DEPARTMENT OF FOOD AND AGRICULTURE

PROPOSED ADOPTION OF REGULATIONS

Title 3, California Code of Regulations

Subchapter 3

Sections 4800, 4801, and 4802 Submission of Local Ordinances to the Secretary

# INITIAL STATEMENT OF REASONS/ POLICY STATEMENT OVERVIEW

## Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address

These regulations are intended to address the obligation of a local agency to submit to the Secretary of Food and Agriculture any proposed local ordinance that regulates plants, crops, or seeds for commercial agriculture for consent prior to adoption.

## Specific Basis

After January 1, 2015, a proposed local ordinance that regulates plants, crops, or seeds shall be submitted to the Secretary for consent prior to adoption (Food and Agricultural Code (FAC) section 52334). Only local ordinances for regulating plants, crops, and seeds for commercial agriculture are subject to approval and does not include genetically modified organisms by recombinant DNA techniques including those that were or are now subject to regulation under 7 CFR 340.1. FAC section 401 and 401.5 charges the Department with promoting the agriculture industry of the state and to "enhance, protect, and perpetuate the private sector to produce food and fiber in a way that benefits the general welfare and economy of the state." A quarantine shall not be established by one county, city, district, or other public agency, against another county, city, district, or public agency, on account of the existence of any pest, without the written consent of the Secretary (FAC section 5305). FAC Division 4, Plant Quarantine and Pest Control and the regulations which are established pursuant to this division are of a statewide interest and concern and are intended to occupy the field (FAC section 5323). The legislature recognized the need for statewide quarantine regulations from

the Department to supersede any county ordinances in order for quarantines to be effective. Genetically modified organisms as previously described are not relevant when the Department is establishing a quarantine. No local jurisdiction shall adopt ordinances, laws, or regulations which prevent, hinder, or delay the effect or application of this division or regulations established pursuant to this division.

The specific purpose of sections 4800, 4801, and 4802 Submission of Local Ordinances to the Secretary, is to establish a process for a local agency to follow; clarify which local ordinances must be submitted to the Department; clarity regarding the responsibilities of the local agency and the Department, how and where to submit ordinance packages, timeframes, appeal rights and process, form, and effective date of the decision rendered.

The factual basis for the determination by the Department that the adoption of sections 4800, 4801, and 4802 are necessary is as follows:

FAC section 5105 states: “A quarantine shall not be established by one county, city, district, or other public agency, against another county, city, district, or public agency, on account of the existence of any pest, without the written consent of the director.”

FAC section 5323 states: “This division and the regulations which are established pursuant to this division are of a statewide interest and concern and are intended to occupy the field. No local jurisdiction shall adopt ordinances, laws, or regulations which prevent, hinder, or delay the effect or application of this division or regulations established pursuant to this division. Regulations established pursuant to this division are not valid unless they are clearly consistent with a strict interpretation of this division and are necessary to effectuate the purpose of this division. The adoption of the regulations does not create any presumption of their necessity or validity.”

FAC section 52334 states: “Notwithstanding any other law, on and after January 1, 2015, a city, county, or district, including a charter city or county, shall not adopt or enforce an ordinance that regulates plants, crops, or seeds without the consent of the secretary. An ordinance enacted before January 1, 2015, shall be considered part of the comprehensive program of the department and shall be enforceable.”

**Section 4800**, General Provisions

Subsections (a) and (b) are necessary to identify which local ordinances are subject to the Secretary’s consent and which are not to facilitate the review requirement in FAC 52334.

Subsection (c), requires submissions to the Secretary be in writing and filed with the Director of Plant Health and Pest Prevention Services, required information, place and time of submission. It also requires that it is submitted when received. This is necessary so that the responsible party knows where to submit the package. It is necessary to designate when a package is submitted because the Department has 10 days from the date of submission to review for completeness. Given the variability of mail delivery, the Department chose the date of submission as the date the Department receives the package.

Subsection (d) sets forth what needs to be contained in the local ordinance package. It is necessary to define what information the Department needs for the Secretary to consent to the local ordinance or not. This is also necessary to facilitate the review requirement in FAC 52334.

**Section 4801**, Administrative Review Process, establishes that the Department shall notify the responsible party if the ordinance package is incomplete within 10 business days of receipt. 10 business days is the time frame used by the Office of Administrative Law for reviewing an emergency rulemaking file. Given that the Department only

reviews ordinance packages subject to the regulation, the Department believes this time frame is reasonable for review and notification to the responsible party.

**Section 4802**, Secretary's Criteria for Review

Subsection (a) establishes the Secretary shall evaluate the complete ordinance package within 45 business days and what criteria shall be used for review. 45 days was decided upon due to the Secretary's workload and allowing for adequate time for review.

Subsection (b) requires the ordinance package be reviewed to determine if the criteria under subsection 4800(a) and 4800(b) are met and if the ordinance prevents, hinders or delays the effect or application of the statutory or regulatory authorities of Division 4 of the California Food and Agricultural Code. This is necessary to facilitate the review requirement in FAC 52334.

Subsection (c) establishes the Secretary's decision shall be in writing and contain only a brief statement of the conclusion, consent or denial, and findings to support the conclusion. Existing law does not specify the form the decision will be in after the ordinance package is evaluated or how soon it will take a decision to be rendered. It is necessary for a local agency to know what the decision's content will be when it is received, how long it will take to render a decision and when they can expect to receive the decision.

Subsection (d) is necessary so that the responsible party knows how to appeal the decision of the Secretary.

Economic Impact Analysis

These proposed regulations establish the necessary regulatory framework for a local agency to submit a proposed local ordinance that regulates plants, crops, or seeds to the Secretary of Food and Agriculture for consent prior to adoption. There are no known economic impacts.

California Environmental Quality Act

Under Public Resource Code section 21069, the Department meets the definition of responsible agency, “a public agency, other than the lead agency, which has responsibility for carrying out or approving a project.” The local agency proposing to adopt the ordinance shall be the lead agency and shall be responsible for compliance with the requirements of the California Environmental Quality Act.

Anticipated Benefits from This Regulatory Action

Currently there are no regulations related to FAC section 52334. These proposed regulations would establish the procedural framework for such submissions. This will ensure that the local agency has a clear understanding of its and the Department’s responsibilities, how and where to submit ordinance packages, timeframes involved, form and effective date of the decision rendered, etc.

Assessment

Based upon the Economic Impact Analysis, the Department has made an assessment that the amendment of the regulation would not 1) create or eliminate jobs within California; 2) create new business or eliminate existing businesses with California; or 3) affect the expansion of businesses currently doing business with California.

There are no known specific benefits to the worker safety or the health of California residents. The Department is not aware of any specific benefits the adoption of this regulation will have to the protection of public safety of California residents or worker safety. The proposed regulations would increase transparency in government, promote

fairness and social equity in the justice system, as well as indirectly ensuring a safe food supply and a positive health benefit to California consumers.

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.

Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that sections 4800, 4801, and 4802 do not impose a mandate on local agencies or school district. No reimbursement is required under Section 17561 of the Government Code.

The Department also has determined that no savings or increased costs to any state agency, 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, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action. The cost impact of the changes in the regulations on private persons or businesses is not expected to be significant; this regulation only establishes the processes and procedures for submitting proposed local ordinances that regulate plants, crops, or seeds to the Secretary of Food and Agriculture for consent prior to adoption.

The Department has determined that the proposed action will not have a significant adverse economic impact on housing costs or California businesses, including the ability of California businesses to compete with businesses in other states. The Department's determination that this action will not have a significant adverse economic impact on businesses was based on this regulation only establishes the processes and procedures for submitting proposed local ordinances that regulate plants, crops, or seeds to the Secretary of Food and Agriculture for consent prior to adoption.

Alternatives Considered

The Department of Food and Agriculture 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 local agencies than the proposed action.

Information Relied Upon

The Department is relying upon the following studies, reports, and documents in the adoption of sections 4800, 4801, and 4802:

none