

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 requesting 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, 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 principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

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 action 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 an estimated seven handlers of celery grown in Florida subject to regulation under the celery marketing order, and approximately seven producers of celery in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of celery handlers and producers may be classified as small entities.

This action is based upon a recommendation and information submitted by the Committee and upon other available information. The Committee met on June 10, 1992, and unanimously recommended a marketable quantity of 6,612,910 crates of fresh celery for the 1992-93 marketing season beginning August 1, 1992. Additionally, a uniform percentage of 100 percent was recommended which will allow each producer, registered pursuant to § 967.37(f) of the order, to market 100 percent of such producer's base quantity. These recommendations were

based on an appraisal of expected 1992-93 supply and demand.

As required by § 967.37(d)(1) of the order, a reserve of 6 percent (396,775 crates) of the 1991-92 total base quantities was made available to new producers and for increases for existing producers. As of May 1, 1992, the deadline for requesting changes in base quantities, no applications for new base quantities or adjustments in base quantities from current producers were received by the Florida Celery Committee.

This final rule will continue to limit the quantity of Florida celery which handlers may purchase from producers and ship to fresh markets during the 1992-93 marketing season to 6,612,910 crates. This marketable quantity is slightly reduced from the 1991-92 marketable quantity, but is more than the average number of crates marketed fresh during the 1987-88 through 1991-92 seasons. It is expected that such quantity will be more than actual shipments for the 1992-93 season. Thus, the 6,612,910 crate marketable quantity is not expected to restrict the amount of Florida celery which growers produce or the amount of celery which handlers ship. For these reasons, the final rule should lend stability to the industry, and, thus, help provide consumers with an adequate supply of the product.

The interim final rule was published in the Federal Register with an effective date of September 16, 1992 (57 FR 42689, September 16, 1992). That rule provided a 30-day comment period which ended October 16, 1992. No comments were received.

On the basis of the foregoing, the Administrator of the AMS has determined that issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the Committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 967

Celery, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 967 is revised as follows:

PART 967—CELERY GROWN IN FLORIDA

1. The authority citation for 7 CFR part 967 continues to read as follows:

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

Subpart—Administrative Rules and Regulations

2. Accordingly, the interim final rule adding § 967.327, published in the Federal Register (57 FR 42689, September 16, 1992), is adopted as a final rule without change.

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

Dated: December 21, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-31345 Filed 12-28-92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 987

[Docket No. FV92-987-11FR]

Temporary Relaxation of Size Requirements for California Deglet Noor Dates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule temporarily relaxes the size requirements prescribed for Deglet Noor dates for use domestically and in Canada as whole and pitted dates. This action increases the current tolerance, from 10 percent to 15 percent, through October 31, 1993, for individual Deglet Noor dates weighing less than 6.5 grams (the prescribed minimum). The relaxation is necessary because Deglet Noor dates from the 1992-93 crop are significantly smaller in size and weight than normal. The decrease in size and weight is due to extremely high temperatures experienced in the production area during late August and early September. The relaxation was unanimously recommended by the California Date Administrative Committee (committee) to make a larger quantity of the 1992-93 crop available for use as whole or pitted dates domestically and in Canada.

DATES: This interim final rule is effective December 29, 1992 and continues until October 31, 1993. Comments received by January 28, 1993, will be considered prior to issuance of a final rule.

ADDRESSES: Written comments concerning this rule should be submitted in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456. Comments should reference the docket

number and 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:

Kellee Hopper, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, 2202 Monterey Street, suite 102 B, Fresno, CA 93721; telephone (209) 487-5901 or Richard Lower, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone (202) 720-2020.

SUPPLEMENTARY INFORMATION: This interim final rule 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 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 is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome, and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992, memorandum to agency heads, and in Executive Orders 12291 and 12498. The Department applies this principle to the fullest extent possible, consistent with law.

The Department has developed and reviewed this regulatory action in accordance with these principles. Nonetheless, the Department believes that public input from all interested persons can be invaluable in ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in the action. Comments suggesting less burdensome or more efficient alternatives should be

addressed to the agency as provided in this action.

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This interim final rule 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 requesting a modification of the order or to be exempt therefrom. Such 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 principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

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 action 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 25 handlers of California dates subject to regulation under the order each season and approximately 135 date producers in the regulated area. The majority of the date handlers and producers may be classified as small entities.

This interim final rule modifies paragraphs (b)(2) and (c)(2) of § 987.112a to relax the current size requirements for Deglet Noor dates to be

used as whole or pitted dates domestically or in Canada. The modification is issued pursuant to § 987.39 of the order.

Section 987.112a prescribes grade, size, and container requirements for each outlet category of dates. Paragraph (b)(2) of that section prescribes such requirements for "DAC" dates, including an individual size requirement for Deglet Noor dates of 6.5 grams with a tolerance of 10 percent per lot for dates weighing less than 6.5 grams. 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. Paragraph (c)(2) of § 987.112a provides the same requirements for "dates for further processing" (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.

Due to exceedingly high temperatures during late August and early September which stressed the date palms, individual fruit of the current crop is significantly smaller in size and weight than normal. Early deliveries of Deglet Noor dates are failing to meet the marketing order requirements of 10 percent tolerance for individual dates in a lot weighing less than 6.5 grams. The size and weight of the dates are not expected to improve as the harvest progresses.

Therefore, at its October 22, 1992, meeting, the committee unanimously recommended that the size requirements for DAC and FP dates be relaxed through October 31, 1993, by increasing the tolerance from 10 to 15 percent for dates weighing less than 6.5 grams. This action is intended to permit 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. The additional five percent tolerance for undersize dates will allow handlers to use approximately three smaller dates per pound. Thus, more of the crop can be utilized as whole or pitted dates domestically and in Canada. The committee estimates marketable 1992-93 Deglet Noor production at approximately 35.3 million pounds. Making more Deglet Noor dates of satisfactory quality available for use as whole and pitted dates domestically and in Canada will provide for maximum utilization of the 1992-93 crop, thereby

benefiting producers, handlers and consumers.

Based on the available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and unanimous recommendation submitted by the committee, and other available information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it found and determined that upon good cause it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because: (1) Compliance with this action will require no special preparation by handlers; (2) it is important that the relaxed size requirements apply to as much of the 1992-93 crop as possible; (3) this action relieves restrictions on handlers and; (4) the rule provides a 30-day comment period, and any comments received will be considered prior to finalization of this interim final rule.

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

2. Section 987.112a is amended by revising the second sentence of paragraph (b)(2) and revising the second sentence of paragraph (c)(2) to read as follows:

Note: This section will appear in the annual *Code of Federal Regulations*.

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

* * * * *

(b) * * *

(2) * * * Also, with respect to whole dates of the Deglet Noor variety, the individual dates in the sample from the lot shall weigh at least 6.5 grams, but up to 10 percent, by weight, may weigh less than 6.5 grams, except beginning

December 29, 1992, and ending October 31, 1993, the 10 percent tolerance shall be increased to 15 percent. * * *

* * * * *

(c) * * *

(2) * * * Also, with respect to whole dates of the Deglet Noor variety, the individual dates in the sample from the lot shall weigh at least 6.5 grams, but up to 10 percent, by weight, may weigh less than 6.5 grams, except beginning December 29, 1992, and ending October 31, 1993, the 10 percent tolerance shall be increased to 15 percent. * * *

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Dated: December 21, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-31346 Filed 12-28-92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 1006, 1012, and 1013

[DA-92-38]

Milk in the Upper Florida, Tampa Bay, and Southeastern Florida Marketing Areas; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends a portion of the producer milk definition of the Upper Florida, Tampa Bay, and Southeastern Florida, milk orders. The action suspends the requirement that 10 days' production of a producer be received each month at a pool plant in order to qualify milk produced on other days for diversion to nonpool plants. The suspension was requested by the Florida Dairy Farmers' Association, Tampa Independent Dairy Farmers' Association, Dairymen, Inc., and Southern Milk Sales that want to reduce some inefficient milk movements in order to pool milk normally associated with these markets.

EFFECTIVE DATE: December 1, 1992.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, Dairy Division, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-6274.

SUPPLEMENTARY INFORMATION: Prior Document in this proceeding:

Notice of Proposed Suspension: Issued November 16, 1992; published November 23, 1992 (57 FR 54947).

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 will not have a significant economic impact on a substantial number of small entities. This action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This suspension has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the 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 provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a 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 its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

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 the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Upper Florida, Tampa Bay and Southeastern Florida marketing areas.

Notice of proposed rulemaking was published in the *Federal Register* on November 23, 1992, (57 FR 54947) concerning a proposed suspension of certain provisions of the orders. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments were received.

After consideration of all relevant material, including the proposal in the notice, and other available information,

it is hereby found and determined that beginning December 1, 1992, for an indefinite period, the following provisions of the orders do not tend to effectuate the declared policy of the Act:

In § 1006.13, paragraph (b)(2).

In § 1012.13, paragraph (b)(2).

In § 1013.13, paragraph (b)(2).

Statement of Consideration

This action suspends portions of the producer milk definition of the Upper Florida, Tampa Bay, and Southeastern Florida milk orders. This action suspends the requirement that 10 days' production of a producer be received each month at a pool plan in order to qualify milk produced on other days for diversion to nonpool plants.

The suspension was requested by Florida Dairy Farmers' Association, Tampa Independent Dairy Farmers' Association, Dairymen Inc., and Southern Milk Sales. The proponents have formed and work through a common marketing agency in order to achieve maximum efficiencies in balancing the needs of the fluid milk plants and in disposing of reserve or excess milk supplies. When milk of producers located in other states who supply the Florida market is not needed, it is often diverted to plants located in other states that are regulated by other Federal milk orders.

Milk that is diverted to other order manufacturing plants, but fails to qualify for diversion under the 10-day requirement, becomes producer milk under the other order and lowers blend prices to producers under the other order. The suspension will enable cooperatives to realize efficiencies in diverting the most distant milk from fluid milk plants. The suspension will not threaten the integrity of marketwide pooling because all three orders limit the overall percentage of a handler's milk supply that can be diverted each month. The suspension is needed to be effective for the holiday season because of the need to move excess milk supplies off these markets.

No comments were received in response to the proposed suspension. Accordingly, it is appropriate to suspend the aforesaid provisions.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing areas in that this action should enable cooperatives to realize efficiencies in diverting the most distant milk from fluid milk plants;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were received.

Therefore, good cause exists for making this order effective December 1, 1992.

List of Subjects in 7 CFR Parts 1006, 1012, and 1013

Milk marketing orders.

The authority citation for 7 CFR parts 1006, 1012, and 1013 continue to read as follows:

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

It is therefore ordered, That the following provisions of the orders (7 CFR parts 1006, 1012, and 1013) are hereby suspended for an indefinite period.

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

§ 1006.13 [Suspended in Part]

1. In § 1006.13, paragraph (b)(2) is suspended.

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

§ 1012.13 [Suspended in Part]

1. In § 1012.13, paragraph (b)(2) is suspended.

PART 1013—MILK IN THE SOUTHEASTERN FLORIDA MARKETING AREA

§ 1013.13 [Suspended in Part]

1. In § 1013.13, paragraph (b)(2) is suspended.

Dated: December 21, 1992.

John E. Frydenlund,
Deputy Assistant Secretary, Marketing and
Inspection Services.

[FR Doc. 92-31432 Filed 12-28-92; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 19

RIN 3150-AE11

Exclusion of Attorneys From Interviews Under Subpoena

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to provide for the exclusion of counsel from a subpoenaed interview when that counsel represents multiple interests in the investigation and there is concrete evidence that the counsel's presence at the interview would obstruct and impede the investigation. These amendments are designed to ensure the integrity and efficacy of the investigative and inspection process. These amendments provide a standard and procedures for making and effectuating the decision to exclude counsel.

EFFECTIVE DATE: March 1, 1993.

FOR FURTHER INFORMATION CONTACT: Roger K. Davis, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492-1606.

SUPPLEMENTARY INFORMATION:

Contents

- I. Background
- II. Response to Public Comments on the Proposed Rule

I. Background

On December 19, 1991 (56 FR 65949), the Nuclear Regulatory Commission (NRC) published proposed amendments to its regulations found at 10 CFR part 19. The proposed amendments provided for the exclusion of counsel from subpoenaed interviews in connection with an NRC investigation when that counsel represents multiple interests in the investigation and there is concrete evidence that such representation would obstruct and impede the investigation. The proposed amendments also provided procedures to be followed by the NRC and individual witnesses in connection with the NRC's exercise of its authority to exclude counsel.

The Commission had published a final rule on the same subject on January 4, 1990 (55 FR 243). That rule provided, *inter alia*, for the exclusion of counsel for a subpoenaed witness when that counsel represented multiple interests and there existed a reasonable basis to believe that such representation would prejudice, impede, or impair the integrity of the inquiry. Upon legal challenge, the United States Court of Appeals for the District of Columbia Circuit struck down the portion of the final rule on attorney exclusion. *Professional Reactor Operator Society v. Nuclear Regulatory Commission*, 939 F.2d 1047, 1052 (D.C. Cir. 1991) (hereafter "PROS").

Specifically, the Court of Appeals ruled that the NRC must apply the same standard for attorney exclusion that the Court had previously required of the