

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 repeal Sections 3259 and 3276 of Title 3 of the California Code of Regulations (CCR) pertaining to Peach Yellows, Little Peach and Red Suture Diseases Exterior Quarantine (Quarantine Proclamation 11) and Peach Rosette Disease Exterior Quarantine (Quarantine Proclamation 30).

**PUBLIC HEARING**

A public hearing is not scheduled. However, 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 regulations to the Department. Comments may be submitted by USPS, FAX or email. The written comment period closes on March 8, 2021. The Department will consider only comments received at the Department offices by that time or postmarked no later than March 8, 2021. Submit comments to:

Erin Lovig, Senior Environmental Scientist Supervisor  
California Department of Food and Agriculture  
Plant Health and Pest Prevention Services  
2800 Gateway Oaks Drive, Suite #200  
Sacramento, CA 95833  
[Erin.lovig@cdfa.ca.gov](mailto:Erin.lovig@cdfa.ca.gov)  
916.403.6650  
916.651.2900 (FAX)

Unless there are substantial changes to the proposed regulations prior to repeal, the Department of Food and Agriculture may adopt the proposal as set forth in this notice without further notice to the public. 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/POLICY STATEMENT OVERVIEW**

Existing law provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this state and determine the probability of its spread and the feasibility of its control or eradication (Food and Agricultural Code (FAC) Section 5321).

Existing law also provides that the Secretary may establish, maintain and enforce

quarantine, eradication and other such regulations as she deems necessary to protect the agricultural industry from the introduction and spread of pests (FAC Sections 401, 403, 407 and 5322).

### Anticipated Benefits from This Regulatory Action

The existing law obligates the Secretary to investigate and determine the feasibility of controlling or eradicating pests of limited distribution but establishes discretion with regard to the establishment and maintenance of regulations to achieve this goal.

Section 3162 requires pests in California to be rated using a metric to determine risk of introduction into California, and what regulatory action needs are required. The research establishing that peach rosette, yellows, little peach, or red suture diseases were all caused by the same pathogen initiated a review. While these four diseases were previously rated "A"; which required mitigating regulatory actions, the review of the pathogen *Candidatus* Phytoplasma pruni in 2016 found that it is well established in California. Thus the pathogen rating was changed to "C", which is described in CCR Section 3162 as for pests of the agricultural industry or environment which score medium to low and are of common occurrence and generally distributed in California. Plants and plant products found infested or infected with or exposed to a "C"-rated pest are not subject to any State enforced regulatory actions listed under CCR subsection 3162(e).

While peach rosette, peach yellows, little peach, or red suture diseases are harmful, the pathogen causing the diseases is already establish in California, and the 2016 rating change does not allow for regulatory actions. Due to this change the Department has decided to repeal CCR Sections 3259 and 3276 as they regulate a pest for which exterior quarantine actions will have little impact.

Peach rosette, peach yellows, little peach, or red suture diseases are serious diseases and ceasing enforcement of the quarantines does not imply that the Department would be discontinuing its vigilance for the diseases. Stone fruit surveys, nursery inspections, and general fruit quality inspections, activities that would reveal the disease if present, will continue.

There is no existing, comparable federal regulation or statute regulating the interstate movement.

The Department considered other possible related regulations in this area and found that these are the only regulations dealing in this subject area, and the only State agency that can implement plant quarantines is the Department. As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of these regulations and has determined that it is not inconsistent or incompatible with existing state regulations.

### REPEALED TEXT

This proposed repeal of the regulations 3259 and 3276 would remove the exterior quarantines for peach yellows, little peach or red suture diseases, and peach rosette disease.

### **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: Cost savings to the Department due to ceasing quarantine enforcement amount to less than \$20,000 per year.

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.

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.

#### *Small Business Determination*

The Department has determined that the proposed regulations should not affect small businesses because the repeal of these regulations removes all regulatory requirements and there are no costs associated with compliance.

Significant effect on housing costs: None.

#### Results of the Economic Impact Analysis

Amendment 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

The Department is not aware of any specific benefits the amendment of these regulations will have on worker safety or the health of California residents. The proposed repeal of these regulations ensures the orderly marketing of nursery stock and improves access to safe, healthy food for the general public.

### **ALTERNATIVES CONSIDERED**

The Department must determine that no reasonable alternative it considered to the

regulations 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. It is the Department's responsibility to remove as unnecessary a quarantine for a pest for which exterior quarantine actions will have little impact.

### **AUTHORITY**

The Department proposes to repeal CCR Sections 3259 and 3276 pursuant to the authority vested by Sections 407, 5301, and 5302 of the Food and Agricultural Code.

### **REFERENCE**

The Department proposes this action to implement, interpret and make specific Sections 5301 and 5302 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:

Erin Lovig, Senior Environmental Scientist Supervisor  
California Department of Food and Agriculture  
Plant Health and Pest Prevention Services  
2800 Gateway Oaks Drive, Suite #200  
Sacramento, CA 95833  
[Erin.Lovig@cdfa.ca.gov](mailto:Erin.Lovig@cdfa.ca.gov)  
916.403.6650  
916.651.2900 (FAX)

In her absence, you may contact Rachel Avila at (916) 403-6813. Questions regarding the substance of the proposed regulations should be directed to Rachel Avila.

### **INTERNET ACCESS**

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

### **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 made 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.