

handling complies with procedures and safeguards specified by the Committee.

A decision 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, including USDA approval, for the suspension of packing holidays to § 925.304(e) of the order's rules and regulations: (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 the Committee meeting via speakerphone or in person, and all votes of the Committee members 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 on whether or not to 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 request 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, and USDA approval, are intended to address the concerns expressed in the administrative action.

The Committee vote was 8 in favor, 0 opposed, and 1 abstained. The specific safeguards and procedures were added to § 925.304(e) of the order's administrative rules and regulations (68 FR 19708, April 22, 2003). These revisions do not impact the grape import regulation.

#### **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.

Prior to issuance of the interim final rule, § 925.304(a)(2) of the grape order's administrative rules and regulations provided 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 sections 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of the CCR. These provisions did not, but should have, specified 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, the interim final rule added 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.

Prior to issuance of the interim final rule, § 925.304(b)(4) of the grape order's rules and regulations required containers of grapes to be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, and specified 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 continues in effect the removal of these references from § 925.304(b)(4) and continues the addition of 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**.

#### **Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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 the 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 approximately 20 handlers of California grapes who are subject to regulation under the order and about 50 producers of grapes in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$5,000,000 and small agricultural producers are defined as those having annual receipts of less than \$750,000. 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 continues in effect the establishment of 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 continues in effect the clarification of existing maturity requirements for Flame Seedless variety grapes and the correction of errors in regulatory text regarding references to the CCR.

#### **Establishment of Safeguards and Procedures for Suspension of Packing Holidays**

Prior to issuance of the interim final rule, § 925.304(e) of the order's rules and regulations provided 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