

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 adopt section 3162 of the regulations in Title 3 of the California Code of Regulations pertaining to Pest Ratings and Mitigating Actions.

This notice is being provided 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, FAX at 916.654.1018 or by email. The written comment period closes at 5:00 p.m. on May 19, 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
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 develop and maintain a list of invasive pests that have a reasonable likelihood of entering California and 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 (Food and Agricultural Code (FAC) Section 5261).

Existing law also provides that the Secretary is obligated to develop a plan, based upon available funding, for the detection, exclusion, eradication, control, or management of the higher priority invasive species and make that plan available on the Department's website and may establish, maintain and enforce other such regulations as she deems necessary to protect the agricultural industry from the introduction and spread of pests (FAC Sections 401, 403, 407 and 5262).

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 the Department 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 this 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). Based upon available funding, the Department is also obligated to develop a list of invasive species likely to be introduced into California (FAC section 5261) and develop a plan to mitigate the higher priority invasive species and maintain the plan on the Department's website (FAC section 5262).

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. A key need is to be able to have a transparent process to determine which invasive species are higher priority and have the opportunity for public, expert and interested party input.

The implementation of this regulation will ensure:

- A uniform and efficient process for determining pest rating
- Participation for/by the public or other interested parties
- Uniform pest rating criteria
- Appeal process
- Ability to comment
- Ability to regularly update the pest rating list on the website

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.

There is no existing, comparable federal regulation or statute.

AMENDED TEXT

The adoption of this regulation will establish the process for determining pest ratings and mitigating actions. The adoption will include needed definitions, a standardized California Pest Rating Proposal Form, the opportunity for public input, an appeal process, the pest ratings ("Q," "A," "B," "C" and "D"), authorized mitigating actions associated with each pest

rating, posting the pest ratings on the Department's Internet Web site, a review process for the pest ratings and use of the pest ratings in the enforcement of the nursery stock standards of cleanliness.

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 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.

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 on the protection of public safety of California residents or worker safety. Based

upon the economic analysis, the Department believes the adoption of this regulation benefits the general welfare of California residents. [Gov. 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 [Gov. Code sec. 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 3406(b) pursuant to the authority vested by Sections 407, 5261 and 5262 of the FAC.

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 407, 5261 and 5262 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 S. 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. 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 S. Brown.

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.