

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE
Title 3. Food and Agriculture; Division 3. Economics
Chapter 1. Fruit and Vegetable Standardization
Subchapter 4. Fresh Fruits, Nuts and Vegetables; Article 22. Citrus
(Notice published June 17, 2011)

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the California Department of Food and Agriculture (Department) proposes to amend Title 3, Division 3, Chapter 1, Subchapter 4, Article 22, §1430.35, §1430.36, §1430.37, §1430.38, §1430.5, and §1430.6 of the California Code of Regulations (CCR) after considering all comments, objections, and recommendations regarding this proposed action.

PUBLIC HEARING

The Department will hold a public hearing starting at 10:00 a.m. on August 5, 2011, at the Visalia Veterans Memorial Building located at 609 W. Center Avenue, Visalia, CA 93292. The Visalia Veterans Memorial Building is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest/Policy Statement Overview. The Department requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

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) 445-2427 or by e-mail to spatton@cdfa.ca.gov. The written comment period closes at **5:00 p.m. on August 1, 2011**. The Department will only consider 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) 445-2180; Fax: (916) 445-2427

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, 42684, and 42941 of the Food and Agricultural Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking action clarifies and makes specific minimum standards for navel citrus maturity.

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 Secretary of the Department 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 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.

Section 42684 of the Food and Agricultural Code declares, in part, that the establishment and maintenance of minimum standards of quality and maturity for fruits, nuts, and vegetables is essential to ensure that products of acceptable and marketable quality will be available to the consumer. This section also provides that any quality and maturity standards adopted by the Secretary of the Department shall apply to the particular fruit, nut, or vegetable involved regardless of whether the item was produced in this state or outside of this state. Furthermore, this section establishes that the Secretary of the Department shall, in establishing, modifying, or rescinding any quality and maturity standard for any fruit, nut, or vegetable pursuant to this chapter, do all of the following: (1) find that the regulation will provide the consumer with acceptable quality fruits, nuts, and vegetables, which will also provide stability in the marketing of these products, (2) find that the regulation will tend to prevent waste in the production and marketing of fruits, nuts, and vegetables, (3) consider the impact of the regulation upon the agricultural industry, and (4) find that the regulation is necessary to accomplish the purposes of this chapter.

Section 42941 of the Food and Agricultural Code establishes 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, or vegetables in bulk, or in any container or subcontainer, unless such fruits, nuts, and vegetables, and their containers, conform to specified provisions or the regulations promulgated thereunder.

The regulations proposed in this rulemaking action would replace the current soluble solids concentration to titratable acidity minimum maturity test for navel oranges with the California Standard Scale. The California Standard Scale is a measure calculated by

subtracting titratable acidity times a constant from the soluble solids concentration. The soluble solids concentration to titratable acidity minimum maturity test for Valencia oranges is not proposed to be amended.

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. However, the Department does recognize that there could be a potential impact to some growers. Consequently, additional costs, if any, are unknown at this time. The regulations proposed in this rulemaking action would replace the current soluble solids concentration to titratable acidity minimum maturity test for navel oranges with the California Standard Scale. The Department has initially determined that adoption of the California Standard Scale for navel citrus would have a positive economic impact on the industry and benefit consumers because it would eliminate poor tasting navel oranges which currently meet minimum maturity standards.

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 been otherwise identified and brought to the attention of the Department would be more effective in carrying out the purpose of which the action is proposed or would be as effective and less burdensome to affected private persons that the proposed action.

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) 445-2180; Fax: (916) 445-2427

The backup contact person for these inquiries is:

Brian Cote, Special Investigator
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 reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Brian Cote 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, Suite 220, 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; a petition received from Mr. Joel Nelsen, President, California Citrus Mutual, dated March 28, 2011, requesting all regulations concerning navel maturity be revised to replace the current minimum standard of 8:1 soluble solids concentration to titratable acidity (SSC/TA) ratio with the California Standard Scale minimum score of 90, and that

all references to ratio be replaced with a corresponding California Standard Scale number; a letter from Dr. David Obenland, Research Plant Physiologist, United States Department of Agriculture, dated March 16, 2011, concerning the SSC/TA ratio and the California Standard Scale; a letter from Dr. Mary Lu Arpaia, Extension Specialist, University of California, Riverside, dated March 20, 2011, concerning the SSC/TA ratio and the California Standard Scale; a report from California Citrus Mutual, dated March 3, 2011, entitled Responding to the Marketplace: Providing the consumer with better early-season navel quality. The California Standard; a research paper authored by David Obenland et al. published in *Postharvest Biologist and Technology* 52 (2009) 156-163 entitled Determinants of flavor acceptability during the maturation of navel oranges; a report prepared by Dr. Mary Lu Arpaia and Dr. David Obenland, dated June 2009, entitled Development of an Orange Maturity Standard that Assures Better Flavor and Promotes Increased Consumption; a document from the Product Market Association, dated April 2007, entitled Consumer Perceptions on Flavor and Taste; a study compiled by Rie Ishii et al., University of California, dated July 2007, entitled Consumer Perceptions of Oranges II; a research article published by Balaban Publishers, written by J.E. Pehrson and E.M. Ivans, dated March 1988, entitled Variability in Early Season Navel Orange Clone Maturity and Consumer Acceptance; a study written by Robert B. Jordan et al. published in *Food Technology*, Vol. 55, No. 6., entitled A Sensory-Based Alternative to Brix/Acid Ratio; a magazine article, dated March 2011, published in *The Packer* dated March 2011, entitled 2011 Fresh Trends; and, an e-mail from Mr. Bob Blakely, Director of Industry Relations, California Citrus Mutual, dated May 10, 2011, expressing support for the proposed text of the regulations as submitted. Copies may be obtained by contacting Brian Cote at the address or phone number listed on the previous page.

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 Brian Cote 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 Brian Cote 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>.

DEPARTMENT OF FOOD AND AGRICULTURE

5/31/2011

Date

Original Signed by

Nate Dechoretz, Deputy Secretary