

**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 8. Apricots**

INITIAL STATEMENT OF REASONS

PROBLEM STATEMENT

In 2006, tree fruit regulations were updated. Specifically, the requirement to label variety when packing and selling stone fruit. While the changes were added to almost all stone fruits, apricots were not included in the change.

The industry reports that marking regulations for variety has created restricted market access and reduced market flexibility. Consumers in the markets identify stone fruit by commodity, not by specific variety.

Container markings identifying variety have encouraged premature harvesting of some varieties under specific market conditions. Retailer purchases are not specific to variety within commodities. Most often, retail stores display commodities in bulk, with multiple varieties of the commodity combined for consumer purchase.

BENEFITS

The benefits of this regulatory change will ensure that the marking and size nomenclature will be consistent with the tree fruit industry's packing and marking practices. It will afford the apricot industry the same consistency as the peach, plum, nectarine, and prune industries, thus providing an equality to all stone fruit marking and size requirements.

PURPOSE

In 1915, the Legislature began to establish, in statute, minimum standards for fresh fruits, nuts, and vegetables by governing such factors as weight compliance, packaging, container size, labeling, color, and maturity. The California Department of Food and Agriculture's (Department's) Standardization Program is responsible for enforcing laws and regulations establishing minimum state standards for fruits and vegetables. This is accomplished by supervising county agricultural commissioners who carry out enforcement at the local level.

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 this section grants the California Department of Food and Agriculture Secretary 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 authorizes that the director [Secretary] by regulation 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, and make such other regulations as are reasonably necessary to secure uniformity in the enforcement of this division.

Section 42682 of the Food and Agricultural Code authorizes that the director [Secretary] may upon petition of a person that the director [Secretary] finds has a substantial interest in the growing or handling of the particular fruit, nut, or vegetable involved, establish, modify, or rescind by the regulation, which initially took effect January 1, 1971, standard container, lid, marking, sizing requirement for commodities, and packing arrangements for any fruits, nuts, or vegetables, for which specific quality standards have otherwise been provided by law or regulation.

Section 42683 of the Food and Agricultural Code authorizes that the director [Secretary], in promulgating regulations concerning standard containers, lids, marking, sizing, consumer packages or packing requirements for fruits, nuts, and vegetables, will consider such factors as the ease of handling, identification, federal laws, rules or regulations, containers, lids and packs in substantial use in the industry and the competitive position of the California fruit, nut, and vegetable industry.

SPECIFIC PURPOSE AND RATIONALE FOR EACH SECTION, PER GOVERNMENT CODE 11346.2(b) (1):

Section 1402.7 (a) Repealed. The specific purpose of amending this section is to remove the varietal marking requirement on nonconsumer containers of fresh apricots. Because of the changes made to all other stone fruit marking requirements, this repeal will allow apricots to be congruent with other tree fruit marking requirements.

Section 1402.7 (c) Amended. The specific purpose of amending this section is to remove the marking requirements of the descriptive size designations in parentheses from Sec. 1402.8, Table A. Existing regulations conflict with current industry and marketing practices. The changes will align apricot regulations with all other tree fruit regulations for marketing and enforcement purposes.

Section 1402.7 (a) (b) (c) Reordered. With the repeal of subsection (a), the section has been reordered to reflect the changes.

Section 1402.8 Column A Amended. The specific purpose of amending this section is to ensure that the marking and size nomenclature is consistent with industry packing and marketing practices.

Section 1402.8 Column B and D Amended. The specific purpose of amending this section is to correct numbering errors that were made in the last regulatory change.

REPORTS RELIED UPON

The Department relied upon the following documents in establishing this proposed rulemaking action:

- A petition received October 18, 2016 from the California Fresh Fruit Association.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Purpose

The purpose of the regulation change is to update the California Code of Regulations to ensure that the marking and size nomenclature is consistent with industry packing and marking practices.

The Creation or Elimination of Jobs within the State of California

The proposed amendments to Sections 1402.7 and 1402.8 are designed to change the marking requirements for apricots. This commodity was not included in the initial regulatory changes, and the industry has requested the changes stay consistent with other stone fruit marking requirements. Therefore, the Department has determined that this regulatory action will not have an impact on the creation or elimination of jobs in the State of California.

The Creation of New Businesses or the Elimination of Existing Businesses within the State of California

These amendments only apply to apricots grown in California. Therefore, the Department has determined that this regulatory action will not have a significant impact on the creation of new businesses or the elimination of existing businesses in the State of California.

The Expansion of Businesses Currently Doing Business within the State of California

The Department has initially determined that the proposed changes in the regulations will result in no significant added costs to businesses affected by these proposed changes. This is based on the following: The proposed changes allow the apricot industry more flexibility in marketing. Furthermore, the regulation also eliminates the cost associated with physically marking the container with the varietal statement. Therefore, the Department has determined that this regulatory action will not have a significant impact on the creation of new businesses or the elimination of existing businesses in the State of California.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The proposed regulatory action will benefit California apricot producers, and packers. The apricot industry will no longer be required to mark containers with the apricot variety. The changes will benefit California apricot growers and handlers by allowing more flexibility in marketing their commodities. Therefore, the proposed rulemaking will indirectly impact the general public and the protection of public health and safety.

There is no impact to worker safety or the State's environment.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has determined that this proposed change to the regulations will not have a significant adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, because there are no costs to businesses.

REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE DEPARTMENT'S REASONS FOR REJECTING THOSE ALTERNATIVES

The Department has not identified any reasonable alternatives to the proposed action, and no adverse impacts to small businesses are expected as a result of this proposed action.