

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
Fireplace and Stove Wood
CCR Title 4, §§ 4530 - 4536.2

NOTICE OF PROPOSED RULEMAKING ACTION

December 27, 2019

The California Department of Food and Agriculture (Department) proposes to amend California Code of Regulations (CCR) Title 4, §§ 4530 through 4536.2, inclusive, relating to the method of sale and test procedures for stacked and packaged natural firewood (fireplace and stove wood), manufactured wood (artificial compressed or processed logs), stove wood pellets or chips, and wood flavoring chips.

PUBLIC HEARING

A public hearing is not scheduled. A public hearing will be held if any interested person or his or her duly authorized representative submits to the Department a written request for a public hearing no later than 15 days prior to the close of the public comment period. Address the written request for a public hearing to the primary contact person below.

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit to the Department written comments relevant to the proposed regulatory action by email, fax, or mail addressed to the primary contact person listed below. Please include 'Firewood Regulation' in the subject line of any email, fax, or letter regarding this rulemaking. The public comment period begins on December 27, 2019, and closes at 5:00 p.m. on February 11, 2020.

AUTHORITY/REFERENCE

The Legislature has charged the Department in Business and Professions Code (BPC) Division 5, § 12100 with the responsibility of supervising weights and measures activities in California. The secretary of the Department is granted authority in BPC § 12027 to adopt such regulations as are reasonably necessary to carry out the provisions of Division 5. The Department's authority to promulgate this regulation is granted in BPC § 12024.11 mandating the secretary to adopt necessary rules and regulations pertaining to the sale or advertisement of firewood products, and to standardize quantities of measurement of these commodities. Authority is also provided in BPC § 12211 and CCR § 4600, requiring the secretary to adopt and incorporate by reference the package checking procedures in the current edition of the National Institute of Standards and Technology (NIST) Handbook 133, *Checking the Net*

Contents of Packaged Goods (NIST Handbook 133), “Chapter 3. Test Procedures – For Packages Labeled by Volume, Section 3.14. Firewood – Volumetric Test Procedure for Packaged Firewood with a Labeled Volume of 113 L [4 ft³] or Less and Stacked Firewood Sold by the Cord or Fractions of a Cord.”.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Method of Sale Requirements

With this rulemaking, the Department proposes to standardize and make consistent the state’s method of sale, advertising, and labeling requirements for packaged and non-packaged firewood in CCR §§ 4530 - 4534 with the national uniform model standard for fireplace and stove wood. The Department references the 2019 edition of NIST Handbook 130, *Uniform Laws and Regulations in the Areas of Legal Metrology and Fuel Quality* (NIST Handbook 130), “IV. Uniform Regulations, Section B. Uniform Regulation for the Method of Sale of Commodities, Section 2. Non-Food Products, Section 2.4. Fireplace and Stove Wood.” inclusive, for the method of sale, advertising, and labeling requirements of stacked and packaged natural firewood, artificial compressed or processed wood, stove wood pellets or chips, and wood flavoring chips. Current California regulation in CCR § 4531 requires firewood products to be sold by the cord, fraction of a cord, or percentage of a cord; with some exceptions. For example, CCR § 4531 (a) requires natural firewood packaged in quantities less than one-eighth cord to be sold in terms of a cubic foot or fraction of a cubic foot, yet it does not include a requirement for declaring the packaged quantity in terms of a liter or fraction of a liter.

In 2016, the National Conference on Weights and Measures (NCWM) changed NIST Handbook 130 requirements for the method of sale of natural firewood and wood flavoring chips packaged in quantities less than one-eighth cord to be advertised and sold in terms of a liter or fraction of a liter, and permissively to include a declaration of quantity in terms of a cubic foot or fraction of a cubic foot. This change created significant conflict between the national uniform model standard and California’s regulation. The Department proposes to remove current California regulation and adopt and incorporate by reference the 2019 edition of NIST Handbook 130 for the method of sale of firewood. Doing so will align California’s method of sale, advertising, and labeling requirements with the rest of the U.S.

Volumetric Sampling and Test Procedures

In 1991, the Department was ordered by the California Superior Court to adopt necessary rules and regulations pertaining to the sale or advertisement of firewood products, and to standardize quantities of measurement of those commodities. Concurrently and unrelated, the Department was in the process of adopting in regulation all requirements in NIST Handbook 133 in CCR § 4600. However, at that

time, NIST Handbook 133 did not include a national uniform model standard for volumetric sampling and test procedures for stacked and packaged firewood. To fulfil the court order, in 1996, the Department cooperatively worked with the firewood industry to draft volumetric sampling and test procedures for stacked and packaged natural firewood. The Department adopted that regulation in CCR §§ 4535 - 4536.2, inclusive. Two years later, California's regulation was presented to NCWM to be considered for adoption in NIST Handbook 133. It was adopted that year and published in the 1999 edition of NIST Handbook 133. Pursuant to CCR § 4600, the Department already adopts the current edition of NIST Handbook 133, so when NCWM changed the national uniform model standard for firewood test procedures, it inadvertently allowed for duplication and conflict of the test procedures in CCR §§ 4534 - 4536.2, inclusive. Being that they were identical at the time, there wasn't a real concern to correct the duplication. Subsequently, NCWM has modified the sampling and test procedures for firewood in NIST Handbook 133 causing the national uniform model standard adopted in CCR § 4600 to be slightly different than the test procedures in CCR §§ 4534 - 4536.2, inclusive.

Consequently, by complying with one they are in violation of the other, and vice versa. Several counties have expressed confusion whether to follow the latest procedures published in NIST Handbook 133, pursuant to BPC § 12221 and CCR § 4600, or those adopted in CCR §§ 4535 - 4536.2, inclusive. Some weights and measures officials throughout the state are susceptible to misinterpreting and inconsistently applying the dissimilar regulations compared to their counterparts elsewhere in the state. The firewood industry may not be uniformly regulated throughout the state as a result of the differences with the two regulations. To resolve the regulatory conflict and remove the confusion, the Department proposes to repeal CCR §§ 4535 - 4536.2, inclusive. Repealing these sections and deferring to the national uniform model standard published in the current edition of NIST Handbook 133 will harmonize California regulation with other states.

Anticipated Benefits of the Proposed Regulation

The proposed regulation standardizes the unit of measure on the labels and packages of firewood products nationwide. Weights and measures officials in California will have clear test procedures that are identical to those applied throughout the state and in other states that adopt NIST Handbook 133.

The packaged natural firewood industry in California will benefit from the proposed regulation by complying with the method of sale requirements adopted in NIST Handbook 130. The fireplace and stove wood industries can confidently sell firewood products both in California and across the country using the same advertising and

package labeling. This proposed regulation also removes confusion and conflict with differing requirements in the national uniform model standard and California regulation. Following NIST Handbook 133 regarding sampling and test procedures for firewood provides the firewood industry and state and county officials with uniform procedures to apply nationwide.

The proposed regulation strengthens consumer confidence and improves the marketplace. Harmonization with the national uniform model standard provides consumers a similar basis of value comparison by having the same unit of measure declared on package labeling. The Department believes this will lead to greater consumer satisfaction and maintain demand for stacked and packaged natural firewood, artificial compressed or processed logs, stove wood pellets or chips, and wood flavoring chips.

The Department determines there will be no significant benefit to the health and welfare of California residents, worker safety, and the state's environment due to the adoption of this regulation.

Consistency and Compatibility with Existing State and Federal Regulations

The Department has determined that this proposed regulation harmonizes method of sale, advertising, and labeling requirements, and removes existing inconsistencies and dissimilarities of firewood test procedures in the California Code of Regulations. The Department is the only state agency with the authority to regulate firewood and stove wood sold in California. The Department determines that there are no other regulations regarding the method of sale, advertising, and labeling requirements, or sampling and test procedures of firewood and stove wood than those referenced above.

The proposed changes to this regulation do not conflict with any federal regulations contained in the Code of Federal Regulations. The Department is not aware of any Federal laws or regulations relating to the advertising and testing of firewood and stove wood products, and this rulemaking is not mandated by federal law or regulation.

DOCUMENTS ADOPTED AND INCORPORATED BY REFERENCE

The following documents are adopted and incorporated by reference in this proposed regulation:

The 2019 edition of NIST Handbook 130, *Uniform Laws and Regulations in the Areas of Legal Metrology and Fuel Quality* (NIST Handbook 130), "IV. Uniform Regulations, Section B. Uniform Regulation for the Method of Sale of Commodities, Section 2. Non-Food Products, Section 2.4. Fireplace and Stove Wood.," inclusive.

The current edition of NIST Handbook 133, *Checking the Net Contents of Packaged Goods*, “Chapter 3. Test Procedures – For Packages Labeled by Volume, Section 3.14. Firewood – Volumetric Test Procedure for Packaged Firewood with a Labeled Volume of 113 L [4 ft³] or Less and Stacked Firewood Sold by the Cord or Fractions of a Cord.” is already adopted and incorporated by reference in CCR § 4600.

LOCAL MANDATE, FISCAL IMPACT, and HOUSING COSTS

The Department determines that because the proposed regulation only makes technical changes by modifying the state’s method of sale, advertising, and labeling requirements, and the sampling and test procedures, it:

1. Does not impose a mandate on local agencies or school districts;
2. Does not incur costs to any local agency or school district requiring reimbursement pursuant to Government Code §§ 17500 et seq.;
3. Does not incur costs or savings to any state agency;
4. Does not incur other non-discretionary costs or savings imposed on local agencies;
5. Does not incur costs or savings in federal funding to the state; and
6. Does not have a significant effect on housing costs.

STATEWIDE ADVERSE ECONOMIC IMPACT

This proposed regulation will have a nominal impact on small and large businesses. However, the Department initially determines that impact is not a significant, statewide adverse economic impact directly affecting California businesses, large or small, including the ability of California businesses to compete with businesses in other states. The costs incurred are nominal.

RESULTS OF ECONOMIC IMPACT ASSESSMENT

The Department determines that because the proposed regulation only makes technical changes by modifying the state’s method of sale, advertising, and labeling requirements, and the sampling and test procedures, it:

1. Does not create or eliminate jobs in California;
2. May create new businesses in California that have not previously done business in California because of differences with California’s current regulation compared to the national uniform model standards. The proposed regulation will not eliminate existing businesses in California; and

3. May allow for the expansion of businesses in California, to do business in other states that have also adopted firewood requirements in NIST Handbooks 130 and 133.

Other Anticipated Benefits of this Regulation

In addition to the anticipated benefits mentioned above, the Department determines there will be no other significant benefits to the health and welfare of California residents, worker safety, and the state's environment due to the adoption of this regulation.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS, INCLUDING SMALL BUSINESSES

The Department is aware of nominal costs imposed on large and small businesses to comply with the method of sale requirements of this proposed regulation. In compliance with current state regulation, many firewood businesses in California, large and small, sell firewood packaged in quantities less than one-eighth cord in terms of a cubic foot or fraction of a cubic foot, and not in terms of a liter or fraction of a liter. Large and small businesses that do not already advertise in terms of a liter or fraction of a liter will have to modify their labeling and advertising to sell packaged quantities in terms of a liter or fraction of a liter. The Department determines that at nominal cost the firewood industry can easily switch from selling firewood in terms of a cubic foot or fraction of a cubic foot to terms of a liter or fraction of a liter.

There will not be a direct economic impact to any California business, large or small, due to the proposed changes to the firewood sampling and test procedures. The Department is not aware of any direct or indirect economic impact to private persons because of this proposed regulation. The Department believes the retail price of fireplace and stove wood will not be directly affected.

REPORTING REQUIREMENTS

This proposed regulation does not mandate reporting requirements.

CONSIDERATION OF ALTERNATIVES

Government Code § 11346.5 (a)(13) requires that the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the written comment period.

CONTACT INFORMATION

Primary and Secondary Contacts:

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AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the above address. As of the date this notice is published in the California Regulatory Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, the Initial Statement of Reasons, and all supporting documents and information relied upon in the development of this proposed regulation. Please submit a request to the address above to receive a copy of the rulemaking file.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After receiving and considering all timely and relevant comments, the Department may adopt the proposed regulation substantially as described in this notice. If, however, the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with changes clearly indicated) available to the public for at least 15 days before the Department adopts the modified regulation. Please submit a request to the above address for a copy of the modified text of the regulation. Include 'Firewood Regulation' in the subject line of any email, fax, or letter regarding this rulemaking.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons may be obtained by submitting a request to the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Department posts electronic copies of this rulemaking file on its website at:
www.cdfa.ca.gov/dms/regulations.html