

# Yakima Co. Superior Court judge halts apple-sales cutoff

The law bans the sale of apples from previous crop year after Oct. 1 to retailers, wholesalers for resale to consumers

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YAKIMA, Wash. — A week before an Oct. 1 cutoff for selling old crop apples was to go into effect, a Yakima County Superior Court judge has issued a preliminary injunction prohibiting the state Department of Agriculture from enforcing the deadline.

The ruling by Judge Susan Hahn came in a lawsuit filed in July by Evans Fruit Co. Inc. and 11R Sales Inc., a sales agent for Evans. The case has been widely watched throughout the apple industry.

The law, passed earlier this year by the Legislature and signed by Gov. Gary Locke, bans the sale of apples from the previous crop year after Oct. 1 to retailers or wholesalers for resale to consumers. The old crop apples could be sold directly to consumers or could be sold for processing or other use.

In her 17-page opinion, Hahn found that Evans Fruit was likely to prevail in the case. She also said the law violates the Washington State and U.S. constitutions.

The opinion was issued Sept. 24 after a Yakima court hearing Sept. 19.

Evans Fruit is one of the largest fruit warehouses in the Northwest, packing more than 4 million boxes of apples a year. It is also a major exporter.

Historically, Evans Fruit has sold one season's apples from controlled-atmosphere storage well into the next year, as late as October and November. Last year, Evans had sales of \$4.5 million after Oct. 1 of previous crop apples, court documents said.

Bill Evans said the cutoff date was unprecedented anywhere, with any commodity.

His attorney, Brendan Monahan of Yakima, argued the cutoff date was arbitrary, that good-condition CA apples could be sold for market prices on Sept. 30 only to be worth processing prices on Oct. 1. The cutoff law is "unfair, unjust and unconstitutional," Monahan said.

The state, represented by Alice Blado, an assistant attorney general, argued the cutoff law is constitutional and helps to protect the quality and

reputation of Washington apples. She said the state already enforces grade and pack standards designed to ensure quality and that the Oct. 1 cutoff continues those efforts by keeping old crop apples out of stores when new crop apples are available. The cutoff assures consumers they are getting "fresh" apples, she said.

In granting the preliminary injunction, the judge suggested that a simple sticker, placed on each apple noting the crop year, could serve the same purpose without burdening the industry with a cutoff date. Already apple boxes are labeled according to crop year, she said.

"This ruling is an important victory for the entire apple industry," Monahan said. "Apple growers across the state should be inspired by the fact that the court system will protect them from arbitrary and unreasonable government regulations."

Monahan said the preliminary injunction is only one step.

"This injunction will enable Evans Fruit to lawfully sell its perfect apples to its eager customers, and the financial harm imposed by the cutoff date will be held to a minimum," Monahan said. "But we still have a trial in our future, and we look forward to establishing conclusively, and for the benefit of the entire industry, that this law is unconstitutional and should be permanently invalidated."

Bill Brookreson, WSDA deputy director, said he was surprised by the scope of the court's ruling. He said the department was reviewing the ruling and would be consulting with the attorney general's office on the next step in defending the law.

The Oct. 1 cutoff had widespread support throughout the apple industry after it was unanimously approved last December by the Washington State Horticultural Association's Grade and Pack Committee.

Jim Hazen, Hort Association executive director, called the judge's ruling "a disappointment."

"From our perspective, the Oct. 1 cutoff is a consumer-protection effort," Hazen said before the court hearing. "It's an attempt to address quality issues and ensure that only good fruit gets to market. It sends the right message that we take quality seriously."

The cutoff was also viewed as a way to boost net returns for growers by eliminating large carryovers that have plagued the industry in recent years, Hazen said.

For the 2001 crop marketing season, carryovers from 2000 were 3 to 4 percent of the crop — more than 4 million 42-pound boxes of old crop apples were shipped after Sept. 1, with more than 1 million of that total moving after Oct. 1.

