

DEPARTMENT OF FOOD AND AGRICULTURE  
PROPOSED AMENDMENT OF THE REGULATIONS

Title 3, California Code of Regulations

Section 3061

INITIAL STATEMENT OF REASONS/  
PLAIN ENGLISH POLICY STATEMENT OVERVIEW

Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulations are Intended to Address

These regulations are intended to address the obligation of the Secretary of Food and Agriculture to set labeling requirements for nursery stock.

Specific Purpose and Factual Basis

The specific purpose of Section 3061 is to establish an exemption for the individual plant labeling requirement for nursery stock, when shipped, delivered, or transported to a purchaser, as authorized in Food and Agricultural Code (FAC) Section 53482.

Existing law establishes the intent that purchasers of nursery stock may have adequate knowledge concerning the name and the grade size of nursery stock with relation to established standards (FAC Section 53331). Existing law also provides that when nursery stock is sold, it shall be labeled plainly and legibly as to correct name, and establishes the correct name for specific types of nursery stock (FAC Section 53481).

Existing law also provides that when nursery stock is shipped, delivered, or transported to any purchaser, each plant shall be individually labeled as to the correct name. The Department may create exceptions to this section by regulation (FAC Section 53482). Existing law also provides that nursery stock on display for sale at retail may be labeled by a sign on any block of stock of the same kind and species, and that turf shall be labeled by a sign showing the required correct name of the stock on display (FAC Section 53483).

In existing regulations, Section 3061 establishes an exception to the individual plant labeling requirement specified in, and authorized by, FAC Section 53482. The exception allows for such plants to be individually labeled at the discretion of the person offering them for sale, and requires that if such stock is labeled that it must comply with the remaining labeling requirements, beginning with FAC Section 53481.

In 2016, the Department was notified of an apparent contradiction between Section 3061 and its authorizing statute (FAC Section 53482). In order to clarify the scope of the plant labeling exception and to ensure consistent understanding, application, and enforcement of the labeling requirements for nursery stock, the Department is proposing to amend Section 3061.

The proposed amendment of Section 3061 will specify that the exception for the individual labeling of plants applies to nursery stock when it is being “shipped, delivered, or transported to a purchaser,” as stated in the authorizing statute. This specification will replace the description of “offered for sale,” which appears to be in contradiction with the authority provided in FAC Section 53482. Additionally, the proposed amendment will remove from the authority and reference for this regulation FAC Section 53392, which authorizes the Secretary to adopt regulations related to nursery stock grade-size standards. Section 3061 previously included labeling requirements related to grade-size standards, but those requirements were removed when the regulation was last amended in 1994. There are no references or requirements related to grade-size in the existing or proposed regulation.

### Economic Impact Analysis

The proposed amendments to the regulation clarify plant labeling requirements by correcting an apparent contradiction with the authorizing statute. As of September 22, 2016, there were 4,510 persons and/or firms holding a valid License to Sell Nursery Stock in California, with a total of 12,937 sales and growing locations statewide.

County and state agricultural inspectors currently enforce the rules for plant labeling as authorized in statute, therefore there is no projected increase in licensing or acreage fees for enforcement of this regulation. Additional outreach to ensure that nurseries and the public clearly understand the rules for plant labeling may be helpful to ensure consistent application and enforcement of the rules. The current fee structure for licensing would likely be sufficient to cover the cost of this activity.

Nurseries confused by the contradiction and not currently labeling nursery stock for sale as required by statute may see an increase in costs for producing and placing labels on their plants. No other increases in costs of compliance are projected.

#### Anticipated Benefits from This Regulatory Action

The proposed amendments will help to increase consumers' confidence and maintain an orderly marketplace for nursery stock by helping ensure nurseries, regulatory officials, and the public have a clear understanding of the rules regarding plant labeling.

#### Assessment

Based upon the Economic Impact Analysis, the Department has made an assessment that the amendment of the regulation would not 1) create or eliminate jobs within California; 2) create new business or eliminate existing businesses with California; or 3) affect the expansion of businesses currently doing business with California.

There are no known specific benefits to the worker safety or the health or public safety of California residents. The proposed regulations would help maintain an orderly marketplace for nursery stock for California consumers.

As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of this regulation and has determined that it is not inconsistent or incompatible with existing state regulations.

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

The Department of Food and Agriculture has determined that the amendment of Section 3061 does 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.

The agency 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 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:

These regulations clarify plant labeling requirements by correcting an apparent contradiction with the authorizing statute. Fees paid by licensees fund the regulatory enforcement costs. Nursery stock that is properly labeled provides necessary information to consumers and helps maintain an orderly marketplace for nursery stock in California. The proposed changes in the regulations should benefit nurseries, regulatory officials, and the public by providing for a clearer understanding of the rules regarding plant labeling.

### Alternatives Considered

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. The Department considered taking no action. If no action is taken, an

apparent contradiction between the regulation and authorizing statute will remain, resulting in confusion between nurseries, regulatory officials, and the public, decreased consumer confidence, and a less orderly marketplace for nursery stock in California.

#### Information Relied Upon

The Department is relying upon the following studies, reports, and documents in proposing the amendment of Section 3061:

“Recommendations Report to the Legislature on Landscape Water Use Efficiency,” public draft report, dated February 13, 2016, Independent Technical Panel on Demand Management Measures, Department of Water Resources.

“Comments regarding ITP public draft report recommendation 7.5 dated February 13, 2016,” dated April 13, 2016, Joshua Kress, Department of Food and Agriculture.