

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.