

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 section 3262 of the regulations in Title 3 of the California Code of Regulations pertaining to Peach Mosaic Disease Exterior Quarantine.

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 28, 2015. 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
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/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 (FAC Section 5321).

Existing law also provides that the Secretary may establish, maintain and enforce quarantine, eradication and other such regulations as he 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. The Peach Mosaic Disease exterior quarantine was promulgated in the 1930's after an outbreak of the disease occurred in Southern California and several other states. State, county and University of California scientists have no records of the disease in California within the last several decades. It is likely that the disease was eradicated from California in the 20th century.

The quarantine prohibits the movement of "all species including the flowering forms of almond, apricot, nectarine, peach, plum and prune trees" from portions of Colorado, Oklahoma, Texas and all of Arizona and New Mexico. The regulation allows for movement of prohibited material through the use of a permit. To date, no permits have been issued to comply with the regulation requirements. It is likely that the quarantine has gone mostly unenforced for decades and during this time thousands of stone fruit shipments have left the quarantine area.

Even though material has been moving out of the quarantine without proper certification, there has been no incidence of the disease in the regulated states. Due to the lack of enforcement and apparent eradication of the disease, the Department has decided to repeal the regulation. Furthermore, the Principles of Plant Quarantine, adopted by the National Plant Board, require that a quarantine be repealed once it has reached its objective (<http://nationalplantboard.org/history-and-principles/>).

This proposed repeal of the Peach Mosaic Disease Exterior Quarantine benefits interstate shippers of host commodities and regulated articles which would otherwise face unfair interstate commerce restrictions. Nurseries shipping regulated material from within the quarantine will benefit by not having to hold their material for proper certification. Additionally, counties currently receiving regulated material will benefit by not being required to enforce the quarantine. The proposed repeal of this regulation ensures the orderly marketing of nursery stock and improves access to safe, healthy food for the general public.

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

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 plant quarantines. 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.

REPEALED TEXT

This proposed repeal of the regulation would remove authority for the State to enforce the exterior quarantine currently in place.

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: 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.

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 this regulation 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 this regulation will have on worker safety. The proposed repeal of this regulation 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 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. Alternative approaches would not be in line with the National Plant Board's

Principles of Plant Quarantine. It is the Department's responsibility to remove a quarantine that has reached its objective.

AUTHORITY

The Department proposes to repeal section 3262 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: Sara Khalid, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room 210, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: Sara.Khalid@cdfa.ca.gov. 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 website (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 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.

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