

**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**

February 2, 2017

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the California Department of Food and Agriculture (Department) proposes to amend the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed actions.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. Comments may also be submitted via facsimile (FAX) at (916) 900-5345 or by e-mail to steve.patton@cdfa.ca.gov. The written comment period closes at **5:00 p.m. on March 20, 2017**. The Department will consider comments only received at the Department by that time. Submit comments to:

Steve Patton, Branch Chief
Inspection and Compliance Branch
California Department of Food and Agriculture
1220 N Street, Sacramento, CA 95814
Telephone: (916) 900-5030; Fax: (916) 900-5345

AUTHORITY AND REFERENCE

Sections 14, 407, 42681, 42682, and 42683 of the Food and Agricultural Code authorize the Department to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific Sections 42681, 42682, and 42683 of the Food and Agricultural Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking action amends California Code of Regulations (CCR) Title 3, Division 3, Chapter 1, Subchapter 4, Article 8, § 1402.7(a)(b)(c), 1402.8.

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 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 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.

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.

The tree fruit industry has reported that marking regulations for variety have created restricted market access by confusing product identified and marketed by variety, but actually sold under commodity-specific identification to consumers.

Container markings identifying variety have encouraged premature harvesting of some varieties under specific market conditions. Retailer purchases, while driven by a multiplicity of needs, 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.

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. This proposed action will update the California Code of Regulations to ensure that the marking and size labeling nomenclature for apricots is consistent with industry packing and marking practices.

Benefits of the Proposed Action: 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.

CONSISTENCY EVALUATION

During the process of developing these regulations and amendments, the Department conducted a search of any similar regulations on this topic and concluded that these regulations are neither inconsistent nor incompatible with existing State regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any State agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Costs or savings in federal funding to the State: None.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or business: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur through reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Department concludes that it is (1) unlikely that the proposal will eliminate or create any jobs and/or eliminate existing business; (2) likely that this proposal may create new business or expand current business opportunities for producers and packers of apricots; and (3) likely that this proposal may create new business for apricot handlers; lastly, the proposed rulemaking will create an indirect impact to the protection of public

health and safety.

Benefits of the Proposed Action: 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.

Significant effect on housing costs: None.

SMALL BUSINESS DETERMINATION

The Department has initially determined that the proposed changes to the regulations would result in no added costs to small businesses affected by these proposed changes. This proposed regulatory action would eliminate varietal and size marking requirements for apricot packers which would reduce costs and provide additional marketing opportunities for the apricot industry. In addition, the proposed regulatory actions were initiated at the request of the impacted industry.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered, 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, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations, at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Steve Patton, Branch Chief
Inspection and Compliance Branch
California Department of Food and Agriculture
1220 N Street, Sacramento, CA 95814
Telephone: (916) 900-5030; Fax: (916) 900-5345

The backup contact person for these inquiries is:

Laurel Rudolph, SSA
Inspection and Compliance Branch

California Department of Food and Agriculture
1220 N Street, Sacramento, CA 95814
Telephone: (916) 900-5233; Fax: (916) 900-5345

Please direct requests for copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Laurel Rudolph at the above address.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department will have the rulemaking file available for inspection and copying throughout the rulemaking process at its office at 2800 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice; the proposed text of the regulations; the initial statement of reasons; and petitions received from industry. Copies may be obtained by contacting Laurel Rudolph at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Department may amend the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Laurel Rudolph at the address listed above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Laurel Rudolph at the address listed above.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through the Department's website at <http://www.cdfa.ca.gov/is/Regulations.html>