

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 subsection 3658 of the regulations in Title 3 of the California Code of Regulations pertaining to Plants (Pierce's Disease Control Program).

This notice is being provided to be in compliance with Government Code Section 11346.4.

**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, facsimile (FAX) at 916.654.1018 or by email to [sbrown@cdfa.ca.gov](mailto:sbrown@cdfa.ca.gov). The written comment period closes at 5:00 p.m. on May 16, 2011. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Stephen Brown  
Department of Food and Agriculture  
Plant Health and Pest Prevention Services  
1220 N Street  
Sacramento, CA 95814  
[sbrown@cdfa.ca.gov](mailto:sbrown@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 obligates the Department of Food and Agriculture to protect the agricultural industry in California and prevent the spread of injurious pests (Food and Agricultural Code, Sections 401 and 403). Existing law also provides that the Secretary may establish, maintain, and enforce such regulations, as he deems necessary, to prevent the spread of pests to protect California's agricultural industry (Food and Agricultural Code Section

5322). Sections 6045 through 6047 (Food and Agricultural Code) establish that *Xylella fastidiosa*, Pierce's disease, and its vectors present a clear and present danger to California's agricultural industry; establish a Pierce's Disease Control Program and Management Account with program funding appropriations; and establish authority for regulations to effectuate the intent of these statutes.

The proposed amendment of Section 3658 will 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 hosts.

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

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

*The Department has made the following initial determinations:*

Mandate on local agencies and school districts: The Department of Food and Agriculture has determined that Section 3658 does not impose a new mandate on 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.

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 Department has made an initial determination that the proposed action is for an existing ongoing program which may have an adverse impact on some California businesses, including the ability of California businesses to compete with businesses in other states. These impacts would not be statewide and may only affect some of those businesses located within the glassy-winged sharpshooter (GWSS) infested areas. 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 GWSS.

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

Significant effect on housing costs: None.

#### *Small Business Determination*

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

#### **ALTERNATIVES CONSIDERED**

The Department of Food and Agriculture must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed actions.

#### **AUTHORITY**

The Department proposes to amend Section 3658 pursuant to the authority vested by Sections 407 and 6047 of the Food and Agricultural Code.

#### **REFERENCE**

The Department proposes this action to implement, interpret and make specific Sections 6045 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: Stephen S. Brown, 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: sbrown@cdfa.ca.gov. In his absence, you may contact Lindsay Rains McCarthy at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Stephen S. Brown.

### **INTERNET ACCESS**

The Department has posted the information regarding this proposed regulatory action on its Internet Web site ([www.cdfa.ca.gov/phpps/Regulations.html](http://www.cdfa.ca.gov/phpps/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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