportion of a handler's milk supply not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order would also be revised temporarily, from 40 percent to 60 percent, for the same period. The revision is made in response to a request by a cooperative which operates pool supply plants and represents a significant number of producers whose milk is pooled under the order for the purpose of maintaining the pool status of producers historically associated with the Nebraska-Western Iowa order.

EFFECTIVE DATE: September 16, 1988.

FOR FURTHER INFORMATION CONTACT:

Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Temporary Revision of Supply Plant Shipping Percentage and Diversion Limitation Percentage: Issued August 8, 1988; published August 11, 1988 (53 FR 30289).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the provisions of §§ 1065.7(b)(3) and 1065.13(d)(4) of the Nebraska-Western Iowa order.

Notice of proposed rulemaking was published in the *Federal Register* (53 FR 30289) concerning a proposed reduction in the percentage of supply plant receipts that must be transferred or diverted to pool distributing plants in order for the supply plant to maintain pool status, and a proposed relaxation of the limits on the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The temporary reduction would be effective for the months of September 1988 through March 1989. The public was afforded the opportunity to comment on the proposed notice by submitting written data, views and arguments by August 26, 1988.

Statement of Consideration

After consideration of all relevant material, data, views and arguments filed and other available information, it is hereby found and determined that the supply plant shipping percentage set forth in § 1065.7(b) should be reduced by 10 percentage points from the present 40 percent to 30 percent for the months of September 1988 through March 1989. For the same period, the diversion limits on producer milk should be increased by 20 percentage points, from 40 percent to 60 percent.

Pursuant to the provisions of § 1065.7(b)(3) of the Nebraska-Western Iowa milk order, the Director of the Dairy Division may increase or decrease the supply plant shipping percentage as set forth in § 1065.7(b) by up to 20 percentage points during any month.

Similarly, § 1065.13(d) allows the Director of the Dairy Division to increase or decrease the diversion limitation percentages by up to 20 percentage points in any month. Such changes may be made to encourage additional milk shipments needed to assure an adequate supply of milk to fluid handlers, or to prevent uneconomic shipments of milk merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The supply plant shipping percentage of the Nebraska-Western Iowa milk order was reduced temporarily from 40 to 30 percent for the months of September 1986 through March 1987 and for the months of September 1987 through March 1988. In addition, the order's diversion limits were revised temporarily from 50 to 60 percent for the months of May through August 1986, from 40 to 60 percent for the months of September through December 1986, from 40 to 55 percent for the months of January through March 1987, from 50 to 60 percent for the months of July and August 1987, from 40 to 55 percent for the months of September 1987 through March 1988, and from 50 to 65 percent for the months of April through August 1988.

Associated Milk Producers, Inc. (AMPI), a cooperative association operating supply plants historically pooled under the Nebraska-Western Iowa order and representing producers supplying a significant portion of the producer milk pooled under the order, requested that for the months of September 1988 through March 1989, the supply plant shipping percentage requirement be reduced by 10 percentage points and the diversion limit on producer milk be increased by 20 percentage points.

The cooperative stated that producer milk pooled under the Nebraska-Western Iowa order during the first six months of 1988 was 13.4 percent above the same period of 1987, while Class I sales for the same time period were virtually identical.

Given the present combination of production increases combined with static Class I sales, AMPI estimated that the percentage of producer milk used in Class I during the months of September 1988 through March 1989 is unlikely to be more than 34 percent. AMPI stated that a 35-percent level of Class I utilization would make it difficult to justify a requirement that 60 percent of producer milk be moved to pool plants. According to the cooperative, such a requirement would involve delivering