

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE
ARTICLE 22 Citrus
(Notice published May 2, 2008)

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the California Department of Food and Agriculture (Department) proposes to amend, Title 3, Article 22 Section 1430.43 of the California Code of Regulations (CCR). The Department also proposes to add Section 1430.142.

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. The written comment period closes at 5:00 p.m. on June 16, 2008. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Rick S. Jensen, Chief
Inspection and Compliance Branch
California Department of Food and Agriculture
1220 N Street
Sacramento, CA 95814

AUTHORITY AND REFERENCE

Notice is hereby given that the Department of Food and Agriculture, pursuant to the authority vested by Sections 407, 42681, 42682, and 42684, Food and Agricultural Code, and to implement, interpret, or make specific Section 42941, Food and Agricultural Code, proposes to amend regulations in Title 3 of the California Code of Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Sections 407, 42681, 42682, and 42684 of the Food and Agriculture Code allow the Department to establish, modify, or rescind regulations to carry out the provisions of Citrus Program legislature. Such regulations are to secure uniformity of enforcement and maintenance of minimum standards.

Sections 42682 and 42684 further authorize the Department to consider regulatory changes submitted by parties with substantial interest in the industry. California Citrus Mutual petitioned the regulatory changes explained as follows:

Section 1430.43 gives enforcement officers the ability to take a representative sample of oranges, which may have been damaged by freezing conditions. This damage may not show up for several days, which is why the officer must “hold” the oranges for later inspection. The regulation currently allows all citrus other than oranges that may be damaged by freeze to be shipped without a sample taken for later inspection. The specific purpose of amending Section 1430.43 is to allow enforcing officers to take representative samples of all citrus.

Proposed Section 1430.142 will give the Secretary the ability to lower or raise the assessment rate within the legislative authority provided by the Food and Agricultural Code Section 48002. The necessity of this proposal is to provide the industry with the flexibility to quickly replenish their reserve fund used solely for inspections during freeze years. If there were to be a freeze in consecutive years, industry would not have the ability to quickly raise assessments to pay for the necessary inspections. Current changes to the assessment rate require a lengthy legislative amendment. By creating this regulation, industry may efficiently regulate and maintain a level reserve.

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.

Adoption of these regulations will not:

1. Create or eliminate jobs within California;
2. Create new businesses or eliminate existing businesses within California; or
3. Affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

EFFECT ON SMALL BUSINESS

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. The proposed changes allow the assessments to be commensurate with program costs, not to exceed the maximum assessment already set by Food and Agriculture Code, Section 48002 (a). The proposed changes create a level playing field for all citrus freeze inspections.

CONSIDERATION OF ALTERNATIVES

The Department has initially determined that no reasonable alternative considered by the Department, 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 these regulations are proposed, or would be as effective and less burdensome to affected private persons than the proposed regulations.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Rick S. Jensen, Chief
Inspection and Compliance Branch
California Department of Food and Agriculture
1220 N Street, Sacramento, CA 95814
Telephone: (916) 445-2180; Fax: (916) 445-2427

The backup contact person for these inquiries is:

Amadou Ba, Program Supervisor
Inspection and Compliance Branch
California Department of Food and Agriculture
1220 N Street, Sacramento, CA 95814
Telephone: (916) 445-2180; Fax: (916) 445-2427

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 Ms. Susan Shelton 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 560 J Street, Sacramento, CA 95814. 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

the petition received from California Citrus Mutual. Copies may be obtained by contacting Susan Shelton 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 Susan Shelton at the address indicated 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 Ms. Shelton at the above address.

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 our website at: www.cdfa.ca.gov/is/regulations.html

DEPARTMENT OF FOOD AND AGRICULTURE

Date

George Deese, Deputy Secretary