

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 proposes to revise section 3162 Title 3 of the California Code of Regulations (CCR) pertaining to Pest Ratings and Official Control Actions.

PUBLIC HEARING

A public hearing is not scheduled. However, 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 regulation to the Department. Comments may be submitted by USPS, FAX or email. The written comment period closes on June 22, 2020. The Department will consider only comments received at the Department offices by that date or postmarked no later than June 22, 2020. Submit comments to:

Dean Kelch
Department of Food and Agriculture
Plant Health and Pest Prevention Services
2800 Gateway Oaks Dr, Suite #200
Sacramento, CA 95833
dean.kelch@cdfa.ca.gov
916.403.6650
916.651.2900 (FAX)

Unless there are substantial changes to the proposed regulation prior to adoption, the Department of Food and Agriculture may adopt the proposal as set forth in this notice without further notice to the public. 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.

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

Purpose

This amendment to CCR 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 Internet Web site.

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(a):

This section establishes the definitions for terms used in the regulation. The Department is amending this section as follows:

- “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 connotation to endangered and threatened species that may arise with the use of the existing term.
- “General Distribution” was modified to allow for a more general definition with the 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.
- “Identifying Scientist” has been added. This is to specify the personnel responsible for identifying the pests to which this regulation will be applied.
- “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.
- “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).
- “Potential Distribution” has added to refer to areas of the State where the pest might feasibly be expected to establish.
- “Quarantine” has a slight wording change for clarity.
- “Vulnerable Area” has been added to refer to areas of the State where the pest might feasibly be expected to establish and cause economical loss or ecological harm.

Section 3162(b):

This section describes the form used for the "California Pest Rating Proposal". 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 rating "Q" from the list of Proposed Ratings list. 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 total score 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 are 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.
- There is minor rewording in the description of the References. 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. 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. The Department is amending this section to change the time frame from assignment of a "Q" rating to proposal of a permanent rating from one year to two years. The Department is removing the requirement to review permanent ratings on a two-year schedule.

Section 3162(e):

This section establishes the "A"-rating for pests which 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. 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 which have a medium score as a pest of agriculture or the environment and which are of limited distribution. The Department proposes to amend this section to specify and clarify the types of control actions taken for this pest.

Section 3162(g):

This section establishes the "C"-rating for pests. 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.

Section 3162(h):

This section establishes the "D"-rating for pests which score low as a pest of agriculture or the environment and are beneficial or are expected to cause no harm. The Department has amended this section to clarify and expand the definition of the "D"-rated pest.

Section 3162(i):

This section establishes the "Q"-rating for pests which the Department expects to score high as a pest of agriculture or the environment and which are not known to occur in California, or the distribution is unknown. This rating may also be used for pests which are suspected as potentially harmful, but for which 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 which are authorized.

Section 3162(j)

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

This section establishes the "Z"-rating for pests which may be expected to score low as a pest of agriculture or the environment and and/or which 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. There are no authorized official control actions associated with this rating.

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. 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.

Results of Economic Impact Analysis

The proposed amendments are designed to clarify existing pest rating procedures and are not expected to create or eliminate jobs or businesses in California, nor expand existing businesses in California.

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 of 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 of 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.

AUTHORITY

The Department proposes to amend CCR section 3162 pursuant to the authority vested by sections 403, 407, 5261 and 5262 of the Food and Agricultural Code of California.

REFERENCE

The Department proposes this action to implement, interpret and make specific section 407 of the Food and Agricultural Code.

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.

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 is:

Dean Kelch
California Department of Food and Agriculture
Plant Health and Pest Prevention Services
2800 Gateway Oaks Dr, Suite #200
Sacramento, CA 95833
dean.kelch@cdfa.ca.gov
916.403.6650
916.651.2900 (FAX)

In his absence, you may contact Karen Olmstead at (916) 403-6879. Questions regarding the substance of the proposed regulation should be directed to Dean Kelch.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website (www.cdfa.ca.gov/cdfa/pendingregs).

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 action, 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, 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.