

Title 3. Department of Food and Agriculture

Notice of Proposed Rulemaking

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture intends to adopt Sections 1430.54 -1430.57 of the regulations in Title 3 of the California Code of Regulations pertaining to Seedless Mandarin and Honeybee Coexistence.

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.

Notice is also given that any person interested may present statements or arguments in writing relevant to the action proposed to the agency officer named below on or before April 13, 2009.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

These regulations are intended to address the obligation of the Department of Food and Agriculture to address coexistence issues related to production of seedless mandarin varieties in close proximity to the apiaries of beekeepers. Seedless mandarin growers mitigate that some apiaries increase the risk of crop cross-pollination resulting in the presence of seeds in their fruit. The regulations adopted herein shall be limited to Fresno, Kern, Madera, and Tulare counties and may include the establishment of fees, not to exceed the cost of the program, to be paid by seedless mandarin growers.

The Department of Food and Agriculture proposes to adopt Sections 1430.54-1430.57 pertaining to Seedless Mandarin and Honeybee Coexistence. By doing so, the Department seeks to facilitate the coexistence of seedless mandarin acreage and beekeeper apiaries on a case by case basis by county agricultural commissioners in the counties of Fresno, Kern, Madera and Tulare.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department has determined that the proposed regulations do not impose a mandate on local agencies or school districts. The Department also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed actions will not affect housing costs.

EFFECT ON BUSINESSES

The Department has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting California businesses, including the ability of California Businesses to compete with businesses in other states.

COST IMPACT ON AFFECTED PRIVATE PERSON OR BUSINESSES

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. The proposed program is voluntary for seedless mandarin growers and beekeepers. The program is paid for by those seedless mandarin growers electing to participate in the program.

ASSESSMENT

The Department has made an assessment that the proposed adoption of the regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

ALTERNATIVES CONSIDERED

The Department must determine that no alternative considered 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.

AUTHORITY

The Department proposes to adopt Sections 1430.54-1430.57 pursuant to the authority vested by Sections 407, 29002, 29004, 29006, 29008, 29011, 29040, 29041, 29042, 29043, 29045, 29070, 29070.5, and 29812 of the Food and Agricultural Code.

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 29810 and 29811 of the Food and Agricultural Code.

EFFECT ON SMALL BUSINESS

The proposed adoption of these regulations will not have an impact to small businesses. The proposed program is voluntary for seedless mandarin growers and beekeepers. The program is paid for by those seedless mandarin growers electing to participate in the program.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing, may be directed is: Steve Lyle, Office of Public Affairs, Department of Food and Agriculture, 1220 N Street, Room 400, Sacramento, CA 95814, (916)654-0462, FAX (916) 651-7417, Email: LegislativeOffice @cdfa.ca.gov. In his absence, you may contact Carla Sanchez, Legislative Office at (916) 654-0321 or Email: LegislativeOffice@cdfa.ca.gov. Questions regarding the substance of the proposed regulation should be directed to Carla Sanchez.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet Website (www.cdfa.ca.gov/Regulations/General/Mandarin_Bees.pdf).

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed actions, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, when completed, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations adopted by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact), named herein.

DEPARTMENT OF FOOD AND AGRICULTURE

DEPARTMENT OF FOOD AND AGRICULTURE

Title 3, California Code of Regulations

Division 3, Economics

Chapter 1, Fruit and Vegetable Standardization

Subchapter 4, Fresh Fruits, Nuts and Vegetables

Article 22, Citrus

Adopt Section(s) 1430.54-1430.57

Regarding Seedless Mandarin and Honeybee Coexistence

INITIAL STATEMENT OF REASONS/

POLICY STATEMENT OVERVIEW

Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address

These regulations are intended to meet the obligation of the Department of Food and Agriculture to address the coexistence issues related to production of seedless mandarin varieties in close proximity to the apiaries of beekeepers. Seedless mandarin growers argue that some apiaries increase the risk of crop cross-pollination resulting in the presence of seeds in their fruit. The regulations adopted herein shall be limited to Fresno, Kern, Madera, and Tulare counties and may include the establishment of fees, not to exceed the cost of the program, to be paid by seedless mandarin growers.

Specific Purpose and Factual Basis

The Department seeks to facilitate the coexistence of seedless mandarin acreage and beekeeper apiaries on a case-by case-basis by county agricultural commissioners in the counties of Fresno, Kern, Madera and Tulare.

The factual basis for the determination by the Department that the adoption of Sections 1430.54-1430.57 are necessary is as follows:

In 2007, the Legislature passed and the Governor signed AB 771 (Kevin De Leon), Agricultural Industry, a bill that added article 9.5, commencing with section 587 to chapter 3 of Division 1, and Chapter 3, commencing with Section 29810 to Division 13 of

the Food and Agricultural Code. The bill established the Seedless Mandarin and Honeybee Coexistence Working Group Act, which required the Secretary of the California Department of Food and Agriculture to designate a Seedless Mandarin and Honeybee Coexistence Working Group (Working Group) to meet regularly and develop best management practices that address the coexistence of seedless mandarin acreage and beekeeper apiaries. This bill also granted the Secretary the authority to adopt regulations as deemed necessary, should the group fail to reach a consensus.

The Working Group is comprised of ten members; two members represent the honeybee industry, one member represents both the almond and honeybee industries, one member represents both the citrus and honeybee industries; five members represent the citrus industry and one member represents the agricultural commissioners of Fresno, Madera, Tulare and Kern. The Working Group met for over a year and discussed various proposals to resolve conflicts between seedless mandarin growers and beekeepers. The Working Group considered a honeybee pilot program and placing an assessment on beekeepers that placed their apiaries near a citrus belt. However, the Working Group failed to achieve consensus on a protocol of best management practices that could be applied to the seedless mandarin growers and beekeepers within the four specified counties. Instead, the Working Group agreed upon the following five points, as referenced in a letter dated September 11, 2008 to the Secretary from the chair of the Working Group:

1. Agree to mandarin grower registration by January 31 of each year.
2. Honeybee grower registration of locations by March 1, of each year, including the number of hives per location and proper identification markings on hives.
3. Require the county agricultural commissioner in each respective county to adopt an electronic procedure to retain the mapping records for apiaries from year to year.
4. Require the county agricultural commissioner in each respective county to provide public access upon request to any interested mandarin grower regarding the apiary locations registered in the area and the contact information for the beekeeper.

5. In the event of a conflict between the interests of the beekeeper, landowner and mandarin grower, the interested parties are required to meet and confer to discuss possible alternatives locations for bee hive identified by the mandarin growers.

Sections 29810 through 29812, contained in Division 13, Chapter 3, created the Seedless Mandarin and Honeybee Coexistence Working Group. Section 29810, subdivision (a) (2) acknowledged the growth of the seedless mandarin acreage within the state, while section (a) (3) expressed concern about damage resulting from cross-pollination. Meanwhile, section 29810, subdivision (a) (4) recognized the need for honeybees to pollinate approximately \$6 billion worth of crops within the state.

On September 15, 2008, the Secretary received a letter from Assemblymember Kevin De Leon addressing his dismay at the lack of progress made on this issue by the Working Group. The letter further referenced the Department's responsibility for the promulgation of regulations as mandated by AB 771, resulting from the Working Group's failure to reach a consensus by June 1, 2008.

The Department of Food and Agriculture proposes to adopt Sections 1430.54-1430.57, these regulations seek to facilitate the coexistence of seedless mandarin acreage and beekeeper apiaries on a case-by-case basis by county agricultural commissioners in the counties of Fresno, Kern, Madera and Tulare. The adoption of these regulations is intended to address the coexistence issues related to production of seedless mandarin varieties in locations that are in close proximity to the apiaries of beekeepers. The proposed regulations seek to incorporate the Working Group's five aforementioned points, where practical and allowed by law, to establish a process for the parties to reach agreement.

Section 1430.54 Definitions

Section 1430.54 establishes definitions for Title 3, California Code of Regulations Division 4, Economics, Chapter 1, Fruit and Vegetable Standardization, Subchapter 4, Fresh Fruits, Nuts and Vegetables, Article 22, Citrus, regarding Seedless Mandarin and Honeybee Coexistence.

Section 1430.55 Voluntary Registration of Seedless Mandarin Acreage

Section 1430.55 establishes the registration process and responsibilities of the registrant for the voluntary registration of seedless mandarin acreage planted within the protection area (the area within two miles of any registered seedless mandarin acreage in Madera, Fresno, Tulare or Kern county) with the commissioner of the county in which the acreage is located. An owner may register annually, and registration shall include acreage(s) by variety, total number of acres by variety and number of trees by variety. Owners shall register between January 1st and January 31st, thereafter and pay an annual registration fee of (\$10.00) to the commissioner for registration in the county. The proposed Section 1430.55 addresses points agreed upon by the Working Group: the establishment of a registration process for seedless mandarin growers and apiary registration. Under existing law beekeepers are required to register their apiary(ies).

1430.56 Voluntary Release of Confidential Information by Beekeepers

Section 1430.56 establishes the process for the voluntary release of confidential information by beekeepers. Beekeepers may agree to a limited waiver of the confidentiality of information submitted to comply with apiary registration requirements set forth in Division 13, Chapter 1, Article 4 and Division 13, Chapter 1, Article 5 of the Food and Agricultural Code. The waiver shall limit the release of confidential apiary registration information to registered owners of seedless mandarin acreage within the county where the apiary has been registered. A commissioner shall only release information subject to the waiver upon request as follows: during each calendar year for a period commencing on

March 1st and concluding on May 31st; and to a owner who has registered seedless mandarin acreage within two miles of the registered apiary or apiaries.

The proposed Section 1430.56 is in keeping with the intent of the Working Group's consensus to establish a program by county agricultural commissioners to retain the records of apiaries and provide access to registration information of apiaries in the area to seedless mandarin growers.

1430.57 Dispute Resolution

Section 1430.57 establishes the dispute resolution process for the owner of registered seedless mandarin acreage, beekeepers of registered apiaries and commissioner of the county in which the acreage and the apiary are located. The owner of registered seedless mandarin acreage may request that a registered beekeeper move an apiary to an alternative location provided by the owner, if the apiary is located within two miles of the acreage. An owner may request that multiple apiaries be moved if they have been registered by the same beekeeper. Section 1430.57 further establishes a designated timeframe for beekeepers of registered apiaries. Beekeepers shall be available by telephone or other form of electronic verbal communication between 4 p.m. and 7 p.m., Monday through Saturday from March 1st through May 31st to receive requests from a registered seedless mandarin grower to move an apiary.

If agreement upon a new location of an apiary cannot be reached between the owner and the beekeeper, either may request, in writing that the commissioner of the county in which the acreage and the apiary is located provide an advisory opinion as to whether the beekeeper should move the apiary to the alternative location. If the acreage and the apiary are located in different counties, the request may be directed to either the commissioner in the county in which the acreage is located or the commissioner in the county where the apiary is located. The party making the request shall also provide the commissioner with a summary of any attempts to resolve the dispute through negotiation. The agricultural commissioner may make a recommendation of one of the following: not

move the apiary(ies); move the apiary(ies), or some of the beehives, to a new location proposed by the agricultural commissioner. The participating seedless mandarin grower is required to pay for the costs of the program, as required by Section 29812 of the Food and Agricultural Code.

Recognizing that parties may not reach agreement when a seedless mandarin grower offers an alternative location, the Department is proposing that the parties may ask a third-party to intervene. This step should encourage a potential resolution among the interested parties. The agricultural commissioner, acting as the third party, has the best knowledge of the county and the growing needs of area producers. Currently, commissioners administer the registration of apiaries and other laws in the county. Therefore, the Department is proposing that the county agricultural commissioner be the third party to make a recommendation to resolve a dispute regarding the coexistence of the placement of apiary(ies) in proximity to seedless mandarin groves.

Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that the adoptions of Sections 1430.54-1430.57 do not impose a mandate on local agencies or school districts and no reimbursement is required under Section 17561 of the Government Code.

The Department has also determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7(commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the adoption of Sections 1430.54-1430.57.

The cost impact of the proposed regulations on private persons and businesses are expected to be insignificant because this is a voluntary program.

The Department has determined that the proposed action will not have a significant adverse economic impact on housing costs or California businesses, including the ability of California businesses to compete with businesses in other states. The Department's determination that this action will not have a significant adverse economic impact on businesses was based on the following:

This is a voluntary program and the proposed regulations only apply to seedless mandarin growers and beekeeper apiaries in the counties of Fresno, Kern, Madera and Tulare. The adoption of these regulations are intended to address the coexistence issues related to production of seedless mandarin varieties, in locations that are in close proximity to the apiaries of beekeepers.

Assessment

The Department has made an assessment that adoption of the proposed regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

Consideration of Alternatives

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

Information Relied Upon

The Department relied upon the following studies, reports, and documents in the adoption of Sections 1430.54-1430.57:

%Seedless Mandarin and Honeybee Coexistence Working Group Meeting Minutes+

dated March 25, 2007, California Department of Food and Agriculture.

%Seedless Mandarin and Honeybee Coexistence Working Group Meeting Minutes+
dated March 4, 2008, California Department of Food and Agriculture.

%Seedless Mandarin and Honeybee Coexistence Working Group Meeting Minutes+
dated May 14, 2008, California Department of Food and Agriculture.

%Seedless Mandarin and Honeybee Coexistence Working Group Meeting Minutes+
dated May 29, 2008, California Department of Food and Agriculture.

%Seedless Mandarin and Honeybee Coexistence Working Group Meeting Minutes+
dated December 17, 2008, California Department of Food and Agriculture.

Letter, dated September 11, 2008, from Jerry Prieto, Agricultural Commissioner,
County of Fresno, regarding AB 771-De Leon: Seedless Mandarin and Honeybee
Coexistence Working Group.

Letter, dated September 15, 2008, from Assemblymember De Leon, regarding
Seedless Mandarin and Honeybee Coexistence Working Group.

In title 3, Division 3, Chapter 1, Subchapter 4, adopt Sections 1430.54-1430.57 to read:

1430.54 Definitions

(a) "Protection Area" means the area within two miles of any registered seedless mandarin acreage in Madera, Fresno, Tulare or Kern County from March 1 through May 31.

(b) "Seedless Mandarin" means mandarin or tangerine varieties that do not produce seeds when fertilized by pollen of the same plant or another plant of the same genotype.

(c) "Exempt Seedless Mandarin" means mandarin or tangerine varieties that do not produce seeds when fertilized by pollen of the same plant or another citrus plant.

(d) "Beekeeper" means every person that is the owner or is in possession of an apiary which is located within the state.

(e) "Bees" is defined as set forth in Section 29004, Food and Agricultural Code.

(f) "Apiary" is defined as set forth in Section 29002, Food and Agricultural Code.

(g) "Colony" is defined as set forth in Section 29006, Food and Agricultural Code.

(h) "Hive" is defined as set forth in Section 29011, Food and Agricultural Code.

(i) "Owner" means any person who owns seedless mandarin acreage within the Protection Area and includes a joint owner, operator, co-owner, guardian, executor, administrator, or any other person that holds property in a trust capacity under appointment of court.

(j) "Commissioner" is defined as set forth in Section 29008, Food and Agricultural Code.

Note: Authority Cited: Sections 407, 29002, 29004, 29006, 29008, 29011 and 29812, Food and Agricultural Code.

Reference Cited: Sections 29810 and 29811, Food and Agricultural Code.

1430.55 Voluntary Registration of Seedless Mandarin Acreage

(a) An owner may annually register seedless mandarin acreage planted within the Protection Area with the commissioner of the county in which the acreage is located. Registration shall include acreage(s) by variety, total number of acres by variety, and number of trees by variety upon the adoption of this regulation, and between January 1st and January 31st of each year thereafter. An owner shall pay an annual registration fee of ten dollars (\$10.00) to the commissioner for each registration in each county.

(b) An owner is responsible for updating, if necessary, the information provided in previous registrations upon the submission of a current annual registration.

(c) A commissioner may rely upon the most recent information provided by the owner in previous registrations unless it has been updated.

Note: Authority Cited: Sections 407 and 29812, Food and Agricultural Code.

Reference Cited: Sections 29810 and 29811, Food and Agricultural Code.

1430.56 Voluntary Release of Confidential Information by Beekeepers

(a) A beekeeper may agree to a limited waiver of the confidentiality of information submitted to comply with apiary registration requirements set forth in Division 13, Chapter 1, Article 4 and Division 13, Chapter 1, Article 5 of the Food and Agricultural Code.

(b) The waiver shall limit the release of confidential apiary registration information to registered owners of seedless mandarin acreage within the county where the apiary has been registered.

(c) The waiver must be in writing, and accompany the apiary registration form, after the beekeeper has been informed, in writing, that the purpose of the waiver is to make confidential apiary registration information available to owners of seedless mandarin acreage

(d) A commissioner shall only release information subject to the waiver upon request as follows:

(1) during each calendar year for a period commencing on March 1st and concluding on May 31st; and

(2) to a owner who has registered seedless mandarin acreage within two miles of the registered apiary or apiaries.

Note: Authority Cited: Sections 407, 29040, 29041, 29042, 29043, 29045, 29070, 29070.5 and 29812, Food and Agricultural Code.

Reference Cited: Sections 29810 and 29811, Food and Agricultural Code.

1430.57 Dispute Resolution

(a) The owner of registered seedless mandarin acreage may request that a registered beekeeper move an apiary to an alternative location provided by the owner if the apiary is located within two miles of the acreage. An owner may request that multiple apiaries be moved if they have been registered by the same beekeeper.

(b) Beekeepers of registered apiaries shall be available by telephone or other form of electronic verbal communication between 4 p.m. and 7 p.m., Monday through Saturday from March 1st through May 31st to receive requests from a registered seedless mandarin grower to move an apiary as provided in subsection (a).

(c) If agreement upon a new location of an apiary cannot be reached between the owner and the beekeeper, either may request, in writing, that the commissioner of the county in which the acreage and the apiary is located provide an advisory opinion as to whether the beekeeper should move the apiary to the alternative location. If the acreage and the apiary are located in different counties, the request may be directed to either the commissioner in the county in which the acreage is located or the commissioner in the county where the apiary is located. The party making the request shall also provide the commissioner with a summary of any attempts to resolve the dispute through negotiation. Requests can only be made between March 1st and May 31st of any calendar year.

(d) The commissioner shall, within two business days after receiving the request, notify the owner and the beekeeper in writing that a request for an advisory opinion has been received.

(e) The owner and the beekeeper shall provide the commissioner, in writing, with their last offer, reasons for rejection of the other party's last offer, and an indication as to what they believe would be required to reach an agreement. The owner and the beekeeper shall provide a written response that conforms to these requirements within four days of receipt of the notice.

(f) Upon receiving the request and the responses, the commissioner shall issue an advisory opinion that recommends either of the following

(a) the apiary shall not be moved;

(b) the apiary or a portion of the hives, as defined by the commissioner, shall be moved to a new location determined by the commissioner.

(g) The commissioner shall give pollination needs priority when issuing the advisory opinion.

(h) The owner and the beekeeper shall provide the commissioner with a fax number for the transmission of the advisory opinion. The commissioner shall deliver the opinion to them by fax, with a confirmatory hard copy by mail, and it shall be deemed received upon electronic confirmation. The owner and the beekeeper may thereafter comply with the advisory opinion within 48 hours of receipt.

(i) The commissioner shall issue an advisory opinion within eleven (11) business days upon receipt of the request.

(j) The commissioner shall establish a cost to issue the advisory opinion to be paid by the owner of seedless mandarin acreage to the commissioner.

Note: Authority Cited: Sections 407 and 29812 Food and Agricultural Code.

Reference Cited: 407, 29810 and 29811 Food and Agricultural Code.