

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) proposes to amend section 4500 of the regulations in Title 3 of the California Code of Regulations (CCR) pertaining to the California Noxious Weed Species.

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 November 17, 2014. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Lindsay Rains
Department of Food and Agriculture
Plant Health and Pest Prevention Services
1220 N Street
Sacramento, CA 95814
lindsay.rains@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 finds that the planned production of trees (Food and Agricultural Code (FAC) section 22), vines, rose bushes, ornamental plants, floricultural crops, and other horticultural crops, whether in open fields or in greenhouses, (FAC section 23(a)) and plants growing in native stands or planted for ornamental purposes contribute to the environmental and public health and welfare needs of the people of the state (FAC section 24.5), and shall all be considered a branch of the agricultural industry of the state for the purposes of any law which provides for the benefit or protection of the agricultural industry of the state.

Existing law finds that greenhouse production of floricultural, ornamental, or other nursery and agricultural products in the state is a growing industry that provides valuable

agricultural products and year-round employment for agricultural workers (FAC section 23.6).

Existing law finds that the Department shall prevent the introduction and spread of noxious weeds (FAC section 403) and that the Secretary may adopt such regulations as are reasonably necessary to carry out the provisions of the FAC.

Existing law provides that if the Secretary receives information of the existence of any pest that is not generally distributed within this state, (s)he shall thoroughly investigate the existence and probability of its spread, and the feasibility of its control or eradication (FAC section 5321) and may establish, maintain, and enforce regulations to circumscribe and exterminate or prevent the spread of any pest which is described in section 5321.

Anticipated Benefits from This Regulatory Action

The addition of the invasive plant species described in this proposed regulation are not established or not widely established in California. The Department is making the determination that these invasive plants are noxious weeds and should be added to CCR section 4500. This regulatory action will enhance the ability to control the movement and establishment of the relevant noxious weed species within California. Noxious weeds cannot be produced, sold or maintained in California as nursery stock. There are also existing statutory authorities (FAC sections 6461.5, 6463 and 6465) which enables State or county agricultural inspectors the ability to reject or divert for approved processing shipments contaminated with noxious weeds thereby preventing their entry.

Noxious weeds negatively impact agriculture by decreasing the profitability and value of cropland, rangeland, timberland and the biodiversity of native ecosystems (including threatened and endangered species. The presence of noxious weeds increase control costs where they are detected, negatively impact recreational use of public lands and waterways and are not aesthetically pleasing to view. The presence of noxious weeds over large areas can also increase the fire hazard when they dry out. This amendment will (1) increase the profitability and value of cropland, rangeland, and timberland, (2) decrease the costs of roadside, park, and waterway maintenance, (3) reduce the fire hazard and fire control costs in the state, (4) protect the biodiversity of native ecosystems (including threatened and endangered species), and (5) maintain the recreational and aesthetic value of open space, recreational, and public areas (cf. CCR 7272.5).

Existing law states “the Department shall seek to enhance, protect, and perpetuate the ability of the private sector to produce food and fiber in a way that benefits the general welfare and economy of the state. The Department shall also seek to maintain the economic well being of agriculturally dependent rural communities in this state and higher economic benefits from the agricultural sector (FAC section 401.5).” Citizens will benefit by having lower costs for food production and from improved public health and safety. The presence of noxious weeds in agriculturally dependent communities has a negative economic impact and preventing or mitigating the establishment of noxious weeds benefits such communities.

There is no existing, comparable federal regulation or statute listing noxious weeds for the State of California.

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.

AMENDED TEXT

This proposed amendment of the regulation would add 22 species of plants to the noxious weed list and provide authority for the State to enforce the restrictions against these additional species. The Department is also proposing several changes without regulatory effect including adding common synonyms, correcting spelling errors and amending incorrectly alphabetized species.

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: There are no costs for compliance as the amendment of this regulation will prevent additional costs from new weed pest introductions.

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 believes the amendment of this regulation may benefit worker safety by reducing fire hazards and may benefit the health of California residents by reducing food costs.

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 section 4500 pursuant to the authority vested by sections 407 and 5004 of the Food and Agricultural Code.

REFERENCE

The Department proposes this action to implement, interpret and make specific section 5004 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: Lindsay Rains, 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: Lindsay.rains@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 Lindsay Rains.

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 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.