

**DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS
Title 3. Food and Agriculture
Division 3. Economics
Chapter 1. Fruit and Vegetable Standardization
Subchapter 4. Fresh Fruits, Nuts and Vegetables
Article 22. Citrus**

ADDENDUM TO THE STATEMENT OF REASONS

UPDATE OF INITIAL STATEMENT OF REASONS/PLAIN ENGLISH POLICY STATEMENT OVERVIEW

The Initial Statement of Reasons/Policy Statement Overview is still valid.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL 45-DAY COMMENT PERIOD, ENDING AUGUST 9, 2010

The Department received 33 letters in support of this proposed regulatory action during the initial 45-day comment period. Consequently, in accordance with Government Code §11346.9(a)(3), the Department will only respond to objections or recommendations specifically directed at this proposed action or to the procedure followed by the agency in proposing or adopting the action.

COMMENT 34.1: Commenter urges the Department to retain the current ratio and reject this proposed regulatory action.

RESPONSE: The Department has considered this comment and determined that the reasons for proposing this regulatory action, as set forth in the Initial Statement of Reasons, are still valid. Accordingly, adoption of the California Standard Scale for navel citrus would limit the presence of poor tasting navel citrus in the marketplace that currently meet minimum maturity standards.

COMMENT 34.2: Commenter contends that this proposed regulatory action stated that the navel market will be delayed for two weeks. According to the commenter, this regulatory action will devastate business and have a negative impact on the navel industry.

RESPONSE: The Department has considered these comments and determined that adoption of this proposed regulatory action will have a beneficial impact on California's navel industry and the consumer. The California Standard Scale is obtained by subtracting acid from brix. Although the California Standard Scale uses the same components as a ratio, it is not a ratio calculation and is not equivalent to the high ratio values stated. Such ratio values would delay harvest substantially in comparison to the California Standard Scale.

In studies relied upon in the Initial Statement of Reasons, it was estimated that the average delay of harvest (if it occurred) would be two weeks or less. In many instances there will be no delay. Accordingly, the California Standard Scale allows harvest of high

brix/high acid fruit that may potentially be rejected by current standards. As a result, the Department has determined that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. The adoption of this proposed regulatory action will improve overall flavor by virtue of its superior prediction of fruit eating quality, thereby benefitting the consumer. Finally, please note that this proposed regulatory action is specific to navel citrus.

COMMENT 34.3: Commenter states that this proposed regulatory action would create an unfair market advantage if similar standards are not implemented for other varieties, specifically, mandarins. A delay in the navel market will give Clementine growers and imports market advantage, squeeze the navel market, and in so doing, shift millions of cartons into the general maturity pools. Such a shift will be disastrous to the navel growers and the economic impact will be substantial. Commenter further discussed the necessity for conducting an economic impact of this market shift before a new maturity standard for navel oranges becomes law.

RESPONSE: The Department has considered these comments and determined that the argument that the navel season would be delayed until Thanksgiving does not correlate with data included in the Initial Statement of Reasons, which indicates that the delay will be two weeks or less. Furthermore, the Department has not received any empirical evidence which would suggested that adoption of the California Standard Scale would provide Clementine growers and imports with market advantage, squeeze the navel market, and in so doing, shift millions of cartons into the general maturity pools.

Data suggests that indeed some growers who have historically been able to harvest fruit early may be delayed, but other growers who have not been able to participate in the early market will be able to harvest their fruit. This is due to the fact that high sugar, high acid fruit which may have been kept from the market in the early season would now pass the California Standard Scale. Conversely, low sugar, low acid fruit which may have passed the current standard may not meet the California Standard Scale early in the season. Please see the response to COMMENT 34.2 for information concerning the economic impact. Finally, please note that this proposed regulatory action is specific to navel citrus and does not include any changes to Mandarin or Clementine citrus.

COMMENT 34.4: Commenter requests that the Department conduct economic studies regarding a two-week delay in the navel harvest.

RESPONSE: The Department has considered this proposed recommendation and concluded that an adequate body of research in regard to the adoption of the California Standard Scale has been submitted and reviewed. This information was made available to the public during the comment periods.

COMMENT 34.5: Commenter requests that the Department evaluate the new standard alongside the current standard for three to five years.

RESPONSE: The Department has reviewed data from a four year study funded by the Citrus Research Board, which involved volunteer panelists from the University of California Kearney Agricultural Center, volunteer panelists from the Sunkist Sales office in Visalia, and follow-up studies at UC Davis. All of the latter mentioned studies came to the same conclusion; fruit at the current 8:1 brix/acid ratio are not acceptable. This work then prompted subsequent studies that demonstrated that 8:1 ratio fruit are not acceptable. This body of work corroborates the conclusion of Ivans et. al. (cited in the Initial Statement of Reasons), that minimum maturity standards need to be revised.

When researchers analyzed the delay if the standard was changed to a 9:1 ratio or higher, they concluded that such a standard would result significant delays at the start of the season. The California Standard Scale allows a much-needed modification in the maturity standard to occur without lengthy delays in harvest. Furthermore, the California Standard Scale allows good tasting fruit that would likely be rejected by the current standard because of high sugar and high acid concentration to pass the California Standard Scale.

COMMENT 34.6: Commenter requests that the Department ensure that the new standard is equitable among growing regions and navel varieties that meet the current ratio for navel maturity.

RESPONSE: The Department has considered this comment and determined that the California Standard Scale is equitable among growing regions and navel varieties that meet the current ratio for navel maturity.

COMMENT 34.7 Commenter requests that the Department propose a similar maturity standard for Mandarin or Clementine varieties.

RESPONSE: The Department has considered this comment and determined that there is no need to propose a similar maturity standard for Mandarin and Clementine varieties at this time.

COMMENT 34.8: Commenter requests that the Department investigate better standardization of field test methods using refractometer and PH meters to hydrometer and titration methods.

RESPONSE: The Department has considered this comment and determined that there is no need to investigate alternative standardization of field test methods using refractometer and PH meters to hydrometer and titration methods at this time.

COMMENTS 34.9 and 34.26: Commenter requests that, should the Department move forward with this proposed regulatory action, that it allow navel growers in the northern growing region to form a regionally specific entity exempt from the proposed regulatory changes.

RESPONSE: The Department has considered this proposed recommendation and determined that adoption of such an exemption would conflict with the Food and Agricultural Code. Food and Agricultural Code §42684(a) provides that the

establishment and maintenance of minimum standards of quality and maturity for fruits, nuts, and vegetables is essential to ensure that products of acceptable and marketable quality will be available to the consumer. Accordingly, in the interest of establishing uniform minimum standards of quality and maturity for navel citrus, the Department will not allow navel growers in the northern growing region to form a regionally specific entity exempt from these proposed regulatory changes. Furthermore, such an exemption would negate the intent of this proposed regulatory action.

COMMENT 34.10: Commenter suggests that the market is already driving what fruit is acceptable to the consumer without change in the current maturity standards.

RESPONSE: The Department has considered this comment and determined that this proposed regulatory action is necessary to ensure that California navels of acceptable and marketable quality will be available to the consumer.

COMMENT 34.11: Commenter stated that the 2009-2010 navel season was one of the most successful on record, where the current ratio of 8:1 was the standard used. The commenter suggests that this information supports the claim that there is no rationale to change the maturity standard.

RESPONSE: The Department has considered this comment and found that the regulations proposed in this rulemaking action are necessary to provide consumers with the best possible citrus, will tend to prevent waste in the production and marketing of citrus, and will have a positive impact on the agricultural industry. The Department's conclusion is based upon a review of several studies included in the Initial Statement of Reasons.

COMMENT 34.12: Commenter contends that the Department has not complied with FAC §42684 whereby it is stated in the Statement of Reasons that "the regulations proposed in this rulemaking action are necessary to 1) provide consumers with the best possible citrus, 2) will tend to prevent waste in the production and marketing of citrus, and 3) will have a positive impact on the agricultural industry." The commenter is not in agreement with this rulemaking 1) because of misleading data presentation, consumer studies are inconclusive, and many variables affect fruit quality not addressed in the proposal; 2) the delay of the navel harvest and the varietal selectivity of the new maturity standard will cause waste in crops making it to market; and 3) the potential economic impacts to the navel industry will be disastrous.

RESPONSE: As stated in the Initial Statement of Reasons, the Department found that the regulations proposed in this rulemaking action are necessary to provide consumers with the best possible citrus, will tend to prevent waste in the production and marketing of citrus, and will have a positive impact on the agricultural industry.

For issues concerning the research methodology, please see the response to COMMENT 34.5. In regard to issues concerning delay of the navel harvest and the economic impact, please see the response to COMMENT 34.2.

COMMENT 34.13: Commenter alleges that the presentation of data in the Initial Statement of Reasons is misleading. Commenter states that supporting data used to justify this change in the law for navel maturity were written to make the results look more significant.

RESPONSE: The Department rejects this comment. Please see the response to COMMENT 34.5 for a justification supporting the data used.

COMMENT 34.14: Commenter suggests that on line graphs presented conveying 2010 county test data (PowerPoint, pages 19-23) the petitioner shows “%soluble solids concentration to titratable acidity (SSC/TA) pass only” and “pass both.” The commenter contends that the graphs don’t make sense with the ratio going to 0% and both to 100% by December. Fresno County, who supplied part of the data couldn’t explain it. Accordingly, the commenter claims that such data is not empirically valid.

RESPONSE: The Department rejects this comment and contends that the graphs included in the PowerPoint presentation are empirically valid. The “SSC/TA pass only” is just what it refers to, when only the SSC/TA passes. The Department believes that the commenter mistakenly concluded that “SSC pass only” was synonymous with “SSC pass.”

COMMENT 34.15: Commenter states that regardless of whether the words are flipped, adoption of the new “California Standard” is not convincing. By manipulation of the presentation of results to slant them unequally makes the entire proposal less credible.

RESPONSE: The Department contends that presentation of data included in the Initial Statement of Reasons is credible and empirically valid. Please see the response to COMMENT 34.5 for issues concerning the research and studies relied upon in proposing this regulatory action.

COMMENT 34.16: Commenter contends that the 2009 Specialty Block Grant is inconclusive when the graphs are compared. The graphs do not show a statistically significant difference in consumer preferences. The commenter doubts the empirical validity of the study and cites a memorandum dated February 2009 from the petitioner stating that the 2009 Specialty Block Grant was inconclusive. The Department has a duty to request a copy of the California Citrus Mutual January 2009 board minutes and Feb. 11, 2009 Market Memo, and further question why California Citrus Mutual did a 180-degree turn around within a year to submit this proposed regulatory change without any other studies being conducted.

RESPONSE: The Department has received and reviewed a significant amount of data demonstrating that the California Standard Scale is superior to current methodology, regardless of growing season, geographic location, or variety.

The memo dated February 11, 2009, which indicates that the “Comparison of Navel Orange Maturity is Inconclusive,” was published prior to data obtained from navel citrus consumer testing being completely analyzed and presented in a way that could be fully understood. It should be noted that this proposed regulatory action is based on years of

research which conclusively shows that the California Standard Scale is a more effective means of determining navel citrus maturity.

COMMENT 34.17: Commenter states that studies presented to change the regulations focus on consumer acceptance of the eating quality of a navel orange. However, many factors other than maturity affect “providing the consumer with acceptable quality.” There is also great variability in testing and eating quality early in the navel harvest, not only be field, but on a tree. This tends to stabilize as the fruit matures. Raising the navel maturity standard will not alter this inherent variation in the maturity of fruit as harvest progresses.

RESPONSE: The Department has considered this comment in conjunction with the documented empirical evidence in regard to the California Standard Scale and has determined that adoption of the California Standard Scale will provide fruit of better eating quality to consumers.

COMMENT 34.18: Commenter contends that the current ratio or the “California Standard” are only a small part of the eating quality of an orange at any time in a season. These studies have not demonstrated that only the ratio or “BrimA” or the “California Standard” are responsible for the consumer preferences of purchase or not. In the Obenland 2009 study, the conclusions recommended that this new BrimA standard would be most useful at the end of the navel season when the acids are low.

RESPONSE: Please see the response to COMMENT 34.17 for issues concerning the eating quality of navel citrus. In regard to the 2009 Obenland paper, researchers concluded that BrimA [the California Standard Scale] would be most useful at the end of the season as that is when the predictive ability of the current standard is at its worst due to the abundance of low acidity fruit. The research also shows, however, that the California Standard Scale is superior to the current standard in the early season as well.

COMMENT 34.19: Commenter states that the arguments in support of this new standard state there will be “a several week” delay in the navel harvest. Commenter’s packinghouse informed the commenter that certain varieties would not meet the new standard. Commenter states that he has no idea when or if his operation would meet the new standard because his operation stops testing after the ratio is met.

RESPONSE: Please see the response to COMMENT 34.2.

COMMENT 34.20: Commenter argues that this regulatory action creates potential waste in the production and marketing of citrus for unfortunate growers selected out of early navel harvest with this rulemaking action.

RESPONSE: As demonstrated in the response to COMMENT 34.2, the Department has determined that this proposed regulatory action would not result in a significant delay in the early navel harvest.

COMMENT 34.21: Commenter disagrees with the Department's position that this proposed regulatory action will have a positive impact on the industry. Commenter states that their early navels will be selected out of the early navel harvest.

RESPONSE: The Department has considered these comments and concluded that the California Standard Scale provides fruit that are more acceptable to the consumer than the current standard. Please see the response to COMMENT 34.2 for any potential economic impact.

COMMENT 34.22: Commenter contends that this proposed regulatory action would adversely impact northern grows. This in itself cannot result in a positive impact on the industry, even if select growers and commodities like Clementines are the big winners with this regulatory change.

RESPONSE: In analyses relied upon in the Initial Statement of Reasons, it was estimated that the average delay of harvest (if it occurred) would be two weeks or less. In many instances, there will be no delay and, in fact, the California Standard Scale allows harvest of high brix/high acid fruit that may potentially be rejected by current standards. Please see COMMENT 34.2 for additional information in regard to any potential impact concerning delay of the navel season. Finally, please note that this proposed regulatory action is specific to navel citrus and does not include any changes to Mandarin or Clementine citrus.

COMMENT 34.23: Commenter contends that in order for a new maturity standard to be equitable, it needs to be consistent among navel varieties and regions in the state, and not give market advantage to Mandarin or Clementine products or imports. Such a change in the maturity standard for navels needs to be equally applied to the Mandarin or Clementine varieties.

RESPONSE: The Department has considered this comment and contends that this proposed regulatory action is being applied to all navel varieties and regions throughout the state in a consistent and equitable manner. Please see the response to COMMENT 34.2 for additional information concerning the economic impact of this proposed regulatory action. Finally, please note that the research concerning the California Standard Scale has focused almost exclusively on navels. Consequently, the Department will not change the maturity standards for Mandarin or Clementine varieties at this time.

COMMENT 34.24: Commenter requests that the Department, prior to adopting this proposed regulatory action, test in the market for a minimum of one year, preferably three to five years due to possible weather factors, crop size, and condition. Any change in the navel maturity standard needs equivalent change to mandarin maturity standards to be equitable in marketing.

RESPONSE: The Department has considered this comment and determined that an adequate body of research and testing has demonstrated that adoption of the California Standard Scale would benefit both the navel industry and the consumer. Finally, please note that the research concerning the California Standard Scale has focused almost

exclusively on navels. Consequently, the Department will not change the maturity standards for Mandarin or Clementine varieties at this time.

COMMENT 34.25: Commenter states that it is documented in the studies relied upon in proposing this regulatory action and many others that there is variability between SSC/TA measurements in the laboratory using a refractometer and PH meter, versus field measures with a hydrometer and titration. Field measurements are not as accurate as those done with laboratory instruments. Since the hydrometer measures the specific gravity of a solution, factors affecting measurements in the field include temperature variability, dissolved gasses, foam on the juice surface, and the amount of pulp. PH measured by titration can be affected by the age of the indicator solution. More studies should be conducted to look at field test variability and investigate better standardization of field SSC/TA measurements.

RESPONSE: The Department agrees that there is likely greater variability in methodology used in the field as compared to the laboratory. This point, however, should not be allowed to obscure the larger issue of the necessity for change in the maturity standard. The California Standard Scale, regardless of the methodology used to measure it, will provide fruit of better eating quality to consumers than does the current standard. Additionally, any variability in methodology used in the field as compared to the laboratory would remain constant under both the current standard and the California Standard Scale.

COMMENT 34.27: Commenter identifies as a small grower. Commenter contends that this proposed regulatory action will cause economic harm to their entire navel market and chain of commerce.

RESPONSE: Please see the response to COMMENT 34.2.

COMMENT 34.28: Commenter contends that any delay in the start of the navel season has the potential to lower overall returns to the grower and create waste in the production of navel oranges.

RESPONSE: The Department has considered this comment and determined that, in many instances there will be no delay and, in fact, the California Standard Scale allows harvest of high brix/high acid fruit that may potentially be rejected by current standards. Accordingly, the Department has determined that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than this proposed regulatory action. The adoption of this proposed regulatory action will improve overall flavor by virtue of its superior prediction of fruit eating quality, consequently benefitting the consumer.

COMMENT 34.29: Commenter cites sources contending that any restriction on fruit maturity should weigh the negative effects on fruit supply against the positive effects on enhanced demand.

RESPONSE: The Department contends that this proposed regulatory action is not a restriction on fruit maturity. In many instances there will be no delay and, in fact, the California Standard Scale allows harvest of high brix/high acid fruit that may potentially be rejected by current standards. The adoption of this proposed regulatory action will improve overall flavor by virtue of its superior prediction of fruit eating quality, consequently benefitting the consumer.

COMMENT 34.30: Commenter cited a source claiming that there is always going to be a blame game where some think that someone is killing the market by selling inferior product no matter how high the maturity standard. Commenter states that the Department has to play a balancing act to set a reasonable and fair standard. Commenter questions what problem is going to be fixed by raising the maturity standards?

RESPONSE: The adoption of this proposed regulatory action will improve overall flavor by virtue of the California Standard Scale's superior prediction of fruit eating quality, consequently benefitting the consumer. Accordingly, a change in the formula used to calculate maturity would result in no added costs to state government. Consequently, this proposed regulatory action will change (and not necessarily raise) the minimum maturity standards for navel citrus.

COMMENT 34.31: Commenter posits that the Department has an obligation to California navel growers to reject this proposed regulatory action in its entirety or until at a minimum the economic impact of such changes is thoroughly studied. Similar proposals to change these sections have been rejected in the past because of economics. According to the commenter, the market is driving change in the quality of navel oranges delivered to the consumer without altering the current navel maturity standards, and the success of the 2009-2010 navel season using the 8:1 ratio supports retaining it.

RESPONSE: The Department contends that a significant body of research has been reviewed and referenced in the Initial Statement of Reasons. Please see the response to COMMENT 34.2 for additional economic rationale.

COMMENT 35.1: Commenter objects to the proposed changes in this regulatory action.

RESPONSE: Although the above comment does regard some aspect or aspects of the subject proposed under this regulatory action and must be summarized pursuant to Government Code §11346.9(a)(3), the comment is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

COMMENT 35.2: According to the commenter, this proposed regulatory change will negatively impact a substantial number of California citrus growers with little or no benefit to the California Citrus Industry.

RESPONSE: The Department notes the commenter's opposition. Please see the response to COMMENT 34.2 for information concerning the economic impact.

COMMENT 35.3: Commenter states that changing from the current maturity standard to the California Standard Scale regionally discriminates against California Citrus Growers with little or no benefit to the citrus industry or consumers.

RESPONSE: Please see the response to COMMENT 34.2.

COMMENT 35.4: Commenter cites a memorandum iterating that the comparison of navel maturity is inconclusive.

RESPONSE: Please see the response to COMMENT 34.16.

COMMENT 35.5: Commenter states that no formal side by side study has been conducted regarding the impact of the proposed maturity standard regulatory change. If the Department is proposing to change the current maturity standard (which impacts every citrus grower in the state of California) a study should be conducted. To change the law without first determining its impact would be reckless and negligent.

RESPONSE: Please see the response to COMMENT 34.5.

COMMENT 35.6: Commenter posits that as set forth in the arguments in support of the new standard, the proposed maturity regulatory change will result in a "several week" delay in the navel harvest. What impact will this proposed regulation have on the marketing of California navels?

RESPONSE: The Department contends that, as indicated in studies relied upon in the Initial Statement of Reasons, the adoption of the California Standard Scale will result in an average delay of two weeks or less. In many instances there will be no delay and, in fact, the California Standard Scale allows harvest of high brix/high acid fruit that may potentially be rejected by current standards.

Adoption of this proposed regulatory action will create favorable marketing conditions for California navels by improving overall flavor by virtue of its superior prediction of fruit eating quality, consequently benefitting the consumer.

COMMENT 35.7: Commenter suggests that the Department has not determined if such delay will cause more fruit to be forced onto the market in a short period of time, thereby reducing the already challenging market prices.

RESPONSE: The Department has considered this comment and determined that adoption of this proposed regulatory action will have a beneficial impact on California's navel industry and the consumer. The Department has reviewed a substantial body of data, none of which suggests that adoption of the California Standard Scale will cause more fruit to be forced onto the market in a short period of time and result in reduced market prices. Consequently, the Department rejects this comment.

COMMENT 35.8: Commenter suggests that since California navel growers already face significant challenges growing their crop for a profit, additional market price declines may force some California growers out of business.

RESPONSE: Please see the response to COMMENT 35.1.

COMMENT 35.9: Commenter suggests that an argument can be made that if California navel growers are prohibited from harvesting their fruit because of the new California Standard Scale, imported citrus may replace the early California navel. Moreover, if California navels cannot be harvested in the early market (before Thanksgiving), other fresh fruit commodities may replace the California navel on the grocery store shelves, which once gone will be difficult, if not impossible, to recover.

RESPONSE: Please see the response to COMMENT 34.2.

COMMENT 35.10: Commenter states that despite the minimum maturity testing standards, retailers dictate the minimum brix level that is acceptable for their customers. Retailers want good tasting California navels that their consumers will buy so they tell packers what maturity standard the fruit should be picked for consumers. According to the commenter, depending upon the maturity of the fruit in any particular year, and how the fruit tastes, retailers are already setting the standard and the requirements. Changing the maturity standard is not necessary and causes problems for both growers and retailers.

RESPONSE: Please see the response to COMMENT 34.2 for issues related to economic necessity. In addition, although some retailers have standards for maturity that must be reached before they purchase citrus, the Department contends that adoption of this proposed regulatory action will improve overall flavor by virtue of its superior prediction of fruit eating quality, consequently benefitting the consumer.

COMMENT 35.11: Commenter states that before a regulatory change is made to the maturity standard for California navels, a detailed study of the impact of such a change must be conducted.

RESPONSE: Please see the response to COMMENT 34.5.

COMMENT 35.12: Commenter states that if a side by side study is conducted so that growers, industry leaders, and retailers can evaluate how the California Standard Scale will potentially impact the California citrus industry, an informed decision can be made.

RESPONSE: Please see the response to COMMENT 34.5.

COMMENT 36.1: Commenter opposes the proposed change to maturity standards and feels that not nearly enough research has been completed on an issue that will severely impact thousands of growers, and specifically, the navel growers that we represent. It would be more appropriate to let market forces dictate the start of the season.

RESPONSE: Please see the response to COMMENT 34.5.

COMMENT 36.2: Commenter states that only one study concerning consumer preference has been completed. This study shows that there is no significant difference between the current standard and the proposed standard. If the Department is going to implement changes that may cost growers their farms, then a more thorough evaluation must be conducted to make sure the right decision is made.

RESPONSE: Please see the response to COMMENT 34.5.

COMMENT 36.3: Commenter states that the proposed standard would also severely hamper many packers during some of the most critical holiday windows of the year. Several navel houses have expressed their concerns that a change such as the one being proposed would prevent fruit from being sold for the Thanksgiving holiday.

RESPONSE: Please see the response to COMMENT 34.2.

COMMENT 36.4: Commenter is concerned that limiting early season fruit would allow more imported navels into the market if there are fewer early season navels.

RESPONSE: Please see the response to COMMENT 34.2.

COMMENT 36.5: Commenter questions whether the California Standard Scale is necessary. According to the commenter, nearly all major retailers have standards for maturity that must be reached before harvest. As a result, the navel market already has a policing method in place.

RESPONSE: Although some retailers have standards for maturity that must be reached before they purchase citrus, the Department contends that adoption of this proposed regulatory action will improve overall flavor by virtue of its superior prediction of fruit eating quality, consequently benefitting the consumer.

COMMENT 36.6: Commenter states that additional regulation is just an unnecessary overreach.

RESPONSE: The Department has considered this comment and determined, based upon a review of the empirical evidence cited in the Initial Statement of Reasons, that the California Standard Scale is necessary to provide fruit of better eating quality to the consumer.

COMMENT 36.7: Commenter discussed the need to ensure that California navels are the best that they can be. The science and consumer numbers simply don't provide justification. More data must be collected before any change is implemented. One set of growers must not be given preference over another. The market must be allowed to function as it should.

RESPONSE: Please see response to COMMENT 34.5.

COMMENT 37.1: Commenter states that while the proposed change in maturity standards for navel oranges will probably not put his organization out of business, it undoubtedly will decrease his organization's marketing window and overall profits.

RESPONSE: Please see response to COMMENT 34.2.

COMMENT 37.2: Commenter believes this rule change is not needed and could severely damage the industry.

RESPONSE: Please see response to COMMENT 34.2.

COMMENT 37.3: Commenter states that two very large corporate entities are pushing for this change with purely selfish interests.

RESPONSE: The Department rejects this comment as there is no evidence that would support this claim.

COMMENT 37.4: Commenter urges the Department to reject this proposed regulatory action and not allow this unnecessary rule change to take place.

RESPONSE: Please see response to COMMENT 34.2.

COMMENT 38.1: Commenter typically harvests in the first or second week in November and contends that raising the acid level threshold and further restrictions on coloring of the fruit will affect the ability to supply consumers with fruit prior to Thanksgiving. Commenter states that he selected the Fukamoto variety of citrus for this purpose.

RESPONSE: The Department has considered this comment and contends that, in examining five years of navel strain trial at the University of California Lindcove Field Station, many orange varieties, Fukamoto being one of them, would always be able to pass the California Stand Scale well before Thanksgiving.

COMMENT 38.2: Commenter states that not having any change in the industry since 1915 is significant. The research numbers given do not seem to warrant a change this drastic.

RESPONSE: The Department has considered this comment and contends that a substantial amount of evidence, which is cited in the Initial Statement of Reasons, indicates that consumers definitely do not like navel citrus harvested at the current maturity standard. Accordingly, this California Standard Scale is a superior predictor of flavor and would substantially benefit the consumer vis-à-vis the current standard.

COMMENT 38.3: Commenter states that if these tighter restrictions are imposed, the door is open to other states flooding the world-wide export market for citrus.

RESPONSE: The Department has considered this comment determined that it is highly unlikely that such a rule change would open the door to other states flooding the world-

wide export market for citrus. In addition, please note that any imported citrus would have to meet California's minimum maturity standards.

COMMENT 39.1: Commenter states that this regulatory action to delay the navel harvest is another frivolous and unwarranted "nanny" law since almost all food retailers already establish maturity standards.

RESPONSE: Please see the response to COMMENT 36.5.

COMMENT 39.2: Commenter states that his navels will now be delayed by at least two weeks, which impacts already stretched cash flow and by delaying the harvest it will most certainly impact prices.

RESPONSE: Please see response to COMMENT 34.2.

COMMENT 39.3: Commenter states that more laws and added government oversight just adds more cost to growers and seldom if ever does anything good. Commenter urges the Department to start regulating imported fruit.

RESPONSE: In regard to the first comment, please see the response to COMMENT 35.1. In regard to the second, please note that any imported citrus would have to meet California's minimum maturity standards.

COMMENT 40.1: Commenter is writing in protest of the proposal to change the maturity standard for California navels. From the study conducted by the commenter, this new standard would delay their Kern County Navel picking ten days (10) to two weeks. This will cause more fruit to be mature for harvest at basically the same time as fruit farther north.

RESPONSE: This Department has considered this comment and determined that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The adoption of this proposed regulatory action will improve overall flavor by virtue of its superior prediction of fruit eating quality, consequently benefitting the consumer. In addition, the Department has not received any empirical evidence which would suggest that the adoption of the California Standard Scale would disrupt California's navel industry or cause an excess supply in the marketplace. The adoption of this proposed regulatory action will provide significant benefits to the entire California navel industry by increasing the quality of all early navel fruit in the market from California. Using the new California Standard Scale to "brand" California navels will further benefit the industry in marketing its fruit and ultimately result in increased marketing opportunities.

COMMENT 40.2: Commenter states that the most important finding of their blind test study revealed that the ten day (10) delay did not result in a better tasting orange. Commenter states that there is considerable debate about this to the point that they do

not believe there is enough evidence to change the current standard. According to the commenter, this new proposed standard will definitely hurt the volume shipped of early navels from Kern County. Finally, commenter states that the major chain markets have their own standards and are not complaining about our current system.

RESPONSE: For information concerning the studies relied upon, please see the response to COMMENT 34.5. For information concerning the economic impact, please see the response to COMMENT 34.2. Finally, for information concerning retailer standards, please see the response to COMMENT 36.5.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE PUBLIC HEARING ON AUGUST 5, 2011

Five individuals in support of this proposed regulatory action made comments during the public hearing on August 5, 2011. In accordance with Government Code §11346.9(a)(3), the Department will only respond to objections or recommendations specifically directed at this proposed action or to the procedure followed by the agency in proposing or adopting the action.

COMMENT 50.1: Commenter states that her family has been shipping early navels since the 1970's. Commenter stated that she does not believe the California Standard Scale is a solution. It looks to her that it is just a problem in search of a solution.

RESPONSE: Please see response to COMMENT 34.2.

COMMENT 50.2: Commenter states that the debate to change the early navel maturity standard has gone on for several decades and will never be resolved. Commenter cited Dr. Tom Spring, University of Florida, Agricultural Economics, who stated that there is always going to be a blame game where some think that someone is killing the market by selling an inferior product, no matter how high the maturity standard is set.

RESPONSE: Please see response to COMMENT 34.30.

COMMENT 50.3: Commenter contends that the state has to play a balancing act to set a reasonable and fair standard. Consumer tests that have been submitted by California Citrus Mutual are seeking out, which this proposed change is based on, were conducted in 2008, which was a very poor quality navel season from start to finish. However, 2009-2010 was one of the most successful seasons for navel growers that California Citrus Mutual attested to when the current 8:1 ratio was the navel maturity standard used.

RESPONSE: Please see response to COMMENT 34.11

COMMENT 50.4: Commenter states that this proposed regulatory action seems to be a solution in search of a problem. Commenter argues that navel citrus has not decreased, as alleged by other entities. Commenter argues that fresh sales of navel citrus have increased steadily since 1987 and are in line with population growth.

Commenter stated that decline in orange consumption is, in fact, based upon decreases in Valencia demands.

RESPONSE: Please see the response to COMMENT 34.13.

COMMENT 50.5: Commenter contends that this regulatory change will hurt the small to midsize grower and benefit the large and the very large navel growers.

RESPONSE: The Department has considered this comment and determined, after reviewing a significant amount of data, that the California Standard Scale is superior to current methodology, regardless of growing season, geographic location, or variety. In addition, since this proposed regulatory action is being applied to all navel citrus, the Department rejects any contention that this proposed regulatory action is inequitable.

COMMENT 50.6: Commenter states that the smaller growers in the Northern California citrus belt, are selected out with the California Standard Scale.

RESPONSE: Please see response to COMMENT 50.5.

COMMENT 50.7: Commenter states that this is not equitable and in itself is grounds for the Department to reject implementation of the California Standard. Commenter alleges that the underlying unspoken reason for this change in the navel maturity standard appears to be a mechanism for corporate growers to squeeze the navel market and open up a bigger window for the Clementines.

RESPONSE: Please see the response to COMMENT 50.5.

COMMENT 50.8: Commenter states that this does not benefit navel growers, but greatly benefits Clementine growers. Any change in the navel maturity standard needs to be accompanied by a containment change in the 6.5:1 ratio for Mandarins, the Mandarin maturity standard, in order to be equitable for marketing to the small to midsize navel growers.

RESPONSE: The Department has considered this comment and determined that there is no need to propose a similar maturity standard for Mandarin and Clementine varieties at this time.

COMMENT 50.9: Commenter specifies that the current navel maturity standard, as has been pointed out several times, has been in place since 1915. And prior proposals to change it have failed because of economics. Does the benefit of change outweigh the cost?

RESPONSE: Please see the response to COMMENT 38.2.

COMMENT 50.10: Commenter contends that the California Standard has not been tested. No economic studies were submitted. Therefore, should the Department consider its adoption? It needs to be tested alongside the current standard for a minimum of three to five years.

RESPONSE: Please see the response to COMMENT 34.5.

COMMENT 50.11: Commenter states that based upon the lack of sufficient evidence to change the current standard and the demonstrated success of the 8:1 ratio, that the Department reject this proposed regulatory action. Commenter states that the proposed regulatory action is not good for the navel industry.

RESPONSE: The Department has considered these comments and determined that adoption of this proposed regulatory action will have a beneficial impact on California's navel industry and the consumer. Please see the response to COMMENT 34.5 for issues related to the documents and studies relied upon.

COMMENT 50.12: Commenter states that the debate to change the navel maturity standard has gone on for several decades, and will never be resolved. Commenter cited a quote iterating that there is always going to be a blame game where some think that someone is killing the market by selling inferior product no matter how high the maturity standard.

RESPONSE: Please see response to COMMENT 34.30.

COMMENT 50.13: Commenter states that consumer tests submitted by California Citrus Mutual, which this proposed change is based on, were conducted in 2008, a very poor quality navel season from start to finish. Yet the next year, the 2009-2010 was one of the most successful seasons for navel growers, which California Citrus Mutual attested to, when the current 8:1 ratio was the navel maturity standard used.

RESPONSE: Please see response to COMMENT 34.11

COMMENT 50.14: Commenter questions what problem is going to be fixed by the California Standard, or any change in the navel maturity standard? This proposed regulatory change seems to be a solution in search of a problem.

RESPONSE: Please see the response to COMMENT 34.2.

COMMENT 50.15: Commenter suggests that navel orange consumption has not decreased as alleged by California Citrus Mutual. Fresh sales of navel oranges have increased steadily since 1987 and in line with population growth. Decline in orange consumption is because of the decreases in Valencia demand.

RESPONSE: Please see the response to COMMENT 34.13.

COMMENT 50.16: Commenter suggests that this regulatory change will hurt the small to mid sized grower and benefit the large and very large navel growers. The very large corporate growers will benefit because this "designer formula" with no science behind it, preferentially selects their varieties and growing region. Conversely, the smaller growers in the northern California citrus belt are selected out with the "California Standard." This is not equitable and in itself is grounds for the Department to reject implementation of the "California Standard."

RESPONSE: Please see response to COMMENT 50.5.

COMMENT 50.17: Commenter states that the underlying, unspoken reason for this change in the navel maturity standard appears to be a mechanism for corporate growers to squeeze the navel market and open up a bigger market window for Clementines. This does not benefit navel growers, but greatly benefits the Clementine growers.

RESPONSE: Please see response to COMMENT 50.8.

COMMENT 50.18: Commenter suggests that any change in the navel maturity standard needs to be accompanied by a concomitant change in the 6.5:1 mandarin maturity standard to be equitable in marketing for the small to mid sized navel growers.

RESPONSE: Please see response to COMMENT 50.8.

COMMENT 50.19: Commenter argues that current navel maturity standards have been in place since 1915 and prior proposals to change it have failed because of economics. Does the benefit of the change outweigh the costs?

RESPONSE: Please see response to COMMENT 38.2.

COMMENT 50.20: Commenter argues that based upon the lack of sufficient evidence to change the current standard and the demonstrated success of the 8:1 ratio, we request the Department reject California Citrus Mutual's proposal. It simply is not good for the California navel industry.

RESPONSE: Please see response to COMMENT 34.30.

COMMENT 50.21: Commenter states that the materials supporting the proposal fail to establish a compelling reason to make the change. There is no analysis of the economic impacts of the proposed change and some of the justification tends to be misleading or wrong.

RESPONSE: Please see response to COMMENT 34.5.

COMMENT 50.22: Commenter contends that while per capita orange consumption has decreased, the implication that it is due to decreased demand for navel oranges is wrong. Decreased per capita consumption of oranges is due to decreased consumption of Valencia oranges, a problem that navel orange standards do not address. In fact, total consumption of navel oranges has been growing as population has increased and growers have expanded acreage significantly over the last two decades.

RESPONSE: Please see response to COMMENT 34.13.

COMMENT 50.23: Commenter states that there is no documentation of a problem with the level of the present standard in the materials made available.

RESPONSE: Please see response to COMMENT 34.5.

COMMENT 50.24: Commenter contends that the navel orange industry has made significant investments based on the present standard and changing it will result in winners and losers. Any gains are likely to be small and costs of change could be large, especially for growers with particular varieties in given locations. Commenter states that government should avoid a change from a long-standing equilibrium position, such as the present navel orange maturity minimum maturity standard, that has differential impacts on producers and handlers.

RESPONSE: For issues concerning a potential impact on regional growers, please see the response to COMMENT 34.22. For a response to questions concerning a long-standing equilibrium position, please see the response to COMMENT 38.2.

COMMENT 50.25: Commenter highlights concerns that any delay in harvesting navel crops will reduce season average prices. Commenter wants to know what, if any, economic advantages may be realized from increasing the minimum maturity standard for early navel citrus.

RESPONSE: In studies relied upon in the Initial Statement of Reasons, it was estimated that the average delay of harvest (if it occurred) would be two weeks or less. In many instances there will be no delay and, in fact, the California Standard Scale allows harvest of high brix/high acid fruit that may potentially be rejected by current standards. The adoption of this proposed regulatory action will improve overall flavor by virtue of its superior prediction of fruit eating quality, consequently benefitting the consumer.

COMMENT 50.26: Commenter states that the minimum maturity standard is increased in such a way that many brix/acid combinations that meet the present standard would not meet the new higher standard. The impact of the higher standard will be to delay the harvest and sale of a portion of early season navel oranges.

RESPONSE: Please see response to COMMENT 34.2.

COMMENT 50.27: Commenter cites results which indicate that a major problem is shipping early season navel oranges that do not meet the minimum maturity standards. The solution to the problem lies in the testing not increasing the minimum standard.

RESPONSE: The Department has considered this comment in conjunction with the documented empirical evidence in regard to the California Standard Scale and has determined that adoption of the California Standard Scale will provide fruit of better eating quality to consumers.

COMMENT 50.28: Commenter states that based on taste tests conducted, as navel orange sweetness increased respondents were more likely to state that they would purchase the fruit. While tasters state that they would exhibit particular behavior, we do not know what they would actually do.

RESPONSE: Please see response to COMMENT 34.5.

COMMENT 50.29: Commenter states that the 3 pound change in per capita consumption of oranges that occurred between 1987 and 2007 that is used to justify the new minimum maturity standard needs to be examined more closely.

RESPONSE: Please see response to COMMENT 34.5.

COMMENT 50.30: Commenter states that the current minimum standard of 8:1 was effective during the 2009-2010 season. Thus, the success of the 2009-2010 campaign supports the current standard rather than the proposed change. There are many flavor components in navel oranges. Changing the standard will not change the overall nature of a given crop.

RESPONSE: The Department has considered this comment and determined that the California Standard Scale is equitable among growing regions and navel varieties that meet the current ratio for navel variety.

COMMENT 50.31: Commenter states that there will be significant costs for increasing the minimum maturity standard and the incidence of these costs will likely vary by grower.

RESPONSE: In studies relied upon in the Initial Statement of Reasons, it was estimated that the average delay of harvest (if it occurred) would be two weeks or less. In many instances there will be no delay and, in fact, the California Standard Scale allows harvest of high brix/high acid fruit that may potentially be rejected by current standards. Accordingly, the Department has determined that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

COMMENT 50.32: Commenter states that the economic impact of delayed sales will depend on the length of delay, the rate at which prices decrease and the new pattern of sales. A rough calculation reveals that the impact could be substantial. First I use the actual pattern of sales and weekly average prices for weeks ending October 30 through December 25, 2009. Then I assume that sales are delayed one week and that the price for the delayed sales is the actual price for that week in 2009. Comparison of total revenue from delayed sales with actual total revenue shows a decrease of over \$4.5 million due to the one-week delay. Spread evenly over total sales of just over 8 million cartons results in an average cost of \$.56 per carton. However, the impact will probably fall more heavily on some producers than on others and some could suffer substantial revenue decreases.

RESPONSE: The Department has considered this comment and determined that adoption of the California Standard Scale will benefit both the consumer and California's navel industry. In studies relied upon in the Initial Statement of Reasons, it was estimated that the average delay of harvest (if it occurred) would be two weeks or less. In many instances there will be no delay and, in fact, the California Standard Scale allows harvest of high brix/high acid fruit that may potentially be rejected by current

standards. The Department has found that this proposed regulatory action will not result in delayed sales or lower total revenue to California's navel industry. Consequently, the Department rejects this comment due to the lack of concrete empirical data demonstrating an economic impact of this proposed regulatory action.

COMMENT 50.33: Commenter states that there is no question in my mind that the proposed California Standard will create “losers” among navel orange producers because of cultural methods, varieties grown, or geographic location. Thus, using these criteria, the proposed standard would be rejected and the present standard would be retained.

RESPONSE: Please see response to COMMENT 50.32.

COMMENT 50.34: Commenter posits that one must remember that the minimum maturity standard is not an optimum maturity standard. Its purpose is to keep immature fruit off the market, not to provide an optimal level of sweetness. For some tasters, optimal sweetness would require delaying the beginning of navel orange shipments until mid-December or later at tremendous costs to individual growers and all participants in marketing the navel orange crop.

RESPONSE: The Department has considered this comment. The Department notes that adoption of the California Standard Scale would change overall consumer perceptions of a navel orange meeting minimum maturity standards under current regulations from “dislike slightly” to “neutral” under the California Standard Scale. Accordingly, adoption of the California Standard Scale would not establish an optimum maturity standard.

COMMENT 50.35: Commenter states that petitioners for replacement of the brix/acid ratio with the California Standard point to a number of possible favorable outcomes, but with no assurance that any will actually occur. While there may be problems with testing for the present ratio standard, there is little economic justification for the change to the proposed California Standard.

RESPONSE: Please see response to COMMENT 34.2.

COMMENT 50.36: Commenter states that increasing the minimum maturity standard will have net costs to early-season navel orange growers but the amount and distribution is uncertain. The fact that net costs are likely to vary by grower is sufficient grounds for rejection of the mandatory California Standard. To the extent possible, government should avoid creating winners and losers. Commenter recommends that a mandatory change to the new California Standard be rejected.

RESPONSE: Please see response to COMMENT 34.2.

COMMENT 50.37: Commenter states that since California Citrus Mutual and the California Citrus Research Board sponsored the research, perhaps they could (or could acquire the rights to) copyright and license the California Standard as a “voluntary label” for California navel oranges. If there is a real need for a higher standard of “sweetness”

both consumers and marketing firms will benefit from participation in such a program. This is a market-based solution to the perceived problem in early season sour fruit that does not interfere with operations of those individuals, firms and brands that are successfully marketing early season navel oranges to satisfied customers.

RESPONSE: The Department has considered this comment and determined that a California Standard “voluntary label” would fail to ensure an equitable marketplace and consistent application of minimum maturity standards.

COMMENT 52.1: Commenter states that the material supporting this regulatory action fails to establish a compelling reason to make the change. There is no analysis of the economic impacts of the proposed change and some of the justification tends to be misleading or wrong.

RESPONSE: Please see response to COMMENT 34.5.

COMMENT 52.2: Commenter states that the taste test responses on future purchase behavior are untested and must be regarded as unreliable. There are many examples of respondents not doing what they indicate that they would do when faced with actual decisions.

RESPONSE: Please see response to COMMENT 34.5.

COMMENT 52.3: Commenter argues that total consumption of navel oranges has been growing as population has increased and growers have expanded acreage significantly in the last two decades.

RESPONSE: Please see response to COMMENT 35.1.

COMMENT 52.4: Commenter states that there is no documentation of a problem that the levels of present standards in the materials made available. In their article, Ivans and Ferree noted that some of the early season navel oranges purchased for their reach did not meet the minimum maturity standards.

RESPONSE: Please see response to COMMENT 34.5.

COMMENT 52.5: Commenter states that the solution to the maturity problem, the major problem noted in Ivans and Ferree is improved testing, not changing the standard.

RESPONSE: The Department rejects this comment and contends that research corroborates the conclusion of Ivans et. al. (cited in the Initial Statement of Reasons), that minimum maturity standards need to be revised.

COMMENT 52.6: Commenter states that the success of marketing the 2009-2010 navel orange crop is perhaps the strongest argument against changing the maturity standards since the brix acid ratio of 8:1 was in use at that time.

RESPONSE: Please see response to COMMENT 34.5.

COMMENT 52.7: Commenter provides that the navel orange industry has made significant investments based on the present standard and changing it will result in winners and losers. Any gains are likely to be small and the cost of change would be large, especially, for growers with particular varieties and given locations.

RESPONSE: Please see response to COMMENT 34.2.

COMMENT 52.8: Commenter states that the Department should avoid a change from a long-standing equilibrium position, such as the present navel orange minimum maturity standard, to one that has differential impacts on producers and handlers.

RESPONSE: Please see response to COMMENT 38.2.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE FIRST 15 DAY COMMENT PERIOD BEGINNING September 21, 2011 AND ENDING October 6, 2011

The Department received eight letters in support of this proposed regulatory action during the 15-day comment period. Consequently, in accordance with Government Code §11346.9(a)(3), the Department will only respond to objections or recommendations specifically directed at this proposed action or to the procedure followed by the agency in proposing or adopting the action.

COMMENT 45.1: Commenter states that this proposed regulatory action should not be allowed to proceed. Commenter believes the marketing window for navel sales would be shortened in the fall, which would then cause a glut of fruit to be sold after Christmas.

RESPONSE: The Department has considered this comment and contends that, based upon a review of the data included in the initial statement of reasons, that this proposed action will not result in delayed sales or lower total revenue to California's navel industry. By providing a better tasting piece of fruit throughout the navel season, the Department maintains that this proposed regulatory action will tend to limit waste and consequently excess supply in the marketplace.

COMMENT 45.2: Commenter states that there are other reasons to reject this proposal, such as unique flavor and sweetness of certain navel strains, and micro-climates which enhance color and sweetness, but probably would not pass the California Standard test.

RESPONSE: The Department has considered this comment and determined that the California Standard Scale is superior to current methodology, regardless of growing season, geographic location, or variety.

COMMENT 47.1: Commenter continues to believe that the proponents for the change have failed to provide the necessary economic analysis to support their request.

RESPONSE: Please see response to COMMENT 34.2.

COMMENT 47.2: Commenter states that the first document, U.S. Citrus Imports for Oct through Dec 2001-2010, shows that fresh citrus imports to the U.S. have trended up in both value and quality since 2001. In quantity terms, the trend is most pronounced in October. However, any conclusions that one might be able to draw from these data are very limited.

RESPONSE: The document entitled “U.S. Citrus Imports for the Selected Months of October to December 2001-2010” illustrates that there is a demand for citrus that is being increasingly being met by foreign sources. Accordingly, adoption of the California Standard would enhance demand for domestic navel citrus by better meeting consumer expectations and tastes.

COMMENT 47.3: Commenter states that as was pointed out in previously submitted materials, imported product is readily available to replace early navel oranges kept off the market by more restrictive quality standards.

RESPONSE: Please see response to COMMENT 34.2.

COMMENT 47.4: Commenter states that the source or nature of the data used for the charts (i.e., the geographic area covered and the nature of the sample, if it is a sample) is unknown.

RESPONSE: The Department rejects this comment as the source or basis of the data used for this additional material is clearly noted.

COMMENT 47.5: If sales of 25 percent of the fruit sold in the first five weeks (1,154,333 cartons) had been delayed until the last four weeks, the total revenues would have decreased over \$2,814,582. It is probably over \$2,814,582 because increased sales of over 1.15 million cartons of fruit during the last four weeks would have undoubtedly resulted in an average price of less than \$11.29 per carton and even lower total revenues due to delayed sales. If you happened to be a grower whose sales were delayed by the California Standard, your average price in 2009 would have been at least 17.7 percent lower for the delayed sales.

RESPONSE: The Department has considered this comment and contends that it does not correlate with the substantial body of empirical evidence reviewed. The argument that the navel season would be substantially delayed does not agree with the data reviewed by the Department, which indicates that the delay will be two weeks or less. Additionally, data reviewed suggests that indeed some growers who have been able to harvest fruit early may be delayed, but other growers who have not been able to participate in the early market will be able to harvest their fruit. Accordingly, the Department has found that this proposed regulatory action will not result in delayed sales or lower total revenue to California’s navel industry.

COMMENT 47.6: Commenter states that the last two documents (fifth and sixth) show the California Standard vs. Ratio: relationship to consumer acceptance. Commenter is skeptical of the statement that the California Standard can be applied without restricting the volume of fruit available to the market. For the entire period, 5 to 25 percent of fruit

passing the ratio standard would not pass the California Standard. Document 3 based on field data indicates that about 40 percent of fruit passing the ratio standard during the first two weeks of November 2010 would not pass the California Standard and that the proportion would still be at least 10 percent through November 20.

RESPONSE: Please see response to COMMENT 47.5.

COMMENT 47.7: Commenter notes that the materials initially submitted contain a review of the 2009-2010 season. Commenter notes again that the 8:1 ratio test was used that season and further that based on the documents added, application of the California Standard would have kept 25 percent of the early navel oranges shipped in October and November 2009 off the market.

RESPONSE: Please see response to COMMENT 34.5.

COMMENT 47.8: Commenter states that additional comments regard the last two documents (fifth and sixth) are relevant. Review of the paper “Determinants of flavor acceptability during the maturation of navel oranges” by Obenland, et al., which appears to be the research basis for the two documents, indicates that the relationship between SSC, TA and consumer response are not nearly as precise as the figures indicate. This means that the relationship between either the California Standard or the Brix/acid ratio and consumer acceptance is subject to considerable variability, especially at the minimum and maximum scores for Brix and TA. The acceptability of the figures is also limited as noted in Obenland, et al.

RESPONSE: The Department has considered this comment and determined, based upon the substantial body of academic and empirical research included in this proposed regulatory action that the California Standard Scale is both a better predictor of flavor than the existing standard and will ultimately benefit the consumer by providing a better tasting piece of fruit throughout the navel season. For additional information concerning the validity and applicability of the California Standard Scale, please see the response to COMMENT 34.5.

COMMENT 47.9: Commenter states that based on the presentation of Obenland, et al., it is easy to conclude that the proposed adoption of the California Standard with a minimum value of 90 is simply an attempt to increase the maturity standard.

RESPONSE: The Department notes that adoption of the California Standard Scale would change overall consumer perceptions of a navel orange meeting minimum maturity standards under current regulations from “dislike slightly” to “neutral” under the California Standard Scale. Accordingly, adoption of the California Standard Scale would not establish an optimum maturity standard.

COMMENT 47.10: Commenter states that replacement of the Brix/Acid ratio with the proposed “California Standard” lacks justification. There is limited evidence that navel orange demand is adversely affected by the present maturity standard. The consumer taste test responses on future purchase behavior are untested, subject to considerable unexplained variation and must be regarded as unreliable.

RESPONSE: Please see response to COMMENT 34.5.

COMMENT 47.11: Commenter states that there is no estimate of the costs or possible returns from adoption of the California Standard Scale. Some “back of the envelope” calculations based on information submitted supporting the proposed change in regulations indicates that the costs of the change for the 2009 crop could easily exceed \$2.8 million. While this may not seem like a large cost, it can be very significant to the comparatively small number of growers marketing early navel oranges who would be affected by the change.

RESPONSE: Please see response to COMMENT 47.5.

COMMENT 47.12: Commenter states that any gains from increasing the maturity standard are likely to be small and costs of change can be large, especially for growers with particular varieties in given locations. I continue to believe that government should avoid a change from a long-lasting equilibrium position, such as the present orange minimum maturity standard, that has significant differential impacts on producers and handlers.

RESPONSE: Please see response to COMMENT 47.5.

COMMENT 47.13: Commenter states that there is no estimate of possible returns from the proposed change or any reliable data on which to base such an estimate. One can be confident, however, that those growers bearing the cost burden of the proposed change will realize few if any benefits.

RESPONSE: Please see response to COMMENT 34.5.

COMMENT 55.1: Commenter states that there has not been sufficient evidence submitted to the Department to establish that the proposed new standard would significantly impact consumer preference. In addition, the commenter contends that there has not been sufficient evidence submitted to satisfy the legal requirements for changing the current California Maturity Standard.

RESPONSE: Please see response to COMMENT 34.5 for a rationale related to the evidence and documents relied upon. In addition, as stated in the Initial Statement of Reasons, the Department found that the regulations proposed in this rulemaking action are necessary to provide consumers with the best possible citrus, will tend to prevent waste in the production and marketing of citrus, and will have a positive impact on the agricultural industry.

COMMENT 55.2: Commenter states that there is not sufficient evidence that the proposed new maturity standard would benefit California Navel growers (except maybe certain southern region growers that will usurp the high early season prices).

RESPONSE: Please see response to COMMENT 34.2.

COMMENT 55.3: Commenter claims that the proposed new maturity standard will regionally discriminate between California navel growers that would otherwise be entitled to harvest and sell their fruit under the current 8:1 ratio.

RESPONSE: The Department has considered this comment and determined that, based upon a review of the academic studies and evidence provided in this regulatory action, that the California Standard Scale is equitable among growing regions and navel varieties that meet the current ratio for navel variety.

COMMENT 55.4: Commenter states that the harvest of the California navel crop will be delayed in certain years by 2-3 weeks, thereby creating a market for imports and other shelf items (Thanksgiving promotions will be lost; once a market window is lost it is very difficult to recover).

RESPONSE: The Department has considered these comments and determined that the argument that the navel season would be delayed until Thanksgiving does not correlate with data included in the Initial Statement of Reasons, which indicates that the delay will be two weeks or less. Additionally, data suggests that indeed some growers who have historically been able to harvest fruit early may be delayed, but other growers who have not been able to participate in the early market will be able to harvest their fruit. This is due to the fact that high sugar, high acid fruit which may have been kept from the market in the early season would now pass the California Standard Scale. Conversely, low sugar, low acid fruit which may have passed the current standard may not meet the California Standard Scale early in the season. Please see the response to COMMENT 34.2 for information concerning the economic impact.

COMMENT 55.5: Commenter states that it is too late for the CDFA to implement an industry wide navel maturity standard change two weeks before the California navel harvest is scheduled to commence (growers are relying upon the current maturity standard that has been in effect for 40 years).

RESPONSE: The Department has considered this comment and concluded that the effective date of this proposed regulatory action will be April 1, 2012.

COMMENT 55.6: Commenter states that the proposed regulation to change the navel maturity standard does not contain a sunset provision, which would re-institute the current 8:1 maturity standard if the new standard has a negative impact on California navel growers.

RESPONSE: The Department has considered the commenter's suggestion and determined that, based upon a review of the academic and empirical studies relied upon and submitted to the public for comment, that there is no need to implement a sunset provision.

COMMENT 55.7: Commenter states that the proposed new navel maturity standard was not tested side-by-side with the 8:1 ratio (current California navel maturity standard) that has existed for 40 years to determine its impact on California navel growers; true/accurate economic data must be collected before a change should be regulated.

RESPONSE: The Department has considered this comment and determined that a significant body of research, which was included in this proposed regulatory action, support the necessity for the adoption of the California Standard Scale. Please see response to COMMENT 34.5 for a justification of the California Standard Scale.

COMMENT 55.8: Commenter states that Retailers/Buyers dictate market preferences and standards.

RESPONSE: Please see response to COMMENT 36.5.

COMMENT 55.9: Commenter cites a memo dated February 11, 2009, “comparison of navel maturity is inconclusive.” Utilizing USDA Specialty Crop Grants funds, California Citrus Mutual carried out a consumer study to determine if BrimA would be a better indicator of consumer acceptance and intent to purchase early season navels. The study concluded that consumer preference for early navels under the BrimA standard was not conclusive.

RESPONSE: Please see response to COMMENT 34.16.

COMMENT 55.10: Commenter stated in the documents it submitted in support changing the current maturity standard, “the 2009-10 navel season will go into the record books as one of the most successful campaigns in a generation.” “From the first carton shipped to the last, the quality was exception.” The current 8:1 maturity test ratio was used for the 2009-2010 season – not the new proposed California Standard Scale. If the proposed new “California Standard Scale” had been used, 25 percent of the early navel oranges shipped in October and November 2009 would have been kept off the market.

RESPONSE: Please see response to COMMENT 34.2.

COMMENT 56.1: Commenter states that the new evidence submitted does nothing to address the inequity in application of the new navel maturity standard, far reaching economic impacts of this change, or the costs to CDFA of imposing a regulatory change which has uncertain benefits to the navel growers.

RESPONSE: Please see response to COMMENT 34.2.

COMMENT 56.2: Commenter states that import data doesn't show which products are affected. Since the navel maturity standard is only the only citrus standard proposed to change, we would like to see a break down of the imports by product and month.

RESPONSE: The Department has considered this comment and determined that an adequate body of empirical evidence has been relied upon in proposing this rulemaking action. Accordingly, no further break down of the imports by product and month will be included in this rulemaking package.

COMMENT 56.3: Commenter states that county data submitted to show how much fruit would pass the new standard excludes Fresno County, which is believed will illustrate

the greatest negative impact with the new standard proposed. Data on how much fruit would pass the standard by region and variety should be submitted.

RESPONSE: Please see response to COMMENT 56.2

COMMENT 56.4: Commenter states that no economic data has been submitted to justify this change. In fact, economic analysis based upon the limited data submitted supports maintaining the current navel maturity standard.

RESPONSE: Please see response to COMMENT 34.5.

COMMENT 56.5: Commenter states that the petitioner has not identified the costs required to implement a new standard and who would incur them. Given the California State budget problems, it is unlikely that the Department would have the resources to train and hire new personnel to enforce the new standard.

RESPONSE: Please see COMMENT 34.2 for discussion concerning any economic impact. In addition, the Department has determined that this proposed regulatory action would result in no additional costs or require any additional allocation of resources to train and hire new personnel to enforce the California Standard Scale. The California Standard is obtained by subtracting acid from brix. Accordingly, a change in the formula used to calculate maturity would result in no added costs to state government.

COMMENT 56.6: Commenter states that no compelling evidence has been submitted to support this change in the navel maturity standard. It is beneficial to some growers and regions and not to others, and also opens up a market window for imports should the navel season be delayed. Mandarin varieties marketed at the same time as early season navels need to be subject to a similar change in the minimum maturity standard of 6.5:1

RESPONSE: Please see response to COMMENT 34.2. In regard to regulatory changes concerning mandarins, please see response to COMMENT 35.1.

COMMENT 56.7: Commenter states that the inequity in application of the California Standard Scale giving market advantage to certain navel varieties, growing regions, and mandarin varieties has not been addressed by the petitioners. Commenter states that any change in the minimum maturity standards needs to be equitable across the board.

RESPONSE: Please see response to COMMENT 55.3.

COMMENT 56.8: Commenter states that consumer studies submitted are not tested, and their reliability is questionable. As previously referenced, the Board of California Citrus Mutual found the studies to be inconclusive in February 2009.

RESPONSE: Please see the response to COMMENT 34.5 for information concerning the reliability of the data submitted. Please see the response to COMMENT 34.16 for information concerning the cited memorandum.

COMMENT 57.1: Commenter considers the proposed regulatory action useless.

RESPONSE: Please see response to COMMENT 35.1.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE SECOND 15 DAY COMMENT PERIOD BEGINNING DECEMBER 5, 2011 AND ENDING DECEMBER 20, 2011

COMMENTS 58.1, 59.1, 60.1, 61.1, 62.1, 63.1, and 64.1: Commenters request that the Department reject the proposal to change the current navel maturity standard from a sugar-to-acid ratio of 8:1 to the California Standard Scale.

RESPONSE: Please see response to COMMENT 34.1.

COMMENT 58.2: Commenter states that new rules are not necessary, rather enforcement of the current quality guidelines.

RESPONSE: Please see response to COMMENT 34.1.

COMMENTS 59.2, 60.2, 61.2, 62.2, 64.2: Commenters state that an economic impact of this rulemaking change on California navel growers has not been conducted. Commenters stress the need for an economic impact analysis to be conducted before this regulatory package is adopted.

RESPONSE: Please see response to COMMENT 34.2.

COMMENTS 59.3, 60.3, 61.7, 62.3, 63.2, and 64.3: Commenters argue that a California Standard Scale of 90 is not a minimum maturity standard, it is an optimum standard. Commenters argue that the Department's responsibility is to set and enforce a minimum standard, not an optimum standard.

RESPONSE: Please see response to COMMENT 50.34.

COMMENTS 59.4, 60.4, 61.8, 61.9, 62.4, and 64.4: Commenters highlight the need to adopt regulations that promote business, not impede it. Commenters also state that the proposed rulemaking does not show an economic benefit to navel growers and posits that navel growers would have losses of one-third of their profits during the 2011/12 navel season if this proposed regulatory action were in place.

RESPONSE: The Department has considered this comment and contends that, in examining five years of many navel varieties, the California Standard Scale would provide a net benefit to the California navel industry. Given the potential for antecedent variables such as negative growing conditions, any resulting one year economic impact cannot be used to support the claim that adoption of the California Standard Scale will result in a negative economic impact.

COMMENTS 59.5, 60.5, 62.5, and 64.5: Commenters state that adoption of the California Standard Scale will result in a significant economic impact to the navel

industry and claims that growers could have lost as much as \$5.00 per carton with the proposed regulatory package in place. Commenters state that a financial loss of \$5.00 per carton will be an especially heavy burden on small family farms to the benefit of the large corporate citrus growers.

RESPONSE: Please see response to COMMENT 47.5.

COMMENTS 59.6 60.6, 61.13, 62.6, and 64.6: Commenter states that by raising the bar for California navels, the door will be open for imports.

RESPONSE: The Department has considered this comment and determined that it does not correspond with the data reviewed by the Department, which indicates that adoption of the California Standard Scale may delay the beginning of the navel harvest season by approximately two weeks. Data made available to the public suggested that indeed some growers who have been able to harvest fruit early may be delayed, but other growers who have not been able to participate in the early market will be able to harvest their fruit. Furthermore, the Department has not received any empirical evidence which would suggest that the adoption of this proposed regulatory package would increase competition with foreign imports.

COMMENTS 59.7, 60.7, 61.14, 62.7, and 64.7: According to the commenters, a longer delay in the navel harvest imposed by the California Standard Scale will magnify the financial losses incurred from foreign imports competing for shelf space and will negatively impact the California economy.

RESPONSE: Please see response to COMMENT 47.5.

COMMENT: 59.8, 60.8, 61.15, 62.8, and 64.8: According to the commenters, up to 30 percent of navels harvested early would not have met the proposed California Standard Scale score of 90 during the 2011/12 navel season. Currently, Mandarin harvest starts at or about the same time as the navel harvest. If the California Standard Scale is adopted, it will put navel growers at an economic disadvantage by loss of the early navel market premium and open the market window for foreign imports and Mandarins. Delay of the California navel harvest will benefit the Mandarin growers and foreign citrus at the expense of the California navel growers who have had a long-standing equilibrium position in the marketplace.

RESPONSE: The Department has considered this comment and contends that given the potential for antecedent variables such as negative growing conditions, any resulting one year economic impact cannot be used to support the claim that adoption of the California Standard Scale will result in a negative economic impact. In addition, please see the response to COMMENT 47.5 in regard to concerns related to the delay of harvest and any additional economic impact.

COMMENT 59.9, 60.9, 61.18, 62.9, and 64.9: Commenters state that should the Department move away from a minimum maturity standard, then the state needs to be prepared to compensate the navel growers the difference in their profits. By changing the regulations as proposed, the Department will impede the navel industry and benefit

the largest producers.

RESPONSE: Please see the response to COMMENT 50.34 in response to comments concerning an optimum standard. In addition, the Department will not compensate navel growers for any difference in profits.

COMMENT 61.3: Commenter states that the public comments submitted have not been acknowledged nor responded to in the revisions to the proposal to change the minimum navel maturity standard. The proposed regulatory change appears to be shoved upon the navel industry without adequate and convincing evidence that the current sugar to acid ratio of 8:1 is inadequate.

RESPONSE: The Department has considered and responded to public comments in accordance with Government Code §11346.9(a)(3). In addition, the Department has reviewed, and made available to the public, a substantial body of empirical data and academic studies, which indicate that adoption of the California Standard Scale will benefit both navel producers and consumers. Furthermore, this proposed regulatory action has been discussed in numerous public forums, including at California Citrus Advisory Committee meetings and a public hearing.

COMMENT 61.4: Commenter states that in the 2011 navel season, fruit that passed the current 8:1 ratio but did not pass the proposed California Standard Scale of 90 was “good eating fruit.” Yet navels that were a 7.7 ratio but passed on the proposed California Standard tables didn’t taste good at all.

RESPONSE: The Department has considered this comment and concluded that the methodology relied upon by the commenter is not empirically valid. Therefore, the Department rejects this comment.

COMMENT 61.5: Commenter states that the proposed California Standard of 90 as applied in the marketplace does not match the claims made by the petition, and once again calls into question the validity of changing a long-standing equilibrium position with the minimum navel maturity standard.

RESPONSE: The Department rejects this comment and contends that the well established body of research, as provided in the Initial Statement of Reasons, supports the determination that the California Standard Scale will provide fruit that are more acceptable to the consumer than the current standard. In addition, data included in the Initial Statement of Reasons indicates that the delay of harvest will be two weeks or less, which would not significantly change fruit availability or cause regional growing inequities.

COMMENT 61.6: Commenter states that under the proposed California Standard of 90, she would not be able to harvest until late November, a 4-5 week delay in harvest. Calculations of commenter’s loss under the proposed regulations are a minimum of \$16,000. If this were applied to over 5 million cartons shipped in the early navel season, it would amount to a \$7.5 million loss to the navel industry. The ripple effect of depressed market prices from delay of the navel market will also have significant

economic impacts.

RESPONSE: The Department has considered this comment and determined that the figures reported in this comment cannot be relied upon since supporting documentation or sources were not provided. Please see a response to COMMENT 47.5 for additional discussion concerning the economic impact of this proposed regulatory action.

COMMENT 61.10: Commenter states that there is documented proof this season that the navel growers would have losses of 1/3 of their profits if the minimum maturity standard were changed as proposed.

RESPONSE: Please see response to COMMENTS 61.6.

COMMENT 61.11: Commenter states that the economic impacts on the navel industry and the California economy will be significant. Economic losses from a two-week delay of the 2010 navel harvest were projected at about \$3 million.

RESPONSE: Please see response to COMMENTS 61.6.

COMMENT 61.12: Commenter states that estimates for the 2011 provide that growers could have lost as much as \$5 per carton with the proposed California Standard Scale in place (confidential pricing from a citrus packer). This financial loss will be an especially heavy burden to small family farms to the benefit of the large corporate citrus growers.

RESPONSE: Please see the response to COMMENTS 59.4, 60.4, 61.8, 61.9, 62.4, and 64.4.

COMMENT 61.16: Commenter states that the proposed California Standard Scale of 90 is untested in the marketplace. It is evident this season that many growers will be negatively impacted and the economic benefits to the navel industry are uncertain. As growers, we again request a pilot study and/or sunset clause to these regulations.

RESPONSE: The Department has considered these comments and contends that the California Standard Scale is a well tested methodology for determining citrus maturity, as evident by the body of research provided in the Initial Statement of Reasons. In regard to issues concerning an economic impact during the 2011/12 navel season, please see the response to COMMENTS 59.4, 60.4, 61.8, 61.9, 62.4, and 64.4. In addition, the Department has considered and rejected the commenter's request for a pilot study and/or sunset clause for the California Standard Scale. The determination was made upon a review of the empirical evidence provided in the Initial Statement of Reasons, which indicates that the California Standard Scale is equitable among growing regions and navel varieties.

COMMENT 61.17: Commenter states that consumer studies submitted to justify this regulatory change did not use any navels produced north of Woodlake, CA, excluding the northern growing region. Growers in this area will be impacted to the greatest extent with the proposed California Standard of 90 governing their navel harvest.

Therefore, CDFA needs to grant this growing region an exemption if the new regulations are adopted.

RESPONSE: The Department has considered this comment and contends that the California Standard Scale is an equitable measure of all navel varieties. In examining five years of navel strain trial at the UC Lindcove Field Station, many navel orange varieties, would always be able to pass the California Standard Scale well before Thanksgiving. Accordingly, the Department rejects the contention that the Department has failed to consider the many differences, individual characteristics, and locations of the early maturity varieties.

COMMENT 63.3: Commenter states that he recently received a bag of oranges from a lot that tested 8.2 on the Brix/Acid ratio test and 86.5 on the California Standard Scale. Even though these oranges do not meet the California Standard Scale, the taste was very good and clearly superior to the Mandarins and imported navel oranges purchased from a local Safeway store about the same time.

RESPONSE: Please see the response to COMMENT 61.4.

COMMENT 63.4: Commenter states that the proposed California Standard minimum value of 90 is an increase in the minimum maturity standard. The SSC/TA will often be greater than 8.6 for early season navels before the California Standard value of 90 is attained. Depending on location, this can easily delay picking by two to four weeks after reaching the SSC/TA ratio equal 8.0 (the current standard).

RESPONSE: Please see the response to COMMENTS 59.6, 60.6, 61.13, 62.6, and 64.6 in regard to comments concerning “the delayed picking by two to four weeks.”

COMMENT 63.5: Commenter contends that he has obtained records from a navel producer that show brix/acid test results compared with the California Standard for October and November 2011. According to the commenter’s review, if the California Standard had been effective fall 2011, the producer would have lost at least \$16,000 in 2011. According to the commenter, many other small and medium sized growers would have suffered similar adverse impacts from the California Standard Scale, had it been effective this year.

RESPONSE: Please see the response to COMMENTS 59.4, 60.4, 62.4, and 64.4.

COMMENT 63.6: Commenter states that the harvest and marketing delay for early season navel oranges caused by the California Standard Scale, if adopted, will encourage additional imports. It could also decrease total revenue from all early season navels due to compressing the marketing period. These impacts are counter to government programs and efforts to encourage local purchases, small family farms, and to improve our trade balance.

RESPONSE: In regard to concerns related to competition from imports, please see the response to COMMENTS 59.6 60.6, 61.13 62.6, and 64.6. The substantial body of empirical evidence reviewed by the Department has indicated that the adoption of the

California Standard Scale will result in a net benefit to the California navel industry. Additionally, the Department has considered comments concerning the detrimental impact of the California Standard Scale. Based upon a review of the empirical evidence and academic studies provided in support of this proposed regulatory action, the Department has determined that the adoption of the California Standard Scale will benefit both California's navel industry and consumers.

COMMENT 63.7: Commenter states that there is absolutely no persuasive evidence in the petition that changing to the California Standard Scale will increase either short or long run returns from the total California navel orange crop. It will decrease returns to growers marketing early season navel oranges. Even if total returns for navel oranges were to remain the same, it will involve a transfer of revenues from early navel oranges to that portion of the crop and growers who market their crop after Christmas. Commenter finds the potential transfer of income to be a particularly objectionable feature of the proposed increase in minimum maturity standards.

RESPONSE: The Department has considered this comment and contends that these claims do not correlate with the substantial body of empirical evidence and academic studies supporting the adoption of the California Standard Scale. Empirical evidence and the studies relied upon suggest that some growers who have been able to harvest fruit early may be delayed by approximately two weeks, but other growers who have not been able to participate in the early market will be able to harvest their fruit. Accordingly, the Department has not received compelling evidence that this proposed regulatory action would limit participation in the California navel marketplace. Therefore, the Department rejects this comment.

COMMENT 65.1: Commenter states that during the December 15, 2011 California Citrus Advisory Committee meeting, it was reported that if the proposed changes to the California navel maturity standard had been mandated for the 2011 season, that (to date) approximately 30 percent of the fruit that was picked, packed, and marketed (under the current maturity testing regulation) would have been red tagged and therefore destroyed or subject to further action by the counties/CDFAs.

RESPONSE: Please see response to COMMENTS 59.4, 60.4, 61.8, 61.9, 62.4, and 64.4.

COMMENT 65.2: Commenter states that since the proposed change to the California Standard (whether it is accepted or rejected) is not going to be implemented this crop season, waiting to analyze the comparative information (over the next 60-90 days) is important and reasonable.

RESPONSE: The Department anticipates that this proposed regulatory change will be implemented on April 1, 2012. The Department has considered the commenter's request to analyze data from the 2011/12 navel season and determined that it is not necessary. The Department has reviewed data from several academic and empirical studies that have been compiled over multiple navel seasons and has come to the conclusion that adoption of the California Standard Scale is necessary. Please see the response to COMMENT 34.2 for additional justification.

COMMENT 65.3: Commenter requests that the Department delay the decision regarding the maturity standard regulation change until the comparative maturity standard data for the 2011/12 season has been considered, analyzed, and reported to California navel growers.

RESPONSE: Please see the response to COMMENT 65.2.

COMMENT 66.1: Commenter states that if the California Standard Scale, Version 1.0, had been implemented this year, commenter's operation would have not been able to supply returning customers with pre-holiday fruit.

RESPONSE: The Department has considered this comment and contends that, in examining five years of many navel varieties, the California Standard Scale would provide a net benefit to the California navel industry. The substantial body of empirical evidence has indicated that the adoption of the California Standard Scale may delay the start of the navel harvest season by two weeks or less. Additionally, data reviewed suggested that indeed some growers who have been able to harvest fruit early may be delayed, but other growers who have not been able to participate in the early market will be able to harvest their fruit. For issues concerning the reliance of data based on the 2011/12 growing season, please see the response to COMMENTS 59.4, 60.4, 62.4, and 64.4.

COMMENT 66.2: Commenter states that if fruit with good flavor and color that meet current ratio requirements would have to be discarded.

RESPONSE: The Department has considered this comment and upon a review of the studies relied upon has determined that this proposed regulatory action would tend to limit poor tasting navel citrus in the market place and prevent waste.

COMMENT 66.3: According to the commenter, the California Standard Scale, Version 1.0, neglects to take into consideration the many differences and individual characteristics of the early maturity varieties.

RESPONSE: Please see the response to COMMENT 61.17.

COMMENT 66.4: Commenter states that the California Standard Scale, Version 1.0, eliminates the ability of customers to purchase fruit according to their individual needs, tastes, and preferences.

RESPONSE: The Department has considered this comment and determined that the adoption of the California Standard Scale will benefit navel consumers by providing a better tasting and consistent product.

COMMENT 66.5: Commenter states that there is a potential for legal actions due to the unwarranted negative impact. According to the commenter, economic losses for his organization would exceed \$750,000. In addition, adoption of the California Standard Scale would result in a loss of early market customers.

RESPONSE: For information concerning the economic impact, please see the response to COMMENT 47.5. In regard to potential legal actions, the Department has the authority under Food and Agricultural Code §42684(a) to establish and maintain minimum standards of quality and maturity for fruits, nuts, and vegetables to ensure that products of acceptable and marketable quality will be available to the consumer.

COMMENT 66.6: Commenter states that orange consumption is declining because of “easy peel” citrus and the proliferation of other options, not inconsistent eating quality.

RESPONSE: The Department has considered this comment and determined that the California Standard Scale provides fruit that are more acceptable to the consumer than the current standard. Based upon a review of the material relied upon in this rulemaking package, the Department believes that the adoption of the California Standard Scale will limit a decline in orange consumption by providing a better tasting and consistent product.

COMMENT 66.7: Commenter states that the California Standard Scale does not and cannot guarantee acceptable flavor over the current maturity standards.

RESPONSE: Please see the response to COMMENT 66.6.

COMMENT 66.8: Commenter states that the adoption of the California Standard Scale’s impact on flavor is minimal, and does not justify the far greater potential negative impact on sales.

RESPONSE: Please see the response to COMMENT 38.2.

COMMENT 66.9: Commenter states that his operation’s citrus that did not meet the proposed California Standard Scale had good flavor, were well accepted, and sold well with repeat orders.

RESPONSE: Please see the response to COMMENT 38.2.

COMMENT 66.10: Commenter states that adoption of the California Standard Scale would change fruit availability and Kern County would gain significantly over Tulare County.

RESPONSE: The Department has considered this comment and rejects it on the basis that it has not received any academic or empirical evidence which would support the commenter’s claim.

COMMENT 67.1: Commenter states that changing the maturity test from the old 8.0 to the new California Standard of 90 still sounds like an attempt by two very large corporate entities to control the early navel market and exclude all competition north of Kern County.

RESPONSE: The Department rejects this comment. The reasons for adopting the

California Standard Scale are included in the Initial Statement of Reasons and the response to COMMENT 34.5.

COMMENT 68.1: Please see the attached letter.

RESPONSE: The commenter did not provide an attachment. Although the above comment does regard some aspect or aspects of the subject proposed under this regulatory action and must be summarized pursuant to GC §11346.9(a)(3), the comment is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

AUTHORITY

Section 14 of the Food and Agricultural Code authorizes the Department to adopt rules and regulations in accordance with the Administrative Procedure Act. Additional authority vested in the Food and Agricultural Code grants the Secretary of the Department the authority to amend or repeal rules and regulations.

Section 407 of the Food and Agricultural Code authorizes the Secretary of the Department to adopt such regulations as are reasonably necessary to carry out the provisions of the Food and Agricultural Code which the Secretary is directed or authorized to administer or enforce.

Section 42681 of the Food and Agricultural Code specifies, in part, that the Secretary of the Department may prescribe methods of selecting samples of lots or containers of fruits, nuts, and vegetables on a basis of size or other specific classification, which are reasonably calculated to produce by such sampling fair representations of the entire lots or containers which are sampled.

Section 42684 of the Food and Agricultural Code declares, in part, that the establishment and maintenance of minimum standards of quality and maturity for fruits, nuts, and vegetables is essential to ensure that products of acceptable and marketable quality will be available to the consumer. This section also provides that any quality and maturity standards adopted by the Secretary of the Department shall apply to the particular fruit, nut, or vegetable involved regardless of whether the item was produced in this state or outside of this state. Furthermore, this section establishes that the Secretary of the Department shall, in establishing, modifying, or rescinding any quality and maturity standard for any fruit, nut, or vegetable pursuant to this chapter, do all of the following: (1) find that the regulation will provide the consumer with acceptable quality fruits, nuts, and vegetables, which will also provide stability in the marketing of these products, (2) find that the regulation will tend to prevent waste in the production and marketing of fruits, nuts, and vegetables, (3) consider the impact of the regulation upon the agricultural industry, and (4) find that the regulation is necessary to accomplish the purposes of this chapter.

Section 42941 of the Food and Agricultural Code establishes that it is unlawful for any person to prepare, pack, place, deliver for shipment, deliver for sale, load, ship,

transport, cause to be transported, or sell any fruits, nuts, or vegetables in bulk, or in any container or subcontainer, unless such fruits, nuts, and vegetables, and their containers, conform to specified provisions or the regulations promulgated thereunder.

ESTIMATED COSTS OR SAVINGS TO PUBLIC AGENCIES OR AFFECTED PRIVATE INDIVIDUALS OR ENTITIES

The Department has determined that no savings or increased costs to any state agency, no costs under "Part 7 (commencing with Section 17500) of Division 4" of the Government Code to local agencies or school districts requiring reimbursement, no other nondiscretionary costs or savings imposed on local agencies, and no costs or savings in federal funding to the state will result from these proposed regulations. The Department has also determined that these proposed regulations do not impose a mandate on local agencies or school districts.

SMALL BUSINESS IMPACT STATEMENT

The Department has determined that the proposed changes in the regulations would result in no significant added costs to small businesses affected by these proposed changes.

ECONOMIC IMPACT ON AFFECTED BUSINESSES

The Department has determined that these proposed regulations would result in no costs to private businesses or individuals affected by these proposed regulations. This is based on the fact stated in the "SMALL BUSINESSES IMPACT STATEMENT."

ALTERNATIVES DETERMINATION

The Department has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

[Pursuant to Government Code section 11346.9(a)(5), if anyone proposes an alternative that would lessen the adverse economic impact on small businesses, the final statement of reasons must include an explanation setting forth the Department's reasons for rejecting any proposed alternatives.]

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.