

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 (Department) intends to amend subsection 3425(b) of the regulations in Title 3 of the California Code of Regulations pertaining to the Melon Fruit Fly Interior Quarantine.

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 [Stephen.Brown@cdfa.ca.gov](mailto:Stephen.Brown@cdfa.ca.gov). The written comment period closes at 5:00 p.m. on September 22, 2014. 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  
[Stephen.Brown@cdfa.ca.gov](mailto:Stephen.Brown@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, 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 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**

One of the Department's broad statutory objective is to prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds (FAC section 403) and that it may adopt regulations as are reasonably necessary to achieve this (FAC section 407). The Department is obligated to investigate the existence of any pest that is not generally distributed within the state and determine the probability of its spread, and the feasibility of its control or eradication (FAC section 5321) and may establish and maintain quarantine regulations (FAC section 5322).

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 amendment of this regulation benefits the apple, avocado, bean (lima, mung and string), cantaloupe, cauliflower, cucumber, date, eggplant, fig, guava, melon, orange (king, mandarin and sweet) peach, pear, pepper, pumpkin, squash, tomato and watermelon industries (nursery, fruit for domestic use and exports, packing facilities) and the environment (urban landscapes) by having a quarantine program to prevent the spread of melon fruit fly should it be introduced as an incipient population.

The Department is also obligated to protect the general welfare and economy of the state and to seek to maintain the economic well-being of agriculturally dependent rural communities in the state (FAC Section 401.5). The activities authorized by the amendment of this regulation would prevent the potential spread of the melon fruit fly to uninfested areas of the state; including agriculturally dependent rural communities. Historically, most melon fruit fly quarantines in California have been associated with introductions into the urban environment.

Should it be necessary to establish a quarantine for melon fruit fly, the national and international consumers of California host fruit benefit by having high quality fruit available at lower costs. It is assumed that any increases in production costs would ultimately be passed on to the consumer.

The amendment of this regulation benefits homeowners and community gardens that grow their own host fruits for consumption and host material which is planted as ornamentals in various rural and urban landscapes.

This regulation will benefit the public's general welfare by providing authority for the Department to perform quarantine activities against melon fruit fly in the state.

The implementation of this regulation will prevent:

- Direct damage to the agricultural industry growing host fruits outside the quarantine area.
- Indirect damage to the agricultural industry growing host fruits do to the implementation of quarantines by other countries and loss of export markets.
- Increased production costs to the affected agricultural industries.
- Increased pesticide use by the affected agricultural industries.
- Increased costs to the consumers of host fruits.
- Increased pesticide use by homeowners and others.
- The need to implement an unnecessary federal regulation for the entire state.

There is no existing, comparable federal regulation or statute.

The Department considered any other possible related regulations in this area, and we find that these are the only regulations pertaining to this subject area, and the Department the only state agency which can implement these eradication areas for plant pests. 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.

#### **AMENDED TEXT**

The amendment of this regulation will establish the process for adding and removing quarantine areas for melon fruit fly, how to determine the initial size of the area, how the area may be expanded if there are additional detections of melon fruit fly within the quarantine area, where the quarantine boundary description will be located on our website, an appeal process which may be used by any interested party, a list serve option to receive automatic notification and the life cycle for melon fruit fly.

#### **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.

Cost impacts on a representative private person or business: 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 may affect small business.

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 has determined the amendment of this regulation benefits:

- The general public
- Homeowners and Community Gardens
- Agricultural industry
- The state's general fund

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 (Government Code sec. 11346.3(b)).

The Department has evaluated and determined that the amendment of this regulation is not inconsistent with existing state regulations. There are no other comparable existing state regulations (Government Code section 11346.5(a)(3)(D)).

### **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.

### **AUTHORITY**

The Department proposes to amend subsection 3425(b) pursuant to the authority vested by sections 407, 5301, 5302 and 5322 of the FAC.

### **REFERENCE**

The Department proposes this action to implement, interpret and make specific sections 5301, 5302 and 5322 of the FAC.

## **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 Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: [sbrown@cdfa.ca.gov](mailto:sbrown@cdfa.ca.gov). In his absence, you may contact Lindsay Rains at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Stephen Brown.

## **INTERNET ACCESS**

The Department has posted the information regarding this proposed regulatory action on its internet 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 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 actions. 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 actions 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.