

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 adopt section 3287 Title 3 of the California Code of Regulations (CCR) pertaining to Spotted Lanternfly Exterior Quarantine.

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 November 16, 2020. The Department will consider only comments received at the Department offices by that time or postmarked no later than November 16, 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/PLAIN ENGLISH 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 (FAC) Section 5321).

Existing law allows the Secretary to adopt quarantine regulations as necessary to protect the California agricultural industry from pests and prevent the spread of injurious insect

pests and animal diseases (Food and Agricultural Code (FAC) sections 407, 5301, and 5302).

This adoption of Section 3287 will create an exterior quarantine for the spotted lanternfly. The effect of this regulation will be to provide authority for the State to prevent spread of the spotted lanternfly to non-infested areas in order to protect California's agricultural industry.

The Department considered any other possible related regulations in this area and finds that these are the only regulations dealing in this subject area, and the Department is the only State agency that can implement this proposed regulation. As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of this proposed regulation and has determined that it is not inconsistent or incompatible with existing state regulations.

Anticipated Benefits from This Regulatory Action

The Californian, national, and international consumers of California will benefit in quarantining the spotted lanternfly. This will help in controlling the infestation of high quality fruit, nuts, vegetables, and seeds. By the proposed regulation preventing infestations that would require costly treatments through quarantines, it is assumed that any increases in production costs will ultimately be passed on the consumer.

The adoption of this regulation benefits homeowners who grow fruit, nuts, vegetable, and seeds for consumption and host material which is planted as ornamentals in various rural and urban landscapes by preventing damage to these hosts and the need for them to be treated to mitigate infestations of spotted lanternfly.

Adopted Text

The proposed action establishes that Spotted lanternfly, *Lycorma delicatula*, is a pest and outlines a quarantine to protect the state of California.

Areas under quarantine are infested areas, which are the states of Delaware, Maryland, New Jersey, Pennsylvania, Virginia, and West Virginia.

Articles and commodities that are declared hosts and possible carriers of the pest are:

- (1) Any living life stage of the spotted lanternfly.
- (2) All plants and plant parts
- (3) Outdoor industrial and construction materials, equipment and waste
- (4) Shipping and storage containers
- (5) Outdoor household articles
- (6) Conveyances
- (7) Agricultural equipment

(8) Any other article, object, materials, or means of conveyance when it is determined by a California State Plant Quarantine Officer to present a risk of carrying or spreading any life stage of spotted lanternfly.

The movement of these regulated articles from infested area(s) must be accompanied by a written permit, phytosanitary certificate, or Compliance Agreement:

The listed articles and commodities from the areas under quarantine are prohibited entry into California, with the follow exceptions:

- 1) Articles and commodities that are accompanied by an origin certification from non-infested localities.
OR
- 2) Articles and commodities accompanied by a certificate of treatment issued by an authorized state agricultural official declaring that the article or shipment was treated at origin for spotted lanternfly prior to shipment.
OR
- 3) If moved through the infested area during the period of March through December, regulated articles moved into the infested area in an enclosed vehicle or conveyance or completely covered.
OR
- 4) Any articles transported by a means of conveyance that provides a global positioning system (GPS) data report indicating that the conveyance did not travel through an infested area.
OR
- 5) Indoor articles not exposed to the environment, including, but not limited to, household articles, house plants, and indoor furnishings.

If an individual not doing business is moving regulated articles, including any vehicle or conveyance, from infested areas delineated in this quarantine rule, articles may be moved from the infested area with a valid checklist issued by the State Plant Regulatory Agency and completed by an individual. The completed checklist must be signed and shall accompany the regulated article(s).

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: None, the adoption requires those outside of California to have compliance agreement or phytosanitary certificate if regulated articles are from or exposed to an infested area. These are issued by the state of origin and the checklist is completed by the individual. Small California business would not be affected as the cost of compliance takes place outside California.

Significant effect on housing costs: None.

Results of the Economic Impact Analysis

Adoption 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 adoption of this regulation would benefit:

- the general public
- homeowners and community gardens
- agricultural industry
- the State's general fund
- the environment

There are no known specific benefits to worker safety or the health of California residents.

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.

AMENDED TEXT

This adoption of Section 3287 will create an exterior quarantine for the spotted lanternfly. The effect of this regulation will be to provide authority for the State to prevent spread of

the spotted lanternfly to non-infested areas in order to protect California's agricultural industry.

AUTHORITY

The Department proposes to adopt CCR section 3287 pursuant to the authority vested by sections 5301 of the Food and Agricultural Code of California.

REFERENCE

The Department proposes this action to implement, interpret and make specific sections 5301 and 5302 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 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 Rachel Avila at (916) 403-6813, rachel.avila@cdfa.ca.gov. 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 (<https://www.cdfa.ca.gov/plant/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 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.