

**TITLE 3. FOOD AND AGRICULTURE
DIVISION 3. ECONOMICS
CHAPTER 1. FRUIT AND VEGETABLE STANDARDIZATION
SUBCHAPTER 4. FRESH FRUITS, NUTS AND VEGETABLES
ARTICLE 4. CONTAINERS
Section 1380.19**

(Notice published March 22, 2013)

NOTICE OF PROPOSED RULEMAKING

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

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 May 6, 2013**. 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 4,

§1380.19 et seq. of the CCR, which currently establishes standard container descriptions for fresh fruits, nuts and vegetables.

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.

Due to the increased types of varietal melons, California producers are supplying fruit to the vast and growing population throughout North America. The various shapes of the different varietal melons, the internal pressure, bruising, subjectivity, and skin type all require different packaging to arrive in good condition. These varietal melons are so different in shape that it is very difficult to pack in the current standard containers that

are approved for traditional mixed melons. In order to mitigate these issues, the Department is proposing to adopt 44S as a new standard container for shipping mixed melons.

The Department has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that these are the only regulations that concern the establishment of a new standard container for shipping mixed melons.

Benefits of the Proposed Action: This proposed regulatory action will benefit producers, packers, and consumers by allowing an additional standardized container, which provides industry with the ability to use an alternative container, for shipping melons which will assist in reducing damage to the product.

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 any jobs; (2) likely that this proposal may create an unknown number of jobs for producers and packers of varietal melons; (3) likely that the proposal will create an unknown number of new businesses providing varietal melons; (4) unlikely that the proposal will eliminate any existing businesses.

Benefits of the Proposed Action: The proposed regulation will benefit California producers, packers, and consumers. Traditional mixed melons are declining in

popularity across North America as population demographics and consumer preference has changed. As the variety melons grown by California producers increases in diversity and volume, the need for corresponding standard containers is evident.

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 add a standard container for variety melons which is unlikely to result in an impact to small businesses. In addition, this proposed regulatory action was 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, Staff Services Analyst
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; a petition received from Milas Russell, Jr., President, Sandstone Marketing, Inc and letters of support from Couture Farms, Five Crowns Marketing, Fisher Ranch, T&M Farms, and Turlock Fruit Company, Inc. 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 adopt 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 provided on the previous page. 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 provided on the previous page.

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>