

DEPARTMENT OF FOOD AND AGRICULTURE
Title 3 of the California Code of Regulations

Notice of Proposed Rulemaking

Comment Period for 45 Days

The Department of Food and Agriculture intends to adopt sections 4800, 4801, and 4802 of the regulations in Title 3 of the California Code of Regulations pertaining to Submission of Local Ordinances to the Secretary.

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 Sara.Khalid@cdfa.ca.gov. The written comment period closes at 5:00 p.m. on January 25, 2016. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Sara Khalid
Department of Food and Agriculture
Plant Health and Pest Prevention Services
1220 N Street
Sacramento, CA 95814
Sara.Khalid@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, Food and Agriculture Code (FAC) section 407, provides that the Secretary may adopt such regulations as are reasonably necessary to carry out the provisions of this code which she is directed or authorized to administer or enforce.

Existing law, FAC section 52334, provides that, on and after January 1, 2015, a local agency shall not adopt or enforce an ordinance that regulates plants, crops, or seeds without the consent of the Secretary.

Anticipated Benefits from This Regulatory Action

After January 1, 2015, a proposed local ordinance that regulates plants, crops, or seeds for commercial agriculture shall be submitted to the Secretary for consent prior to adoption (Food and Agricultural Code (FAC) section 52334).

Currently there are no regulations related to Food and Agriculture Code (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, form and effective date of the decision rendered, etc. Local ordinances adopted prior to the effective date of this regulation are not subject to the regulation's requirements.

Therefore, a local agency is aware of the submission process to the Secretary when proposing a local ordinance, in order to increase transparency in government and promote fairness and social equity in the justice system. Additionally, the adoption of this regulation indirectly ensures a safe food supply and a positive health benefit to California consumers.

There is no existing, comparable federal or state regulation or statute.

The Department considered any other possible related regulations in this area, and we find that these are the only regulations dealing in this subject area, and the only State agency which can implement regulations related to FAC section 52334. 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.

AMENDED TEXT

The adoption of these regulations will establish:

General Provisions – identify ordinances subject to the Secretary's consent, require 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;

Administrative Review Process – establish timeframe for Department review for completeness;

Secretary's Criteria for Review – establish timeframe and criteria for Secretary approval and appeal process.

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

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

Significant effect on housing costs: None.

Results of the Economic Impact Analysis

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.

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 amendment of this regulation will have to the protection of public safety of California residents or worker safety. As stated under the "INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW" above, 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.

The Department has evaluated and determined that the amendment of this regulation is not inconsistent with existing State regulations. There are no other comparable existing State regulations [Gov. Code sec. 11346.5(a)(3)(D)].

ALTERNATIVES CONSIDERED

The Department must determine that no reasonable alternative it considered 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, 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.

AUTHORITY

The Department proposes to adopt sections 4800, 4801, and 4802 pursuant to the authority vested by section 407 of the Food and Agricultural Code.

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 407, 5305, 5323, and 52334 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 to is:

Sara Khalid
Department of Food and Agriculture
Plant Health and Pest Prevention Services
1220 N Street
Sacramento, CA 95814
Sara.Khalid@cdfa.ca.gov
(916) 654-1017
(916) 654-1018 (FAX)

In her absence, you may contact:

Laura Petro
Department of Food and Agriculture
Plant Health and Pest Prevention Services
1220 N Street
Sacramento, CA 95814
Laura.Petro@cdfa.ca.gov
(916) 654-1017
(916) 654-1018 (FAX)

Questions regarding the substance of the proposed regulation should be directed to Sara Khalid.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet Web site (www.cdfa.ca.gov/plant/Regulations.html).

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department has prepared an initial statement of reasons for the proposed actions. All the information upon which this proposal is based, the express terms of the proposed action, a copy of the initial statement of reasons, and the proposed regulations in underline and strikethrough 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.