

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

Articles 4 Containers, and 11 Avocados

§ 1380.19 (e) Standard Containers, 1408.2 Avocados, Maturity, Sampling and Testing Procedures, 1408.9 Avocados, Marking Requirements, 1408.10 Avocados, Marking Requirements for Irregular Containers. 1408.11 Avocados, Consumer-Type Package, 1408.13 Avocados, Packing, Sizing, and Standard Container Requirements, 1408.14 Avocados, Weight Requirements for Packed Containers, 1408.16 Avocados, Net Weight Tolerance, and 1408.17 Avocados, Sampling Procedure for Weight Requirement.

**INITIAL STATEMENT OF REASONS**

**PROBLEM STATEMENT**

Avocado regulations have not undergone a significant change since the 1960's. The Avocado industry has grown substantially since, and while the regulations have remained unchanged, the standard and industry practices have not. The amended regulations will better align with current industry practices. This regulatory action is intended to amend and repeal certain provisions in the California Code of Regulations (CCR) regarding marking and packing of fruit in any type of consumer and nonconsumer containers used in shipment of California Avocados. This action will simplify and modernize the packing and shipment of avocados produced in California.

**BENEFITS**

Consumer demands have increased the need to use nonstandard type containers when packing avocados. Current regulations state that avocados are to be packed in three standard containers, in rows and layers. Eliminating the avocado standard container requirements, will allow flexibility in the use of any type of consumer and nonconsumer containers. This change will not compromise consumer safety or the economic interests of the industry. Additionally, these changes will allow producers and handlers of California avocados to be competitive with foreign markets. The use of nonstandard type containers will allow for the increased uniformity in the size of the fruit as packed. Additionally, this will allow the industry to market a quality product with consistency, which will be embraced by trade customers.

## **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. It 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 Agriculture 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 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.

The director [Secretary] shall not, by regulation, adopt any new container or packing requirement, unless the new container or packing requirement has previously been authorized by regulation of the director [Secretary] as an experimental container pack or container.

Section 42941 of the Food and Agricultural Code mandates 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, and vegetables in bulk, or in any container or subcontainer, unless such fruits, nuts, and vegetables, and their containers, conform to the provisions of this division or the regulations promulgated thereunder.

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

### **1380.19 Standard Containers**

**Section 1380.19 (e) Amended.** The repeal of the standard container requirements for avocados, allows for the packing of avocados to be in any type of consumer and nonconsumer container. Due to current regulatory requirements for labeling and packing in standard containers for avocados, the avocado industry cannot compete with markets outside of California. The repeal of the standard container requirements for avocados are expected to make California avocados more competitive, and would put California avocados in an equitable marketplace with those produced outside of California.

### **1408.2. Avocados, Maturity, Sampling, and Testing Procedures**

**Section 1408.2 (b) Amended.** Current standard container requirements for avocados require count and size markings per container. The proposed regulation changes will allow all containers to be marked with same count or same size per container. Adding “Same size” to the subsection clarifies requirements to maturity, sampling, and testing procedures, along with clarifying the changes made to Section 1480.13(a) for packing and size requirements.

### **1408.9 Avocados, Marking Requirements**

**Section 1408.9 (a) Amended.** This section has been amended to add the variety of Lamb Hass to the varietal listing of marking requirements. This change will help bring the current regulations up to date by reflecting the acceptance and increased prevalence of Lamb Hass avocados in the California market place. This change will also add clarity to the marking requirements with respect to the differentiation between the Hass and Lamb Hass varieties.

**Section 1408.9 (c) Added.** With the elimination of standard container requirements for avocados, this section has been added to the marking requirements to now specify that the word “size” must be marked on the container to increase uniformity in the size of the fruit packed. This will allow the industry to market a quality product with consistency, which will be embraced by trade customers.

### **1408.10. Avocados, Marking Requirements for Irregular Containers.**

**Section 1408.10 Repealed.** The term “irregular container” is no longer necessary on container markings because of the repeal of standard container requirements for avocados. This is anticipated to benefit the marketability of California avocados and industry by aligning with current consumer and industry standards.

### **1408.11 Avocados, Consumer-Type Package.**

**Section 1408.11 Repealed.** This section refers to instructions regarding standard container requirements for avocados. Instructions regarding consumer type packages in standard containers are no longer relevant in the CCR.

### **1408.13. Avocados, Packing, and Size Requirements.**

**Section 1408.13 amended,** the title is amended to reflect the change in size requirements in sec. 1408.13 (a).

**1408.13 (a) Amended.** The proposed elimination of the standard container requirements for avocados will eliminate the rationale for the distinction in Column A between standard 9D single layer carton, and standard 9E and 9F, multilayer carton. Under these circumstances, there is no longer a need for the duplication of size references in Column A. It is proposed that the size designations for the single-layer cartons be deleted. This will leave in place the size designation for the types of cartons that are commonly used and widely recognized in the industry.

**Section 1408.13 (b) (i), Section 1408.13 (b) (ii), Section 1408.13 (b) (iii), Amended.** With the elimination of the standard container requirements for avocados these subsections have been amended to clarify the sampling method for the compliance in the determination of size requirements.

**Section 1408.13 (c) Amended.** Subsection (c), the definition of “lot”, has been relocated to subsection (a), for consistency and clarity. Subsequently, Section 1408.13 has been re-lettered.

### **1408.14. Avocados, Weights Requirements for Packed Containers**

**Section 1408.14 (a), Section 1408.14 (b) Section 1408.14 (b) (i), Section 1408.14 (b) (ii), Section 1408.14 (b) (iii), Repealed.** With the elimination of standard container requirements for avocados, these sections are no longer required in the CCR.

### **1408.16 Avocados, Net Weight Tolerance**

**Section 1408.16 Repealed.** With the elimination of the standard container requirements for avocados, this section is no longer required in the CCR.

### **1408.17 Avocados, Sampling Procedures for Weight Requirements**

**Section 1408.17 Repealed.** With the elimination of standard container requirements for avocados, this section is no longer required in the CCR.

### **REPORTS RELIED UPON**

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

- A petition received May 20, 2016 from Avocado Inspection Advisory Committee, and the California Avocado Commission.
- Experimental permit for nonstandard container/pack.

## **ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

### Purpose

The purpose of the regulation change is to repeal the standard container requirements for avocados, allow all avocados to be packed in any type of consumer and nonconsumer containers, and change marking requirements in regards to size and count, to align with industry practices. These changes are anticipated to encourage the marketability of California fruit.

### The Creation or Elimination of Jobs within the State of California

The proposed amendments to Sections 1380.19 (e), 1408.2, 1408.9, 1408.10, 1408.11, 1408.13, 1408.14, 1408.16, and 1408.17 are designed to eliminate standard container requirements for avocados and expand nonstandard container packing options. These nonstandard containers have been successfully experimented with throughout the experimental container and pack permit process. 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 allow for California avocados grown and packed within the state. These nonstandard containers have been successfully experimented with through the experimental container and pack permit process. Therefore, CDFA 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

These amendments only allow for California avocados grown and packed within the state. These nonstandard containers have been successfully experimented with through the experimental container and pack permit process. Therefore, CDFA 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 producers, and packers. Avocado packers will no longer be required to pack in standard containers. This will allow California handlers to simplify and modernize the packing and shipping of avocados. The changes will benefit California avocado growers and handlers by eliminating a long standing disparity that disadvantages California avocados in comparison to avocados that are imported into the state. Therefore, the proposed rulemaking will indirectly impact the general public and protection of public health and safety.

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

The Department has determined that this proposed change to the regulations would 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.