

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE PROPOSED
AMENDMENT OF THE REGULATIONS

Title 3, California Code of Regulations Section 3162
Pest Ratings and Mitigating Actions

INITIAL STATEMENT OF REASONS/
PLAIN ENGLISH POLICY STATEMENT OVERVIEW

The California Department of Food and Agriculture (Department) promulgated section 3162 to establish a pest rating process for various organisms that impact agriculture and the environment. This regulation amends the pest rating procedures for purposes of clarity and consistency.

Description of Public Problem. Administration Requirement. or Other Condition or Circumstance the Regulation is Intended to Address

The Department is mandated to develop and maintain a list of invasive pests that have a reasonable likelihood of entering California for which a detection, exclusion, eradication, control, or management action by the state might be appropriate. In developing the list, the Department considers any invasive pests identified by the federal or state government for which a detection, exclusion, eradication, control, or management action might be undertaken (FAC Section 5261). The Department is also required to develop and maintain a plan on the most appropriate options for detection, exclusion, eradication, control, or management of the higher priority invasive pests on the list it prepares and make the plan available to the public, including making it available on the Department's website (FAC Section 5262).

In order to meet these obligations, the Department must determine and specify which organisms are plant pests. The term “invasive pests” means “animals, plants, insects, and plant and animal diseases or groups of those animals, plants, insects, and plant and animal diseases, including seeds, eggs, spores, or other matter capable of propagation, where introduction into California would or would likely cause economic or environmental harm.” (FAC Section

5260.5). A pest is an organism that is, or is liable to be, dangerous or detrimental to the agricultural industry (FAC Section 5006). Once a determination is made that an organism is a potential plant pest, the Department rates the pest based upon its distribution within the state, the risk it poses to agriculture and the environment, and other factors. The pest rating determined by the process outlined in section 3162 then guides the general plan of action pertaining to the specified pest.

Purpose

This amendment to section 3162 will clarify the procedures for assigning pest ratings and determining official control measures.

Current Laws & Regulations

Existing law, FAC Section 403, directs that the department shall prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds.

Existing law, FAC Section 407, provides that the Secretary may adopt such regulations as are reasonably necessary to carry out the provisions of this code that the Secretary is directed or authorized to administer or enforce.

Existing law, FAC Section 5006, defines “pest” to mean any of the following things that is, or is liable to be, dangerous or detrimental to the agricultural industry of the state:

- (a) Any infectious, transmissible, or contagious disease of any plant, or any disorder of any plant which manifests symptoms or behavior which the director, after investigation and hearing, finds and determines is characteristic of an infectious, transmissible, or contagious disease.
- (b) Any form of animal life.
- (c) Any form of vegetable life.

Existing law, FAC Section 5260.5, defines “invasive pests” as animals, plants, insects, and plant and

animal diseases or groups of those animals, plants, insects, and plant and animal diseases, including seeds, eggs, spores, or other matter capable of propagation, where introduction into California would or would likely cause economic or environmental harm. “Invasive pests” does not include agricultural crops, livestock, or poultry generally recognized by the department or the United States Department of Agriculture as suitable to be grown or raised in the state.

Existing law, FAC Section 5261, provides that the Department shall develop and maintain a list of invasive pests that have a reasonable likelihood of entering California for which a detection, exclusion, eradication, control, or management action by the state might be appropriate. In developing the list, the department shall consider any invasive pests identified by the federal or state government for which a detection, exclusion, eradication, control, or management action might be undertaken.

Existing law, FAC Section 5262, provides that the Department shall develop and maintain a written plan on the most appropriate options for detection, exclusion, eradication, control, or management of the higher priority invasive pests on the list prepared pursuant to FAC Section 5261. The law requires holding public hearings and making the plan available to the public, including making it available on the department’s web site as required by section 5262(f).

Amended Text

The specific purpose of section 3162 is to establish a pest rating process for various organisms that impact agriculture and the environment and to determine the appropriate Department-authorized statewide official control actions based upon the assigned pest rating. The purpose of this amendment is to clarify and make consistent the procedures outlined in section 3162.

Section 3162:

The Department proposes to amend the title of the regulation to replace “Mitigating” with “Official Control”. This amendment is necessary to make the title consistent with the terminology used throughout the section.

Section 3162(a):

This section establishes the definitions for terms used in the regulation. The Department is

amending this section as follows:

- The definition in subsection(a)(2) “Endangered Area” has been removed. This term will no longer be used in the regulation. It will be replaced with “Vulnerable Area” defined in subsection (a)(11). This amendment is necessary to eliminate the potential association with endangered and threatened species that may arise with the use of the existing term.
- Renumber existing subsection (a)(3), “General Distribution”, to subsection (a)(2) and make minor amendments. The proposed modification allows for a more general definition with emphasis on the pest’s potential distribution. The factors which influence potential distribution can go beyond the host range and suitable climatic range specified in the original definition.
- Add subsection (a)(3) “Identifying Scientist”. This is to specify the personnel who are authorized to identify and assign an authoritative identification to pests to which this regulation will be applied.
- Amend the definition in subsection (a)(4). “Limited Distribution” has wording changes to clarify the definition. The emphasis in this definition as in the modified definition for “General Distribution” has been changed to reflect potential distribution.
- In subsection (a)(7), the word “endangered” has been changed to “vulnerable” for consistency.
- Subsection (a)(8), “Pest Rating” has been reworded for clarity.
- Remove subsection (a)(9), “Pest Mitigation Measure”. The existing regulation defines both “Pest Mitigation Measure” and “Official Control” identically. The Department proposes to remove the term “Pest Mitigation Measure” to eliminate this duplication and rely solely on the term “Official Control Measure” as defined in subsection (a)(7).
- Subsection (a)(9) “Potential Distribution” has been added to refer to areas of California where the pest might feasibly be expected to establish.
- In subsection (a)(10), “Quarantine”, there has been a slight wording change for clarity.

- Subsection (a)(11) “Vulnerable Area” has been added to refer to areas of California where the pest might feasibly be expected to establish and cause economical loss or ecological harm.

Section 3162(b)

This section of the regulation describes the format used for the "California Pest Rating Proposal". In order to have a plan of action involving appropriate mitigation actions for an introduced invasive species, the seriousness of the potential impacts of the pest is established along with scientific background and distribution information. The form allows the evaluator to assign a numerical score based on the consequences of introduction, including:

- climate/host interaction,
- known pest host range,
- pest dispersal potential,
- economic impacts,
- significant impacts to cultural practices, home/urban gardening or ornamental plantings, and
- environmental impacts.

The evaluator then considers the post entry distribution and survey information, to assign a final numerical score. After an evaluation of uncertainty versus risk, the evaluator assigns a rating to the pest.

The Department proposes the following amendments to section 3162(b):

- Add a temporary rating “Z” to the list of possible Current Ratings. The “Z” rating is described in section 3162(j).
- Remove the rating “Q” from the Proposed Rating list. This is necessary because the “Q” rating is intended as a temporary rating prior to the publication of the Pest Rating Proposal and is not appropriate as a Proposed Rating.
- Replace Common Name with [taxon name] as the primary name for the pest. This allows the person completing the Pest Rating Proposal to use either common name or scientific name as the primary name throughout the document.

- Add “Taking into account other, established pests,” and “additional” to item (5) environmental impact. If another pest, one with very similar or identical impacts on California agriculture and environment as those impacts expected from the evaluated pest, is already established in the state, then the introduction and establishment of the pest being evaluated may have few, if any, additional economic or environmental impacts.
- Replace the word “endangered” with the word “vulnerable” in items (5) and (6) for consistency with the terminology used throughout this section.
- There is minor rewording to replace “total” score with score “for the above five consequences”. This is a more appropriate wording; the score at this point is a subtotal until item (6) has been included. This change is necessary to specify that the score at this point is the sum of the five factors described above this section.
- Add “Official Pest Damage Record” to the information allowed to determine the California distribution of the pest. The Pest Damage Records document samples collected by the Department from border stations, county agricultural commissioners, and CDFA personnel, and analyzed in the CDFA laboratory. This addition is necessary to specify one of the two record types that may be relied upon to evaluate Post Entry Distribution and Survey Information.
- Replace the word “here” with the phrase “in the above assessment.” This change is necessary to specify that the references listed in a Pest Rating Proposal are references used throughout the assessment.

Section 3162(c)

This section provides the process by which a pest is rated. It establishes that any interested party may use the "California Pest Rating Proposal (Form)" and that it is available from a website link with instructions for submission. After completing the Form, it will be posted to the website within 30 days for a 45-day public comment period. The Department will respond to any posted comments within 30 working days of receiving the comment and make the final pest rating determination and post it at the following website: <http://cdfa.ca.gov/plant/regs/pestrating.html>. Under the California Administrative Procedure Act, regulations must be

available for at least a 45-day public comment period. The Department uses an equivalent comment period for a proposed pest rating.

Other than a minor wording change to subsection 3162(c)(2), the Department does not propose amending this section.

Section 3162(d)

This section defines the process to review existing pest ratings. As additional scientific information becomes available or if the status of the distribution of the pest in California significantly changes, the pest rating may need revision. This section establishes that the Department shall review all Q ratings and propose a permanent rating within two years of assigning a temporary rating. The Department chose the two-year time frame to ensure there was adequate time for any new science to develop pertaining to the targeted pest and that the Department's scientific staff would have adequate time to review the science and meet its obligations.

- The Department is removing the requirement to review all pest ratings on a two-year schedule. Pest ratings will be reviewed and updated when new information on a pest becomes available rather than on a set time schedule.

Section 3162(e)

This section establishes the "A" rating for pests that score high as a pest of agriculture or the environment and are not known to occur or are under official control. The section also describes the authorized official control actions for pests of this rating.

Not all invasive species create equal harm to agriculture or the environment. Some invasive species may be very harmful but already be established to varying degrees within California.

This section establishes that:

- "A" -rated pests have the most serious potential impacts
- the appropriate control actions to take when an "A"-rated pest is detected

- the process to implement those actions
- a method to notify an affected party that a pest has been detected
- any options available to mitigate the impacts of the pest

The Department proposes the following amendments:

- Rewording the definition of the “A” rating for consistency and clarity.
- Subsection 3162(e)(1) replace the “conveyances” with “shipments.” Add the possibility of “held for inspection” as a potential control action.
- Subsection 3162(e)(3)(H) replace “Received” with “Transported” on the Notice of Rejection.
- Subsection 3162(e)(3)(R) correct the spelling of the word “Commissioner’s” on the Notice of Rejection.

Section 3162(f)

This section establishes the "B" rating for pests that have a medium score as a pest of agriculture or the environment and that are of limited distribution. The Department proposes to amend this section to specify and clarify the types of control actions taken for this pest. These actions are at the discretion of the Department or an authorized representative of the Department.

Section 3162(g)

This section establishes the "C" rating for pests. This rating was originally used for pests that score medium to low as a pest of agriculture or the environment and that are of general distribution. The Department proposes to amend this section to change the “C” rating to pests that score low as a pest and/or are of common occurrence and generally distributed in California. The Department reserves the “C” rating for pests for which it is unnecessary or impractical to implement control measures. Examples of “C” -rated pests could include:

- A pest that scores low and is generally distributed
- A pest that scores low and is of limited distribution

- A pest that is generally distributed regardless of score

The Department notes that there are serious pests that may be “C” -rated due to their wide distribution in the State.

Section 3162(h)

This section establishes the "D" rating for pests that score low as a pest of agriculture or the environment and are beneficial or are expected to cause no harm. Types of organisms that might be rated “D” include:

- Biological control agents
- Crops planted for agriculture
- Non-invasive horticultural plants
- California native organisms

The Department has amended this section to clarify and expand the definition of the “D”-rated pest. There are no authorized official control actions for “D”-rated pests.

Section 3162(i)

This section establishes the "Q" rating for pests that the Department expects to score high as a pest of agriculture or the environment and that are not known to occur in California, or the distribution is unknown. This rating may also be used for pests that are suspected as potentially harmful, but for that there may be inadequate scientific information to complete a Pest Rating Proposal.

The Department is amending this section to clarify the definition of the “Q” -rated pest and the control actions that are authorized. Since the “Q” rating is used for pests that are expected to score high, and these pests are potentially harmful to agriculture and the environment, items that are found to be infested or infected with, or exposed to, a “Q”-rated pest may be refused entry, held for inspection, returned to the owner, quarantined, treated, or destroyed as specified by the Department or by an authorized representative of the Department.

Section 3162(j)

The Department proposes adding a new section for “Z” -rated pests.

This section establishes the "Z" rating for pests that may be expected to score low as a pest of agriculture or the environment and and/or that are of common occurrence and generally distributed in California. This is a temporary pest rating assigned by the Identifying Scientist which is used until the Pest Rating Process described in section 3162(b) has been completed.

Section 3162(k)

This section establishes that the pest ratings shall be used in the enforcement of the nursery stock standards of cleanliness under Title, 3, California code of Regulations, Section 3060.2. For enforcement purposes, the nursery stock standard of cleanliness regulation, 3060.2, uses the terms “not known to occur”, “limited distribution”, and “general distribution”.

The Department does not propose amending this section.

Anticipated Benefits of the Proposed Regulation

The implementation of these amendments will ensure:

- A uniform and efficient process for determining pest rating
- Uniform rating criteria
- Ability to regularly update the list

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of section 3162 and has determined that it is not inconsistent or incompatible with existing state regulations.

California Environmental Quality Act (CEQA)

A Statewide Plant Pest Prevention and Management Program Environmental Impact Report (PEIR) was prepared by the Department as the lead agency under the California Environmental Quality Act. The Pest Rating Process is described in the PEIR.

The proposed regulation's "Z" rating is not included in the PEIR. However, pests assigned the "Z" rating do not require a management response, and therefore the addition of the "Z" rating would not result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects. The Department has attached an addendum to the PEIR reflecting the addition of the "Z" rating to the Pest Rating Process.

Economic Impact Analysis (Government Code 11346.3(b))

Introduction

The proposed regulatory actions regarding the pest rating procedures are technical in nature, and will provide clarity and consistency to regulations already specified in statute. These clarifying changes will not have an economic or fiscal impact on the creation or elimination of jobs in California, related businesses located in California, or the general public.

The Creation or Elimination of Jobs within the State

Activities that are currently being performed by existing state and county staff throughout the State would not be significantly affected by these changes. Therefore, the Department

has determined that this regulatory proposal will have no significant impact on the creation or elimination of jobs in the State of California.

The Creation or Elimination of Businesses in California

Since the changes to section 3162 are for clarity and consistency the Department has concluded that the revisions will have no impact on the creation or elimination of businesses within the State of California.

The Expansion of Businesses in California

Since the changes to section 3162 are for clarity and consistency the Department has concluded that the revisions will have no impact on the expansion of businesses within the State of California.

Benefits of the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The proposed amendments are not expected to have a direct effect on the health and welfare of California residents. The amendments are expected to be beneficial to the state's environment by improving the pest rating system, which, in turn, serves a protective function for the environment.

Disclosures Regarding the Proposed Action

A. Fiscal Effect on Local Government

The amendments to section 3162 do not impose any new mandates on local agencies or

school districts and no reimbursement is required under section 17561 of the Government Code.

There are 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 and no nondiscretionary costs or savings to local agencies or school districts anticipated from the adoption the section 3162 amendments.

B. Fiscal Effect on State Government

The adoption of this regulation would have no fiscal impact on the Department. The processes for assigning pest ratings and the methods of official control under section 3162 have been well established and the amendments are to clarify existing procedures. The Department is not aware of any specific economic impacts associated with the proposed amendments to these processes.

C. Fiscal Effect on Funding of State Programs

There are no expected savings or increased costs to any state agency, and no costs or savings in federal funding to the State will result from the adoption the section 3162 amendments.

D. Significant, Statewide Adverse Economic Impact Directly Affecting Business

The proposed regulation will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

E. Cost Impacts on Representative Private Person or Business

The adoption of these amendments to section 3162 would have no economic impact on the agricultural industry, businesses, or the general public. The processes for assigning pest ratings and the methods of official control under section 3162 have been well established and the amendments are to clarify existing procedures. The Department is not aware of any specific economic impacts associated with the proposed amendments to these processes.

F. Effect on Small Business

The Department does not anticipate that these amendments will affect small businesses. The amendments are clarifications of well-established procedures.

G. Housing Costs

The Department does not anticipate that these amendments will affect housing costs.

Consideration of Alternatives

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effect in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private person 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.

The Department of Food and Agriculture has determined 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

CDFA, 2014. “Statewide Plant Pest Prevention and Management Program Environmental Impact Report”: Volume 1 – Main Body. California Department of Food & Agriculture. December 2014. 506 pp.