

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Section 3423 subsection (b)

Oriental Fruit Fly Interior Quarantine

INITIAL STATEMENT OF REASONS/

POLICY STATEMENT OVERVIEW

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

This regulation is intended to address the obligation of the Department of Food and Agriculture to protect the agricultural industry from the movement and spread of injurious plant pests within California.

Specific Purpose and Factual Basis

The specific purpose of Section 3423 is to provide authority to the State to regulate the movement of hosts and possible carriers of Oriental Fruit Fly (OFF), *Bactrocera dorsalis* from the regulated area.

The factual basis for the determination by the Department that the amendment of this regulation is necessary is as follows:

Between June 17th and August 1st, 2013, 62 adult OFF and 9 larva were identified from Orange County. These detections meet the State and federal regulatory protocols for amending a quarantine in the Anaheim and Cerritos areas of Orange and Los Angeles counties.

The Department declared eradication of an Oriental fruit fly infestation in the Anaheim area of Los Angeles and Orange counties on June 26, 2012. Additionally on that date it also discontinued enforcement of existing subsection 3423(b)(2), Oriental Fruit Fly Interior Quarantine, Title 3, California Code of Regulations. However, the Department has not yet completed a normal rulemaking to remove the existing language from subsection 3423(b)(2). There is an overlap of the "old" quarantine boundary with the new proposed

emergency action. Therefore, the existing boundary was amended on an emergency basis by using a 4.5 mile radius surrounding the two new incipient epicenters of the new infestations. One epicenter is in the Artesia/Cerritos area of Los Angeles County and the other epicenter is in the Anaheim area of Orange County. These epicenters are approximately five miles apart. This proposal would result in the existing boundary in regulation expanding to the south and west and shrinking on the east and north. In the area to be reduced, the Department has determined there are five packing facilities and over 20 nurseries present. There are also other previously affected businesses within this area. When the Department ceased regulatory enforcement in this area in June of 2012, all of the affected businesses were informed of that. It is now necessary to reduce the area under existing regulation as an emergency action to prevent unnecessary regulatory restrictions being imposed upon these businesses.

The Agricultural Commissioner of Orange County requested that a quarantine be established in the area that an infestation was determined to exist on August 2, 2013.

The Agricultural Commissioner of Los Angeles County requested that a quarantine be established in the area that an infestation was determined to exist on August 5, 2013.

The Department determined there is one grower of peppers, 93 farmers markets, 21 plant sellers, 16 produce vendors, one produce distributor, and 58 nurseries that will be impacted.

Oriental fruit fly is a destructive insect pest of innumerable commercial agricultural crops. This unexpected occurrence of Oriental fruit flies in Los Angeles and Orange counties meets the national and international trigger for both eradication and quarantine responses in Los Angeles and Orange counties. Fruits (including nuts, dates, and berries), many kinds of vegetables, and the fruiting bodies of many wild and ornamental plants are known to be hosts or possible hosts of the Oriental fruit fly. Larval feeding reduces the interior of fruit to a rotten mass. Egg punctures admit decay organisms that cause tissue breakdown. Damaged fruit is generally unfit for human consumption. Movement of hosts infested with the larvae of the fly can artificially spread the fly. It has been estimated that the yearly cost of not eradicating Oriental fruit fly in California would range from \$44 to \$176 million in crop losses, additional pesticide

use, and quarantine requirements. Thus, this presented a clear, imminent danger to the agricultural industry in California.

Like all quarantine actions, the intended effect of the emergency amendment of California Code of Regulations, Title 3, Section 3423, Oriental Fruit Fly Interior Quarantine is to provide the necessary regulatory authority to prevent the human-assisted artificial spread of this exotic pest. Artificial spread, such as Oriental fruit flies being moved in infested host commodities from infested areas to uninfested areas has the potential to spread the pest rapidly throughout the State or to other states, whereas the natural spread of the pest would be gradual.

To prevent artificial spread of the fly to noninfested areas to protect California's agricultural industry, it was necessary immediately to regulate the human assisted movement of hosts that can carry the fly from, into and within the infested area and a surrounding buffer area.

The USDA cannot regulate less than an entire state unless the state has a quarantine regulation which is substantially the same as what the existing federal rule requires for interstate movement. The Department needed to have the immediate authority to prevent host material from being shipped intrastate outside the proposed quarantine area. Once the Department amends its regulation, this will enable the USDA to amend their federal regulation or order. If the Department fails to implement a quarantine on an emergency basis, the USDA may consider quarantining all of California in order to immediately prevent the affected nursery from shipping interstate.

Therefore, it was necessary to amend this regulation by amending the Anaheim and Cerritos areas of Orange and Los Angeles counties as an emergency action.

Project Description

This proposed emergency action will amend the quarantine area for OFF to approximately 130 square miles. The proposed boundary lines were drawn jointly by the United States Department of Agriculture (USDA), the California Department of Food and Agriculture, and the affected County Agricultural Commissioners. The criterion for determining quarantine boundaries around an epicenter was based upon the information obtained from the USDA.

The effect of the amendment of this regulation is to implement the State's authority to perform quarantine activities against the OFF in the Anaheim and Cerritos areas of Orange and Los Angeles counties. Any quarantine actions undertaken by the Department will be in cooperation and coordination with the USDA and the affected county agricultural commissioners.

Background

Oriental fruit fly has been established in Hawaii, since 1976, where it is a major pest of agriculture and is particularly attracted to mangoes, avocados and papayas. Maggots have been found in over 125 kinds of fruits and vegetables in Hawaii alone. The introduction of this pest threatens numerous crops in California, including apples, apricots, avocados, cherries, citrus, figs, nectarines, peaches, pears, plums and tomatoes. It has been estimated that the cost of not eradicating Oriental fruit fly in California would range from \$44 to \$176 million in crop losses, additional pesticide use, and quarantine requirements. Oriental fruit fly has been introduced into California a number of times, through the movement of prohibited host fruits and vegetables into the State, and has been eradicated.

Females lay eggs in groups of three to 30 under the skin of host fruits and vegetables; the female can lay more than 1,000 eggs in her lifetime. Time taken for development depends on the ambient temperature. Larvae tunnel through the fruit feeding on the pulp, shed their skins twice, and emerge through exit holes in approximately 10 days. The larvae drop from the fruit and burrow two to three cm. into the soil to pupate. In 10 to 12 days, adults emerge from these puparia. The newly emerged adult females need eight to 12 days to mature sexually prior to egg laying. Breeding is continuous, with several annual generations. Adults live 90 days on the average and feed on honeydew, decaying fruit, plant nectar, bird dung, and other substances. The adult is a strong flyer recorded to travel up to 30 miles in search of food and sites to lay eggs. Transport of fruit infested with eggs or larvae also allows the fly to spread artificially and infest new areas very quickly.

California Environmental Quality Act

"Specific actions necessary to prevent or mitigate an emergency" are exempt from the California Environmental Quality Act (CEQA). Public Resources Code Section 21080(b)(4).

“Emergency’ means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.” Public Resources Code Section 21060.3.

Economic Impact Analysis

The total value of commercial OFF host material produced in California is estimated to be over 11.8 billion dollars. To protect this source of revenue, California must do everything possible to prevent the artificial movement of OFF within the State to uninfested areas.

The Department’s Emergency Quarantine Response Program estimates its costs per year to enforce this quarantine expansion will not significantly increase as a result of this action. Local CDFA offices are close to the affected area.

There is one grower of host material in the affected area that will be impacted. They will need to apply approved treatments to ship peppers outside the quarantine area. Treatment costs were estimated at \$32, 590 for the duration of the quarantine. There are 58 nurseries in the affected area. They will need to maintain host plants free of fruit for the duration of the quarantine. The estimated cost of fruit stripping is \$216 per business. There are 132 farmers markets, plant sellers, swap meets and distributors in the affected area. They will need to screen or cover their fruit to prevent infestation for the duration of the quarantine. The estimated cost of these safeguards is \$44 per business. There is one packer affected. The estimated cost of safeguarding their produce is \$100 for the duration of the quarantine.

Anticipated Benefits from This Regulatory Action

Existing law, FAC section 403, provides that the department shall prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds.

Existing law, 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 5321, 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.

Existing law, FAC section 5322, provides that the Secretary may establish, maintain, and enforce quarantine, eradication, and such other regulations as are in her opinion necessary to circumscribe and exterminate or prevent the spread of any pest which is described in FAC section 5321.

The existing law obligates the Secretary to investigate and determine the feasibility of controlling or eradicating pests of limited distribution but establishes discretion with regard to the establishment and maintenance of regulations to achieve this goal. The amendment of this regulation benefits the affected host industries (nursery, fruit for domestic use and exports) and the environment (urban landscapes) by having a quarantine program to prevent the artificial spread of OFF over long distances. Most all of the commercial fruit and nursery stock production is located outside this proposed quarantine boundary area.

This amendment provides the necessary regulatory authority to prevent the artificial spread of a serious insect pest which is a mandated statutory goal.

FAC Section 401.5 states, “the department shall seek to protect the general welfare and economy of the state and seek to maintain the economic well-being of agriculturally dependent rural communities in this state.” The amendment of this regulation is preventing the artificial spread of OFF to uninfested areas of the State, keeping most agriculturally dependent communities free of this destructive pest.

The California, national and international consumers of California produce benefit by having high quality fruit available at lower cost. It is assumed that any increases in production costs will ultimately be passed on the consumer.

The amendment of this regulation benefits homeowners who grow host fruit for consumption and host material which is planted as ornamentals in various rural and urban landscapes.

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 within California; or 3) affect the expansion of businesses currently doing business within California. Additionally, the Department has been conducting quarantine actions throughout the State for over 30 years without creating or eliminating businesses.

The Department is the only agency which can implement plant quarantines. 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 of Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that the amendment of Section 3423(b) does not impose a mandate on local agencies or school districts and no reimbursement is required under Section 17561 of the Government Code. Each county commissioner in a regulated county requested the State to implement the regulated areas in their county.

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 adoption and subsequent amendments of Section 3423.

The cost impact of the changes in the regulations on private persons and businesses are expected to be insignificant.

The Department has determined that the proposed actions will not have a significant adverse economic impact on housing costs or California business, including the ability of California businesses to compete with businesses in other states. The Department's determination that

the action will not have a significant statewide adverse economic impact on business was based on the following:

The USDA's Federal Domestic Quarantine Order for OFF only restricts the interstate movement of host commodities produced in portions of California under State quarantine regulation for OFF. The USDA cannot amend their regulation prior to the State amending its regulation. If the State's regulation is not substantially the same as the federal order, the USDA cannot regulate less than the entire State. The emergency amendment to Section 3423(b) was necessary to enable the USDA to amend its federal order to prevent the USDA from regulating the entire State.

Some of the businesses selling host material and located outside the current regulated area are also interstate shippers. Therefore, this regulatory action was necessary to protect the all affected industries and provides the majority of potentially affected California businesses, which are not located inside the current State regulated area, the continued ability to compete with businesses in other states without unnecessary federal restrictions or prohibitions on California's interstate commerce.

Based on the preceding information, it was determined that the amendment of Section 3423 (b), does not have a Statewide adverse economic impact on a representative business or private party. For the vast majority of businesses within the regulated area, no additional costs will be incurred.

Alternatives Considered

The Department of Food and Agriculture must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would 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.

Information Relied Upon

The Department relied upon the following studies, reports, and documents in the proposed amendment of Section 3423:

Oriental Fruit Fly (*Bactrocera dorsalis*) Economic Analysis for:

Oreitnal Fruit Fly Project Anaheim-Cerritos, Orange and Los Angeles Counties-August 2013.

"Pest and Damage Records #s AHOP06000019, AHOP06000047, 190P06058657, CE2P06161568, CE2P06161569, CE2P06161570, AHOP06000051, AHOP06000053, CE2P06161651, AHOP06000052, AHOP06000055, AHOP06000054, and AHOP06000053, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

Letter dated August 2, 2013 from Orange County Agricultural Commissioner to Secretary Karen Ross.

Letter dated August 5, 2013 from Los Angeles County Agricultural Commissioner to Secretary Ross.

"Action Plan for Methyl Eugenol Attracted Fruit Flies, including Oriental Fruit Fly, *Bactrocera dorsalis* (Hendel)," revised April 2000, California Department of Food and Agriculture.

"Action Plan, Oriental Fruit Fly, *Bactrocera dorsalis* (Hendel)," October 1989, United States Department of Agriculture, Animal and Plant Health Inspection Service, Cooperating State Departments of Agriculture.

