

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE
Notice of Proposed Rulemaking

The Department of Food and Agriculture proposes to amend the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before 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 regulatory actions 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 June 13, 2011. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Stephen S. Brown
Department of Food and Agriculture
Plant Health and Pest Prevention Services
1220 N Street, Room 210
Sacramento, California 95814

AUTHORITY AND REFERENCE

The Department amended Section 3437 pursuant to the authority vested by Sections 401.5, 403, 407, 5301, 5302 and 5322 of the Food and Agricultural Code of California. The Department amended Section 3437 to implement, interpret and make specific Sections 5301, 5302 and 5322, Food and Agricultural Code.

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, determine the probability of and prevent its spread, and investigate the feasibility of its control or eradication (Food and Agricultural Code (FAC) Sections 403 and 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 proposed amendment of Section 3437 will remove Lake County from the area under quarantine for European Grapevine Moth (EGVM); and will exempt the following articles from meeting the requirements of the quarantine: almonds in dried/split husks ready for harvest, nuts extracted from fruit, olive fruit (with or without stems or twigs), petioles and leaf blades of *Vitis*, spp. and fermented wine, must and pomace. The effect of the amendment will be to remove authority for the State to regulate movement of hosts and possible carriers of EGVM within and from Lake County, and to remove the authority for the State to regulate movements of the exempted articles.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Costs 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.

Other nondiscretionary cost or savings imposed on local agencies: None.

Costs 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 Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

These regulatory actions will not:

- (1) create or eliminate jobs within California;
- (2) create new business 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 affect small business.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), 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 action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT

Inquiries concerning the proposed administrative action may be directed to:

Stephen Brown
Department of Food and Agriculture
Plant Health and Pest Prevention Services
1220 N Street, Room 210
Sacramento, California 95814,
916.654.1017
FAX 916.654.1018
sbrown@cdfa.ca.gov

The backup contact person for these inquires is:

Lindsay Rains
Department of Food and Agriculture
Plant Health and Pest Prevention Services
1220 N Street, Room 210
Sacramento, California 95814,
916.654.1017
FAX 916.654.1018
lrains@cdfa.ca.gov

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Mr. Brown at the above address.

INTERNET ACCESS

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

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department of Food and Agriculture will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the initial statement of reasons for the proposed action and the express terms of the proposed action. Copies may be obtained by contacting Stephen S. Brown at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Department may adopt, repeal and/or amend the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Stephen S. Brown at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons will be posted on the Department's web site or a copy may be obtained by contacting Mr. Brown at the above address.