

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 28 Melons other than Cantaloupe  
§ 1380.19 Standard Containers, and 1442.7 Standard Containers, Melons.

**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 1380.19(m), and 1442.7.

The citrus industry has experimented using current standard container number 58 for export only and place packing the fruit instead of using a volume fill method. This practice has been well received and is preferred by foreign buyers. In order to ensure long standing domestic practices remain the same (volume filled), this new packing methodology of place or pattern packing will only be allowed for export to foreign countries. Amending section 1380.19 (m) will expand export opportunities currently not allowed due to experimental container restrictions. By statute, those restrictions only allow a small percentage of the crop to be shipped using the place packed method.

Melon container 44S was approved and became effective on January 1, 2014 (OAL file number 2013-0911-02 S). Due to departmental oversight, an additional section (1442.7) which also lists melon containers was not amended. This proposed change will correct the minor error. This amendment will provide consistency by adding this new container to a previously established list.

## **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 August 21, 2014 from California Citrus Mutual
- Letters of support from nine major shippers and packers of citrus
- Previous experimental container permits

## **ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

### Purpose

The purpose of the amendment is to allow for a new pack style for exported product only. Current pack styles do not adequately address buyer requirements outside of the U.S.

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

The proposed amendment to Section 1380.19 is designed to give the citrus industry an

additional packing style using standard container 58 found in Section 1380.18 (m). Standard Container 58 is currently sold domestically utilizing a volume filled pack style. In order to satisfy international requests, the same container (58) must be pattern packed with fruit rather than volume filled. Packing facilities have been utilizing this pack style through the experimental container pack permit. Therefore, CDFA 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 citrus both domestically and internationally. This amendment only allows an additional pack style to be sold for export purposes. This pack style has been successfully experimented with through the experimental container pack permit process. Therefore, CDFA 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 sell citrus both domestically and internationally. This amendment only allows an additional pack style to be sold for export purposes. This pack style has been successfully experimented with through the experimental container pack permit process. The amendment to Section 1380.19 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. Citrus handlers will be allowed to keep their domestic and international customers satisfied by varying their pack styles and containers. The melon proposal provides consistency in current regulations. Further, the proper handling and packing of citrus fruits, including melons will protect consumers and the industry, and assure that both entities are purchasing acceptable quality fresh melons. 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 business 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.