

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. 21 Cherries

§1428.3 Maturity, Red or Black Variety, 1428.6 Cherries, Tolerance, 1428.7 Cherries-
Extra Tolerance for Immaturity, 1428.8 Cherries, Markings on Containers, 1428.10
Cherries, Packed Row Size, and 1428.12 Cherries, Loose; Marking and Size
Requirement.

INITIAL STATEMENT OF REASONS

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

Section 42682 of the Food and Agricultural Code authorizes the CDFA Secretary to establish, modify, or rescind, by regulation, which initially took effect January 1, 1971, standard container, lid, marking, sizing requirements 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 [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 as an experimental container pack.

Section 42684 of the Food and Agricultural Code establishes the statutory requirements for establishing, modifying, or rescinding, by regulation, quality and maturity standards for any fruits, nuts, or vegetables.

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 and their containers conform to the provisions of the Standardization Program's division or the regulations promulgated thereunder.

The department proposes to amend Sections 1428.3, 1428.6, 1428.7, 1428.8, 1428.10, and 1428.12.

There has been a significant increase in the number of varieties grown and packed by the cherry industry. In order to maintain equitable marketing opportunities industry wants to remove varietal specific regulations. Currently only the Bing and Tartarian varieties are subject to additional standards. Removing the requirement for growers to mark the variety on the label serves two purposes. One, it reduces the labeling costs and secondly it removes additional standards specific to only two varieties. Allowing the term "sweet cherries" to be marked on the container as it is in the northwest allows the industry to be more competitive in today's global marketplace. Using the same terminology also provides consistency for growers and handlers.

Changing the size requirements for "row size" allows for industry advancement. The smaller size 13 and 14 are no longer the standard. Growing practices have allowed the industry to now grow larger fruit that is not quantified by the current cherry sizer. In order to better market the larger cherries, the row sizes must be modified.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

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

- A petition received on August 14th 2014 from the California Cherry Export Association
- Letters of support from Rivermaid Trading Company and O-G Packing Company

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Purpose

The purpose of the amendment is to remove current varietal specific regulations. This amendment will reduce labeling costs and it will remove additional standards specific to

only two varieties of cherries. It will quantify a row size necessary to sell large cherries.

The Creation or Elimination of Jobs Within the State of California

The proposed amendments to Sections 1428.3, 1428.6, 1428.7, 1428.8, 1428.10, and 1428.12 are designed to give the cherry industry more equitable marketing opportunities by removing varietal specific regulations. The proposed amendments will allow for various cherry varieties to be held to the same standards. The proposed amendments will also allow industry to label cherry containers as “sweet cherries” which is preferred by buyers. It will also change the size requirements for “row size” by removing the smaller size 13 and 14. There will be no significant changes to current industry practices as they pertain to shipping and marketing. Therefore, the Department has determined that this regulatory proposal 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

Marketers currently sell cherries that must be marked with the variety. This amendment allows marketers to label and sell all varieties of cherries as “sweet cherries”. This amendment would change a marking requirement, but not affect the packing industry. Therefore, the Department has determined that this regulatory proposal 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

Marketers currently compete in a global economy. This amendment allows marketers to label and sell all varieties of cherries as “sweet cherries” which is in alignment with the North/West cherry industry standards. The amendment to Sections 1428.3, 1428.6, 1428.7, 1428.8, 1428.10, and 1428.12 will not have an impact on the expansion 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 regulation will benefit California producers, and packers. Cherry packers will no longer be required mark or grade to variety specific standards. This will allow California handlers to be more competitive in today’s global economy by marking the term “Sweet Cherries” preferred by buyers rather than a specific variety. It will allow industry to standardize a larger row size designation for all cherries. Also, the proper handling and packing of cherries will protect consumers and the industry, and assure that both entities are purchasing acceptable quality fresh cherries. Finally, the proposed rulemaking will create an indirect impact to the protection of public health and safety.

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

The Department has initially determined that this proposed change to the regulations will not have a significant statewide adverse economic impact directly effecting business because there is no added cost to businesses affected by this proposed regulation.

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.