

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE
Notice of Proposed Rulemaking

The Department of Food and Agriculture adopted Section 3591.24 of the regulations in Title 3 of the California Code of Regulations pertaining to European Grapevine Moth Eradication Area as an emergency action that was effective on February, 18, 2010. The Department proposes to continue the regulation as adopted and to complete the amendment process by submission of a Certificate of Compliance no later than August 17, 2010.

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. 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.

Any person interested may present statements or arguments in writing relevant to the action proposed to the agency officer named below on or before May 10, 2010.

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 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 (Food and Agricultural Code, Sections 401, 403, 407 and 5322). Existing law also provides that eradication regulations may proclaim any portion of the State as an eradication area and set forth the boundaries, the pest, its hosts, and the methods to be used to eradicate said pest (Food and Agricultural Code Section 5761).

Section 3591.24 was adopted as an emergency regulation and established the State of California as an eradication area for European Grapevine Moth, *Lobesia botrana*. The effect of this action was to establish authority for the State to conduct eradication activities anywhere in the state against this pest, establish the list of hosts and possible carriers, and state the means and methods that may be used in control and eradication. There is no existing, comparable federal regulation or statute.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department of Food and Agriculture has determined that Section 3591.24 does not impose a mandate on local agencies or school districts and no reimbursement is required for Section 3591.24 under Section 17561 of the Government Code. The Department also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed actions will not affect housing costs.

EFFECT ON BUSINESSES

The Department has made an initial determination that the proposed actions will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACT ON AFFECTED PRIVATE PERSON OR BUSINESSES

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT

The Department has made an assessment that the proposed adoption and 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 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 adopt Section 3591.24 pursuant to the authority vested by Sections 407 and 5322 of the Food and Agricultural Code.

REFERENCE

The Department proposes to adopt Section 3591.24 to implement, interpret and make specific Sections 407, 5322, 5761, 5762 and 5763 of the Food and Agricultural Code.

EFFECT ON SMALL BUSINESS

The proposed adoption of this regulation may affect small businesses.

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: Susan McCarthy, 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: smccarthy@cdfa.ca.gov. In her absence, you may contact Stephen Brown at 916.654.1017. Questions regarding the substance of the proposed regulation should be directed to Susan McCarthy.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website (<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 amended 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 amendment. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.