

DEPARTMENT OF FOOD AND AGRICULTURE  
Title 3 of the California Code of Regulations

**Notice of Proposed Rulemaking**

**45 – Day Notice**

The Department of Food and Agriculture proposes to amend Section 3061 of the regulations in Title 3 of the California Code of Regulations pertaining to Labeling of Nursery Stock.

**PUBLIC HEARING**

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to 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 amendment to the Department. Comments may be submitted by mail, FAX or email. The written comment period closes at 5:00 p.m. on December 5, 2016. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Sara Khalid  
Department of Food and Agriculture  
Plant Health and Pest Prevention Services  
1220 N Street  
Sacramento, CA 95814  
[sara.khalid@cdfa.ca.gov](mailto:sara.khalid@cdfa.ca.gov)  
916.654.1017  
916.654.1018 (FAX)

Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

**INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW**

Existing law provides requirements for the labeling of nursery stock sold in the state. The Secretary may create exceptions for the individual labeling of each plant when shipped, delivered, or transported to any purchaser by regulation (Sections 53481-53483, Food and Agricultural Code).

The proposed amendment of Section 3061 pertaining to Labeling of Nursery Stock will correct an apparent contradiction between the regulation and authorizing statute. The effect of this regulation will be to clarify the rules for plant labeling for nurseries, regulatory officials, and the public, and to help maintain an orderly marketplace for nursery stock in California.

The Department considered any other possible related regulations in this area, and we find that these are the only regulations dealing in this subject area, and the only State agency which can implement this proposed regulation regarding labeling of nursery stock. 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.

#### Anticipated Benefits from This Regulatory Action

The proposed amendments to the regulation 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.

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.

#### **AMENDED TEXT**

The amendment of this regulation will correct an apparent contradiction between the regulation and authorizing statute in order to clarify the rules for labeling of nursery stock when it is shipped, delivered, or transported to a purchaser.

#### **DISCLOSURES REGARDING THE PROPOSED ACTION**

*The Department has made the following initial determinations:*

Mandate on local agencies or 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 and no nondiscretionary costs or savings to local agencies or school districts.

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 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.

Small Business Determination:

The Department has determined that the proposed regulations may affect small business.

Significant effect on housing costs: None.

### **ASSESSMENT**

The Department has made an assessment that the proposed amendment to the regulation 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.

There are no known specific benefits to worker safety or the health of California residents. The Department is not aware of any specific benefits the amendment of this regulation will have to the protection of public safety of California residents or worker safety. Based upon the economic analysis, the Department believes the amendment of this regulation benefits the general welfare of California residents (GC Section 11346.3(b)).

### **ALTERNATIVES CONSIDERED**

The Department must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either 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 or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this notice. 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.

### **AUTHORITY**

The Department proposes to amend Section 3061 pursuant to the authority vested by Sections 407, 53391, and 53482 of the Food and Agricultural Code of California.

### **REFERENCE**

The Department proposes this action to implement, interpret and make specific Sections 53481 through 53483 of the Food and Agricultural Code.

## **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 to is:

Sara Khalid  
Department of Food and Agriculture  
Plant Health and Pest Prevention Services  
1220 N Street  
Sacramento, CA 95814  
[sara.khalid@cdfa.ca.gov](mailto:sara.khalid@cdfa.ca.gov)  
916.654.1017  
916.654.1018 (FAX)

In her absence, you may contact Laura Petro at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Sara Khalid.

## **INTERNET ACCESS**

The Department has posted the information regarding this proposed regulatory action on its Internet website ([www.cdfa.ca.gov/cdfa/pendingregs](http://www.cdfa.ca.gov/cdfa/pendingregs)).

## **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 action, 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, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations amended 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 amendment. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.