

Eight of the 20 handlers subject to regulation have annual grape sales of \$5,000,000. In addition, 10 of the 50 producers have annual sales of at least \$750,000. Therefore, a majority of handlers and producers are classified as small entities.

This rule establishes safeguards and procedures for suspension of packing holidays prescribed under the California grape order. The specification of procedures and safeguards for suspending packing holidays are expected to facilitate the Committee's discussions and decision-making on such requests received from handlers. Additionally, this rule clarifies existing maturity requirements for Flame Seedless variety grapes and corrects errors in regulatory text regarding references to the CCR.

Establishment of Safeguards and Procedures for Suspension of Packing Holidays

Section 925.304(e) of the order's rules and regulations provides that the Committee may suspend the prohibition against packing or repacking grapes on any Saturday, or Sunday, or on the Memorial Day or Independence Day holidays of each year, to permit the handling of grapes provided such handling complies with procedures and safeguards specified by the Committee.

A decision issued by an Administrative Law Judge on November 7, 2002, invalidated the authority for the Committee to suspend or modify packing holidays, because there were no safeguards or procedures established for the Committee to follow when it makes its decisions on whether to suspend packing holidays.

As a result, the Committee met on December 12, 2002, and recommended specifying the following safeguards and procedures for suspension of packing holidays to § 925.304(e) of the order's rules and regulations to the handling of such requests: (1) All requests for suspension of a packing holiday shall be in writing, shall state the reasons the suspension is being requested, and shall be submitted to the Committee manager by noon on Wednesday or at least 3 days prior to the requested suspension date; (2) upon receipt of a written request, the Committee manager shall promptly give reasonable notice to producers and handlers and to USDA that an assembled Committee meeting will be held to discuss the request(s). A USDA representative shall attend via speakerphone or in person, and all votes of the Committee members on whether or not to approve the request shall be cast in person; (3) the Committee members shall consider marketing

conditions (*i.e.*, supplies of competing commodities including quantities in inventory, the expected demand conditions for grapes in different markets, and any pertinent documents which provide data on market conditions), weather conditions, labor shortages, the size of the crop remaining to be marketed, and other pertinent factors in reaching a decision to suspend or not suspend packing holidays; (4) once a vote is taken, any documents utilized during the meeting will be forwarded immediately to the USDA representative and a summary of the Committee's action and reasons for recommending approval or disapproval will be prepared and also forwarded by the Committee; and (5) the USDA representative shall notify the Committee manager of approval or disapproval of the requested prior to commencement of the suspended packing holiday and the Committee manager shall notify handlers and producers of USDA's decision.

In previous seasons, the Committee used informal safeguards and procedures when processing and considering requests to suspend packing holidays. The established safeguards and procedures are intended to address the concerns expressed in the administrative action. The specific safeguards and procedures will be specified in § 925.304(e) of the order's administrative rules and regulations.

The Committee discussed alternatives to this change, including not making any changes, but determined that safeguards and procedures were needed to address the concerns expressed in the administrative action and to facilitate the handling of packing holiday suspension requests. The Committee vote was 8 in favor, 0 opposed, and 1 abstained. Imported grapes will not be affected by this action.

Clarification/Removal of Section Numbers

Section 925.52(a)(2) of the grape order provides authority to limit the handling of any grade, size, quality, maturity, or pack of grapes differently for different varieties, or any combination of the foregoing during any period or periods.

Section 925.304(a)(2) of the grape order's administrative rules and regulations provides that grapes of the Flame Seedless variety shall be considered mature if the juice contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in the juice in accordance with applicable sampling and testing procedures specified in §§ 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and

1436.17 of the title 3: California Code of Regulations (CCR). These provisions do not, but should, specify that this variety of grapes also is considered mature under the grape marketing order if the juice meets or exceeds 16.5 percent soluble solids. To correct this oversight, this rule adds language to § 925.304(a)(2) indicating that Flame Seedless variety grapes shall be considered mature if the juice meets or exceeds 16.5 percent soluble solids.

Section 925.304(b)(4) of the grape order's rules and regulations requires containers of grapes to be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, and specifies that such requirement shall not apply to containers in the center tier of a 3 box by 3 box pallet configuration, as provided in §§ 1460.30 and 1359 of the CCR. The references to §§ 1460.30 and 1359 were incorrectly added to § 925.304(b)(4) on August 23, 2002 (67 FR 54567). This rule removes these references from § 925.304(b)(4) and adds references to §§ 1436.30 and 1359 of the CCR to § 925.304(b)(3), as should have been done last August.

Section 925.304(f) states that certain container and pack requirements cited in the grape order are specified in the CCR and are incorporated by reference and that a notice of any change in these materials will be published in the **Federal Register**.

This rule is in the interest of handlers, producers and consumers. These revisions do not impact the grape import regulation.

The information collection requirements for the safeguards and procedures for the suspension of packing holidays have been previously approved by the Office of Management and Budget (OMB) under OMB No. 0581-0189. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meetings were widely publicized throughout the grape industry and all interested persons were invited to attend the meetings and participate in the Committee's deliberations. Like all Committee meetings, the November 14, 2002, and the December 12, 2002, meetings were public meetings and all entities, both large and small, were able to express their views on these issues.