

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 999

[Docket No. FV96-999-1PR]

Specialty Crops; Import Regulations; Removal of Medjool Dates From Import Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on removing the Medjool variety of dates from all import requirements established under the Agricultural Marketing Agreement Act of 1937. Currently, whenever grade, size, quality, or maturity requirements are in effect for dates under a domestic marketing order, imported dates must meet the same or comparable requirements. A marketing order is in effect for California dates and specifies quality requirements for four varieties of dates. However, all varieties of dates are currently subject to import requirements. The Department of Agriculture (Department) has received requests from representatives of an importer of Israeli dates and the Embassy of Israel to remove Medjool dates from import requirements. The Medjool date is a unique variety of date, commanding a premium price, and is believed to not be in direct competition with the varieties covered under the marketing order. Thus, the Department is issuing this proposed rule to solicit public comment on removing Medjool dates from import requirements.

DATES: Comments must be received by June 10, 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 Mark Kreaggor, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2431, Fax # (202) 720-5698.

SUPPLEMENTARY INFORMATION: This proposal is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." Section 8e provides that whenever certain specified commodities, including dates (other than dates for processing), are regulated under a Federal marketing order, imports of those commodities must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodities.

The Department is issuing this rule in accordance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12778, 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.

There are no administrative proceedings which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

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 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.

Import regulations issued under section 8e of the Act are based on regulations established under Federal marketing orders for fresh fruits, vegetables, and specialty crops, like dates. Thus, import regulations also have a small entity orientation and impact both small and large business entities in a manner comparable to rules issued under such marketing orders.

There are approximately 35 importers of dates in the United States. Three of those are importers of Medjool dates and would be affected by this rule. Small agricultural service firms, which include importers of dates, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000. The majority of date importers may be classified as small entities.

This proposal invites comments on removing the Medjool variety of dates from all import requirements established under section 8e of the Act. The Department is initiating this action based on requests received from representatives of importers of Israeli dates and the Embassy of Israel as well as its own review of the current situation with respect to domestic date production and date imports.

As previously mentioned, section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for dates under a domestic marketing order, imported dates (other than dates for processing) must meet the same or comparable requirements. A marketing order has been in effect for California dates since 1955 (7 CFR Part 987). The marketing order initially specified quality requirements for three varieties of California dates—Deglet Noor, Zahidi, and Khadrawy. In 1962, the order was amended to add the Halawy variety of dates.

Also in 1962, section 8e of the Act was amended to cover dates (other than dates for processing). Imported dates for processing are not covered by section 8e and are not subject to grade, size, quality, and maturity import requirements. At the time the import regulation was initiated, it was determined that all varieties of imported

packaged dates and dates for packaging and dates in retail packages would compete with dates produced domestically. Thus, since that time, imported packaged dates and dates for packaging for sale in the retail market have been required to meet quality requirements comparable to those specified under the California date marketing order and the import regulation currently applies to all varieties of dates.

The Department recently received requests from representatives of an importer of Israeli dates and the Embassy of Israel to remove the Medjool variety of dates from the import regulation. The representatives of the Israeli importer expressed concerns that domestic Medjool dates are not subject to quality requirements while all imported dates are subject to specific requirements.

The Medjool date is a unique variety—a much larger date than other varieties and is thus easily distinguishable. Given this unique characteristic, the Medjool date commands a premium price and is believed to not be in direct competition with the four varieties of dates covered under the marketing order.

In looking at the domestic market, Medjool dates were not produced in significant quantities in the United States when the marketing order was promulgated in 1955. Since that time, plantings of Medjool dates have increased to account for over 15 percent of the bearing acreage of dates in California. In comparing the production of the Medjool variety of dates with the four varieties covered under the marketing order, Medjool dates now comprise about 20 percent (or 9 million pounds) of the total production (about 45 million pounds). With the increase in Medjool production in recent years, the domestic date industry has considered amending the marketing order to cover Medjool dates. However, at this time, no formal action has been taken and domestic Medjools remain unregulated.

In looking at data regarding imported dates, in the 1960's when the date import regulation was initiated, few if any Medjool dates were imported into the United States. At that time most of the imported dates came from Iraq and Iran and were of the Sayir variety. Sayir dates and other varieties imported into this country are similar in appearance to the Deglet Noor, Zahidi, Halawy and Khadrawy varieties regulated under the marketing order. During the past five years (1990–1994), about 13 million pounds of dates were imported into this country annually, mostly coming from

Pakistan (over 65 percent). Medjools account for a relatively small percentage of imported dates, with most of the imported Medjools coming from Mexico and a small amount coming from Israel. Mexican and Israeli dates account for about 3 percent and 4 percent, respectively, of total U.S. date imports. Of the total date import inspections from Mexico over the last 5 years, about 54 percent were of the Medjool variety. About 1 percent of the date import inspections from Israel during this same period were Medjools.

In response to these requests, the Department is issuing this proposed rule to provide interested persons the opportunity to comment on removing Medjool dates from import requirements. All other varieties of imported dates would continue to be subject to import requirements. Such other varieties are not as easily distinguishable as Medjools and are believed to be in direct competition with the varieties regulated under the marketing order.

Thus, it is proposed that section 999.1 of the Code of Federal Regulations (CFR), which specifies the import regulation for dates, be amended to exclude Medjool dates.

To exclude dates of the Medjool variety from the terms of the date import regulations, a new definition for dates is added to paragraph (a). The new definition defines “dates” as all varieties of dates, except dates of the Medjool variety.

In addition, minor changes in the current definitions for the terms “Fruit and Vegetable Division”, “USDA inspector”, and “Importation” are proposed to be made to reflect changes in the names of Federal agencies referred to in the definitions.

The definition of “Fruit and Vegetable Division” refers to the “Consumer and Marketing Service”. That agency is now called the “Agricultural Marketing Service”. The definition of “USDA inspector” refers to inspectors of the “Processed Products Standardization and Inspection Branch”. The name of the Branch is now the “Processed Products Branch”. Finally, the definition of “Importation” references the “United States Bureau of Customs”. This agency is now called the “United States Customs Service”.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with issuance of this proposed rule.

This rule would relax requirements currently in effect for date importers and would not impose any additional costs on affected importers. Thus, the

Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

The information collection requirements under the date import regulation have been previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and have been assigned OMB number 0581–0077.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 999

Dates, Filberts, Food grades and standards, Imports, Nuts, Prunes, Raisins, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 999 is proposed to be amended as follows:

1. The authority citation for 7 CFR part 999 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

2. In § 999.1, paragraphs (a) (1) through (10) are redesignated as paragraphs (a) (2) through (11), a new paragraph (a) (1) is added, and new paragraphs (a) (8), (9), and (11) are revised to read as follows:

§ 999.1 Regulation governing the importation of dates.

(a) *Definitions.* (1) Dates means all varieties of dates, except dates of the Medjool variety.

* * * * *

(8) *Fruit and Vegetable Division* means the Fruit and Vegetable Division of the Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250.

(9) *USDA inspector* means an inspector of the Processed Products Branch, Fruit and Vegetable Division or any duly authorized employee of the USDA.

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(11) *Importation* means release from the custody of the United States Customs Service.

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Dated: April 2, 1996.

Eric M. Forman,
Deputy Director, Fruit and Vegetable Division.
[FR Doc. 96–8718 Filed 4–8–96; 8:45 am]

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