

**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.

August 22, 2016

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 October 17, 2016**. The Department will consider only comments 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 42941 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 42941 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 4 and 11, § 1380.19 (e), 1408.2, 1408.9, 1408.10, 1408.11, 1408.13, 1408.14, 1408.16, 1408.17

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 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 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.

The requested regulatory amendments will simplify and modernize regulations applicable to the packing and shipment of avocados produced in California. These amendments will also 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. Specifically, the Avocado Inspection Committee's (AIC) requested regulatory modifications leave intact the Department's robust quality inspection program and maintain existing consumer protections. Accordingly, AIC submits that the requested changes are beneficial for the Department, the California avocado industry, and California consumers.

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. This proposed regulation action will allow handlers to pack in any type consumer and nonconsumer containers and not be restricted to the standard container and labeling requirements that cause confusion and misperception among consumers and retailers.

Eliminating the standard container requirement for avocados and the requirements to use the term "irregular container" when using a nonstandard container, will allow flexibility in the use of other comparable containers without compromising 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.

Benefits of the Proposed Action: The proposed regulatory action will benefit California producers, and packers of avocados. Avocado packers will no longer be required to pack in standard containers, and will allow California handlers to simplify and modernize the packing of avocados. The changes will help 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.

CONSISTENCY EVALUATION

During the process of developing these regulations and amendments, the Department has conducted a search of any similar regulations on this topic and has 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.

Cost 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 in 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/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 avocados; (3) likely that this proposal may create new businesses for avocado handlers; lastly, the proposed rulemaking will create an indirect impact to the protection of public health and safety.

Benefits of the Proposed Action: The proposed regulation will benefit California producers, and packers. Avocado packers will no longer be required to pack in standard containers or mark nonstandard containers as “irregular container.” This will allow California handlers to be more competitive in today’s global economy by using any type consumer and nonconsumer containers.

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 standard containers for avocados and allow handlers to pack in any type consumer and nonconsumer containers which would reduce costs and provide additional marketing opportunities for the avocado 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 for 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>