

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 amended Section 3437(b) of the regulations in Title 3 of the California Code of Regulations pertaining to European Grapevine Moth Interior Quarantine as an emergency action that was effective on June 27, 2011. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than December 28, 2011.

The Department of Food and Agriculture amended Section 3437(b) of the regulations in Title 3 of the California Code of Regulations pertaining to European Grapevine Moth Interior Quarantine as an emergency action that was effective on June 15, 2011. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than December 12, 2011.

The Department of Food and Agriculture amended Section 3437(b) of the regulations in Title 3 of the California Code of Regulations pertaining to European Grapevine Moth Interior Quarantine as an emergency action that was effective on May 31, 2011. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than November 28, 2011.

This notice is being provided to be 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, facsimile (FAX) at 916.654.1018 or by email to sbrown@cdfa.ca.gov. The written comment period closes at 5:00 p.m. on September 19, 2011. 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
sbrown@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 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

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 also provides that the Secretary may establish, maintain and enforce quarantine, eradication and other such regulations as he deems necessary to protect the agricultural industry from the introduction and spread of pests (FAC Sections 401, 403, 407 and 5322). Existing law also provides that eradication regulations may proclaim any portion of the State as an eradication area and set forth the boundaries, the pest, its hosts and the methods to be used to eradicate the pest (FAC Section 5761).

The amendment effective June 27, 2011, established a regulated area surrounding the Aptos area of Santa Cruz County of approximately 87 square miles. The amendment effective June 15, 2011, established a regulated area surrounding the Nevada City area of Nevada County of approximately 73 square miles. The amendment effective May 31, 2011, established a regulated area in the Grass Valley area of Nevada County of approximately 103 square miles. A total of approximately 2,334 square miles are now under regulation in the State. The effect of the amendment of this regulation was to provide authority for the State to perform quarantine activities against EGVM within these regulated areas of Nevada and Santa Cruz counties.

There is no existing, comparable federal regulation or statute.

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 other 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 estimated cost impact of the adopted regulation on a representative private person or business is not expected to be significantly adverse. A representative business could incur costs of approximately \$881.

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

Significant effect on housing costs: None.

Small Business Determination

The Department has determined that the proposed regulations may affect small business.

ALTERNATIVES CONSIDERED

The Department of Food and Agriculture must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed actions.

AUTHORITY

The Department adopted Section 3437 pursuant to the authority vested by Sections 407, 5301, 5302 and 5322 of the Food and Agricultural Code of California.

REFERENCE

The Department adopted Section 3437 to implement, interpret and make specific Sections 5301, 5302 and 5322, 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: 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 Internet Web site (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 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.