

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Section 3658

Pierce's Disease Control Program

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

This regulation is intended to address the obligations of the California Department of Food and Agriculture to protect the agricultural industry of California and prevent the introduction and spread of injurious plant pests.

Specific Purpose and Factual Basis

The specific purpose of Section 3658 is to provide authority for the State to minimize the destructive impact of Pierce's disease and its vectors at the earliest possible time on the agricultural industry, by establishing the host plants, which will enable the program to arrest the artificial spread of the disease and its vector, the glassy-winged sharpshooter (GWSS), *Homalodisca vitripennis*, to additional areas; thereby protecting California's agricultural industry.

The factual basis for the determination by the Department that the amendment Section 3658 is necessary is as follows:

The Legislature has found and declared that Pierce's disease and its vectors present a clear and present danger to the State's grape industry, other agricultural commodities and plant life, and enacted urgency legislation mandating immediate action to minimize the destructive impact of Pierce's disease and its vectors at the earliest possible time. In addition, the Governor recognized the immediate threat posed by the GWSS, in requesting that the United States Department of Agriculture declare a state of emergency under federal law. The federal declaration of emergency was published in the Federal Register on July 7, 2000, with an effective date of June 23, 2000.

The Department of Food and Agriculture adopted and subsequently amended regulations to further its implementation of a Statewide Program and Rapid Response Plan to arrest the spread of, and eradicate GWSS (where feasible), upon its detection in additional areas. These regulations and implementation of a Statewide Program and Rapid Response Plan have been necessary actions to carry out the Legislature's purpose to control Pierce's disease and to mitigate the effects of the ongoing spread of the GWSS.

Several other leafhoppers and plant feeding insects are known to vector Pierce's disease, but have not resulted in transmission of the disease at levels of serious economic significance. The GWSS is not a native insect pest in California and its introduction to this State is relatively recent. It was first observed in California in 1990. The GWSS is an especially strong and aggressive flier, capable of spreading Pierce's disease over larger areas than other vectors of the disease. It is also a voracious feeder that moves rapidly from one host plant to another in search of food. The pest is also prolific and lays its eggs on over a hundred different species of plants.

Besides natural migration, the GWSS is spread artificially on host plants/nursery stock which is transported into and around the State; this transportation facilitates movement of the GWSS over many miles and into previously non-infested regions. In addition to commercial crops, non-commercially produced plants including houseplants, fruit trees, ornamental plants, weeds, and native plants can host the GWSS.

The GWSS vectors the bacterium, *Xylella fastidiosa*, which causes Pierce's disease. This microorganism frequently kills grapevines and can severely impact other crops, including citrus, almonds, peaches and nectarines. In the 1890s, Pierce's disease destroyed the grape industry in Southern California. There is no treatment known to be effective against Pierce's disease. Furthermore, although the current threat posed by the GWSS is the spread of Pierce's disease, the pest can also vector citrus variegated chlorosis disease that is not known to occur in the United States. However, if the GWSS becomes widespread and citrus variegated chlorosis disease is introduced into this State, the State's citrus industry would suffer very significant losses.

Section 3658 establishes the list of plants that shall meet the requirements of standards for movement (Section 3659) and certification (Section 3660). The Department proposes to amend Section 3658 to add 50 new hosts: *Acer* spp. (Japanese maple), *Aeonium* spp. (Aeonium), *Alstroemeria* spp. (Peruvian lily), *Aralia* spp. (Japanese aralia), *Aucuba* spp. (gold dust plant), *Brugmansia* spp. (angel's trumpet-tree), *Buddleja* spp. (butterfly bush), *Carissa* spp. (natal plum), *Cedrus* spp. (deodar cedar), *Chamaedorea* spp. (palms), *Chilopsis* spp. (desert willow), *Clematis* spp. (evergreen clematis), *Coleus* spp. (Coleus), *Coreopsis* spp. (Coreopsis), *Crataegus* spp. (thornless hawthorn), *Cuphea* spp. (Cuphea), *Dalbergia* spp. (Indian rosewood), *Datura* spp. (jimsonweed), *Distictis* spp. (blood trumpet), *Dracaena* spp. (Dracaena), *Duranta* spp. (golden dewdrop), *Fatsia* spp. (Japanese fatsia), *Geranium* spp. (cranesbill), *Gerbera* spp. (Transvaal daisy), *Gleditsia* spp. (honey locust), *Hydrangea* spp. (Hydrangea), *Ipomoea* spp. (morning glory), *Juniperus* spp. (Juniper), *Lavatera* spp. (mallow), *Lepidospartum* spp. (scalebroom), *Leptospermum* spp. (Leptospermum), *Leucodendron* spp. (Leucodendron), *Leucophyllum* spp. (Texas ranger), *Liriope* spp. (giant turf lily), *Luma* spp. (Luma), *Mahonia* spp. (Oregon grape), *Monstera* spp. (Monstera), *Musa* spp. (banana), *Parkinsonia* spp. (Mexican Palo Verde), *Pereskia* spp. (Barbados gooseberry), *Plectranthus* spp. (Plectranthus), *Prosopis* spp. (mesquite), *Ruellia* spp. (Mexican bluebells), *Salvia* spp. (sage), *Sedum* spp. (Sedum), *Sophora* spp. (sun king sophora), *Tecoma* spp. (Yellowbells), *Vitex* spp. (chaste tree), *Zelkova* spp. (Sawleaf zelkova) and *Ziziphus* spp. (jujube). The effect of this proposed amendment is to provide authority for the State to specifically regulate the movement of these new hosts.

California Environmental Quality Act

A Final Environmental Impact Report (FEIR) was prepared by the Department as the lead agency under the California Environmental Quality Act (CEQA). The FEIR addresses the potential environmental impacts that would result from implementation of alternatives for the eradication of the GWSS under the Pierce's Disease Control Program. The environmental documents may be obtained by contacting the:

Pierce's Disease Control Program

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

The Department of Food and Agriculture determined that the amendment of Section 3658 does not impose a new mandate on the local agencies or school districts. This is an ongoing program authorized by the Legislature to combat Pierce's disease and its vectors with existing funding derived from the Pierce's Disease Management Account. The Legislature authorized these funds to be allocated to those local public entities that develop Pierce's disease work plans that conform to statutory standards and are approved by the Department of Food and Agriculture.

The Department has also determined that the amended regulations will involve no additional costs or savings to any state agency because funds for state costs are already appropriated, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable savings to local agencies or costs or savings to school districts under Section 17561 of the Government Code, funds for reimbursement for costs to local agencies have already been appropriated, and will be allocated under the approved work plans, and no costs or savings in federal funding to the State. To the extent that local agencies incur costs as a result of their continuing enforcement of and compliance with this amended regulation, the local agencies may recover those costs by establishing an acceptable Pierce's disease work plan that qualifies for allocation of funds appropriated by the Legislature for this purpose.

The Department has determined that the proposed action will not have a significant adverse economic impact on housing costs. The Department of Food and Agriculture finds that the amendment of this regulation may have an adverse economic impact on some California businesses, including the ability of California businesses to compete with businesses in other states. The economic impact on those California businesses is not expected to be significantly adverse when balanced against the protection provided to those businesses from costs or losses due to Pierce's disease or the GWSS.

The types of businesses that may be impacted are nursery stock producers, nurseries and landscapers. The regulations include performance standards, rather than prescriptive

standards, for achieving compliance. This provides affected parties the greatest flexibility and with many potential options to achieve compliance.

The Department identified 535 nurseries under compliance agreement within the GWSS-infested areas that must comply with these regulations when shipping out of the infested area. GWSS is a very mobile pest and any nursery shipping out of the infested area is already following the program's Best Management Practices (BMPs) which give them the best opportunity to be successful for handling pest pressure from GWSS. This helps ensure that GWSS is not inadvertently shipped as a "hitchhiker" on non-host material. As these nurseries are already following the BMPs, the addition of these new hosts will not result in any new costs of compliance. The number of regulated nursery stock shipments per year has ranged from 50,600 to 76,700 during the years 2001 through 2010 (average number of shipments per year is 64,670).

The existing ongoing costs for these nurseries include treatments and labor costs for inspections, trapping, and special handling of these new host plants. These costs are extremely varied based on the type of plants produced at each nursery, the size of nursery, the nursery's location with regard to the GWSS's highly populated areas, and existing pest control programs.

The 2009/2010 value of California nursery products was approximately \$3.4 billion. During this same time period, there were approximately 1,421 nurseries which ship nursery stock within California. Of these, 38 percent (535) of the nurseries are under a compliance agreement.

Based on the above information, it was determined that the amendment of Section 3658 may have an adverse economic impact on some businesses, but it is not expected to be significantly adverse. For many businesses, no additional costs will be incurred.

Assessment

The Department has made an assessment that this amendment to the 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.

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 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 3658:

Nursery Advisory No. 01-2011, dated February 16, 2011, Value of California Nursery Stock Products, fiscal Year 2009/2010, California Department of Food and Agriculture.

Summary of Host Plants Followed by Pest and Damage Record Number, dated February 17, 2011 and its attachments, Permits and Regulations, California Department of Food and Agriculture.

“Notice of Determination,” dated May 28, 2003, California Department of Food and Agriculture.

“Certification of the Final EIR for the Pierce’s Disease Control Program, and Approval of the Pierce’s Disease Control Program,” dated May 28, 2003, California Department of Food and Agriculture.