

Agricultural Marketing Service, USDA

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in § 987.12 to reflect new major outlets and regulatory requirements needed because of changes in marketing conditions. Marketable dates shall include but not be limited to the following: DAC dates, Dates for further processing, Export dates, and Product dates.

[43 FR 4252, Feb. 1, 1978]

§ 987.44 Free and restricted percentages.

(a) Whenever the Committee finds that the available supply of marketable dates of applicable grade and size available to supply the trade demand for free dates of any variety is likely to be excessive, and that limiting the volume of marketable dates to be handled as free dates through establishment of free and restricted percentages applicable to such variety of such dates would tend to effectuate the declared policy of the act, it shall recommend such percentages to the Secretary. If the Secretary finds, upon the basis of the Committee's recommendation and supporting data or other information available to him, that the establishment of such percentages would tend to effectuate the declared policy of the act, he shall establish such percentages. The sum of the free and restricted percentages for any crop year shall equal 100 percent.

(b) The dates handled by any handler in accordance with the provisions hereof shall be determined to be that handler's quota fixed by the Secretary within the meaning of section 8a(5) of the act.

[27 FR 6818, July 19, 1962, as amended at 43 FR 4252, Feb. 1, 1978]

§ 987.45 Withholding restricted dates.

(a) Whenever free and restricted percentages for any variety of dates have been established for a crop year by the Secretary in accordance with § 987.44, each handler shall, at the time of having dates of such variety certified for handling as free dates (including those for further processing that are to be handled as free dates), withhold from handling a quantity of marketable dates of such variety having a weight equal to the restricted percentage for such variety referable to the dates so

far certified. The withholding requirement shall not apply to dates certified for delivery directly to an excess supply removal program of the Secretary. The weight required to be withheld shall be determined by dividing the restricted percentage by the free percentage and applying the resultant withholding factor, rounded to the nearest one-tenth of one percent, to the weight of dates so certified. The withholding factor, computed as aforesaid, shall be established by the Secretary. When pitted dates are certified, the weight to be withheld shall be determined by dividing the weight of the pitted dates certified for handling or further processing by a divisor established by the Committee with the approval of the Secretary and applying the withholding factor.

(b) Compliance by any handler with the withholding of restricted dates may be deferred to any date not later than January 31 of any crop year, upon request to the Committee and when accompanied by a written undertaking that on or prior to such date, he will have fully satisfied his withholding obligation. Such undertaking shall be secured by a bond or bonds to be filed with, and acceptable to, the Committee and with a surety or sureties acceptable to the Committee, running in favor of the Committee and the Secretary in an amount conditioned upon full compliance with such undertaking. The amount shall be determined by multiplying the poundage of the deferred restricted obligation by a bonding rate per pound which would provide funds estimated to be sufficient for the Committee to purchase on the open market a volume of dates equivalent to the deferred obligation. Such bonding rate shall be established annually, and modified as necessary, by the Committee. Any sums collected through default by a handler on his bond shall be used by the Committee to purchase dates to meet the violated restricted obligation, reimburse the Committee for expenses relative to the default, and any excess money remaining shall be refunded to the defaulting handler.

The dates so purchased by the Committee shall be turned over to the defaulting handler for disposition as restricted dates. In the event the Committee is unable to purchase a poundage of dates equal to the defaulted volume, the sums collected shall, after reimbursement of Committee expenses in connection with the default, be distributed among all handlers other than the defaulting handler in proportion to the volume of certified dates handled as free dates (including those for further processing that were handled as free dates), during the crop year in which the default occurred.

(c) At any time during the crop year free dates may be inspected and certified for handling or for further processing as provided in § 987.41. Dates so certified shall, at the time of certification, be identified by appropriate seals, stamps, or tags to be furnished by the Committee and to be affixed to the containers by the handler under the direction and supervision of the Committee or its designated inspectors. The assessment requirements in § 987.72 as well as the withholding obligation prescribed in paragraph (a) of this section shall be met at the time of certification. However, a handler who has had more free dates certified for handling or further processing than he subsequently shipped or otherwise handled may, upon request to the Committee and with its approval, have any of such excess quantity of the certified dates suspended from certification of record or, if damaged or the outlet changed, removed from certification, and his withholding and assessment obligations adjusted accordingly. A handler, who has had dates certified for handling or further processing and has not had them so suspended from certification of record or removed from certification, may carry such certified free dates over into the new crop year and need not pay the assessment nor meet the requirements of any withholding percentages established for such year.

(d) Dates withheld to meet the withholding obligation shall be stored at the expense of the handler, in storage of his own choosing and disposed of in accordance with § 987.55. All such dates shall be inspected and identified by ap-

propriate seals, stamps, or tags to be furnished by the Committee and to be affixed to the containers by the handler under the direction and supervision of the Committee or its designated inspectors. All withholding and movement of restricted dates, shall be subject to the supervision and accounting control of the Committee and reports shall be filed as required by this part. Any handler who during a crop year disposes in restricted outlets of a quantity of marketable dates in excess of his withholding obligation of such year may: (1) On written request delivered to the Committee not later than September 30 of such crop year have a part or all of such excess transferred, by the Committee, to such other handler or handlers as he may name, for crediting such other handlers' withholding obligations incurred in that crop year; and in addition (2) have a part or all of the remainder of such excess credited to his restricted obligation of the subsequent crop year: *Provided*, That the amount of any such credit shall not exceed that established by the Committee, with the approval of the Secretary, as the percentage of such withholding obligation.

(e) On request to the Committee and with its approval, a handler may, in accordance with the provisions of this paragraph and any applicable rules and regulations which the Committee may prescribe with the approval of the Secretary, defer until any date not later than September 30 of the crop year the meeting of any portion of his obligation to withhold restricted dates by setting aside such amount of graded dates as will assure a quantity of marketable dates equal at least to the quantity needed to be withheld to meet his withholding obligation. With respect to any such dates the handler may set aside in connection with such a deferment, the Committee may require, if it deems it necessary, the handler to have made, at his own expense, such inspection as may be necessary for a determination as to whether such dates conform to the applicable requirements for dates that may be set aside under this paragraph. As a condition to the Committee approving the deferment, the handler shall agree in writing that:

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(1) He will adequately mark and identify the set-aside graded dates as such and hold them separate and apart from other dates;

(2) The graded dates will not be removed from the stacks in which so set aside without the prior written permission of the Committee;

(3) Inspection of the dates by the Committee will be permitted at any reasonable time; and

(4) If the quantity, quality, or size of the set-aside dates is found by the Committee at any time to be deficient, the handler will promptly set aside such additional or substitute quantity of graded dates as is necessary to correct the deficiency.

(f) Upon the Committee prescribing, with the approval of the Secretary, minimum standards for inspection of field-run dates and appropriate administrative rules and regulations, a handler may, in accordance therewith and the provisions of this paragraph, satisfy all or any part of his obligation to withhold restricted dates by setting aside field-run dates or by disposing of field-run dates in outlets prescribed in, or pursuant to, § 987.56. The field-run dates shall be of such quality or size as shall be prescribed in such rules and regulations. The setting aside, direct disposal, and disposal of any field-run dates set aside shall occur prior to September 30 of the crop year in which the withholding obligation occurs. Prior to the disposal or setting aside of the field run dates, the handler shall have had them inspected to determine the weight of dates eligible to satisfy withholding obligation. Upon such disposal or setting aside of the field-run dates, the handler shall be credited with satisfaction of his restricted obligation to the extent of the eligible weight of dates. In permitting the handler to so satisfy his withholding obligation the Committee shall require the handler to agree in writing that:

(1) Any field-run dates set aside will be held separate and apart from other dates and appropriately marked;

(2) Such dates will not be removed from the stacks in which so set aside for substitution of other dates, disposition, or for any other reason without prior written permission of the Committee; and

(3) Inspection of said dates by the Committee will be permitted at any reasonable time. In order to satisfy a withholding obligation by direct disposal of field-run dates into cull outlets, the disposal shall be under the supervision of the Committee and through persons on a Committee approved list of feeders and manufacturers. The handler may, upon giving prior notice to the Committee of any of the following proposed actions with respect to field-run dates withheld and obtaining its approval, (i) dispose of any such set-aside, field-run dates in the same manner as provided for direct disposal (ii) grade such dates and have the graded dates certified as marketable dates and withhold or dispose of such marketable dates as restricted dates, or (iii) substitute for the set-aside, field-run dates an equivalent quantity of marketable dates which he shall withhold or dispose of as restricted dates.

[27 FR 6818, July 19, 1962, as amended at 29 FR 9707, July 18, 1964; 36 FR 15039, Aug. 12, 1971; 43 FR 4253, Feb. 1, 1978]

§ 987.46 Revisions of percentages.

The Secretary may, on recommendation of the Committee submitted prior to January 31 of the crop year, or on the basis of other information available to him, increase the free percentage to conform with such new relation as may be found to exist between trade demand for free dates and available supply of marketable dates of applicable grade and size. Upon any revision in the free and restricted percentages the control obligation of each handler with respect to free dates handled or certified for handling or for further processing by him for the entire crop year shall be recomputed in accordance with such revised control percentages. The handler shall be permitted to select, insofar as practicable, under the supervision and direction of the Committee, the particular dates to be removed from any dates withheld.

[27 FR 6818, July 19, 1962, as amended at 43 FR 4253, Feb. 1, 1978]

§ 987.47 Surplus.

All cull dates and all substandard dates, including such dates blended