

**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 Cherries, Mature, 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.**

October 10, 2014

**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](mailto:steve.patton@cdfa.ca.gov). The written comment period closes at **5:00 p.m. on November 24, 2014**. The Department will consider only comments received at the Department by that time. Submit comments to:

Steve Patton, Compliance 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, and 42684 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, 42684, and 42941 of the Food and Agricultural Code.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

This rulemaking action amends Title 3, Division 3, Chapter 1, Subchapter 4, Article 21, § 1428.3 Cherries, Mature, 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.

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.

Some current cherry regulations contain specificity that is variety dependent. Due to the increased number of new cherry varieties, a change is necessary to eliminate that dependency. The proposed amendment will allow regulatory consistency for all cherries regardless of their variety. Amendment of the marking requirements will allow the industry to be more competitive both nationally and internationally. Technological advances have increased the average size of the cherry. It is no longer economically viable to grow and sell smaller cherries. In order to accommodate and standardize a larger size, the standard cherry sizer must remove the smaller size and add a larger row size. This will benefit the consumer by providing a fuller more mature piece of fruit.

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.

Benefits of the Proposed Action: This proposed regulatory action will benefit producers and packers. Not requiring varietal specificity creates a fairer marketplace as new varieties are introduced. In addition, allowance of the term “sweet cherries” provides California marketers with the same marketing opportunities currently afforded to only those in the northwest region of the United States. Creating a larger size row designation provides additional marketing opportunities while ensuring consistency among buyers.

### **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 cherries; (3) likely that this proposal may create new businesses for cherry handlers; (4) 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.

Benefits of the Proposed Action: 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.

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 marking requirements for cherry packers which would reduce costs and provide additional marketing opportunities for the cherry 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 has determined 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, Compliance 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:

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

Please direct requests for copies of the proposed text of the regulations, the initial statement of reason, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Danielle Chapman 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 Danielle Chapman 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 Danielle Chapman 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 Danielle Chapman 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>