

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Sections

3406 Mediterranean Fruit Fly Interior Quarantine, 3417 Mexican Fruit Fly Interior Quarantine, 3423 Oriental Fruit Fly Interior Quarantine, 3424 Bactrocera zonata Interior Quarantine, 3441 Bactrocera correcta Interior Quarantine, 3442 Malaysian Fruit Fly Interior Quarantine, 3444 Zeugodacus tau Fruit Fly Interior Quarantine, and 3445 Queensland Fruit Fly Interior Quarantine

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 the Secretary of Food and Agriculture to protect the agricultural industry of California from the movement and spread within California of injurious plant pests as required by Food and Agricultural Code (FAC) Sections 401 and 403.

Purpose

The specific purpose of amending California Code of Regulations (CCR) Sections 3406 Mediterranean Fruit Fly Interior Quarantine, 3417 Mexican Fruit Fly Interior Quarantine, 3423 Oriental Fruit Fly Interior Quarantine, 3424 Bactrocera zonata Interior Quarantine, 3441 Bactrocera correcta Interior Quarantine, 3442 Malaysian Fruit Fly Interior Quarantine, 3444 Zeugodacus tau Fruit Fly Interior Quarantine, and 3445 Queensland Fruit Fly Interior Quarantine is to correct quarantine language that does not accurately describe how the Department responds to a single fly detection that is more than 3 miles from any other fly detection or one life cycle after of the same species but within the 4.5 mile quarantine

area. The corrections will clarify that this type of detection will trigger delimitation trapping, and not extend the quarantine area or be considered a satellite infestation.

Factual Basis

The factual basis for the determination by the Department of Food and Agriculture (Department) that the amendment of Sections 3406, 3417, 3423, 3424, 3441, 3442, 3444, and 3445 is necessary is as follows:

These interior quarantines currently allow for the infested area designation within the quarantine area to be lifted after three life cycles of the pest have passed since the last detection. The quarantine areas are a 4.5-mile radius from the detection sites. The current text for the above interior quarantines would allow a single find within that 4.5 miles radius or one life cycle to prevent the infested area designation from being lifted. The Department's regulations are based on the United States Department of Agriculture's (USDA) Cooperative Fruit Fly Emergency Response Triggers and Guidelines and, according to these guidelines, if a fly is found beyond a 3-mile radius of a previous detection it would not extend the quarantine but rather trigger delimitation trapping.

To prevent future detections of single fruit fly from triggering an expansion of a quarantine or be automatically considered a satellite infestation and to align with the current USDA guidelines, the language in the above interior quarantines has been updated

Project Description

This amendment will change the existing texts that describe when an infested area designation will be lifted from an interior quarantine.

3406 Mediterranean Fruit Fly Interior Quarantine

In section (b)(4) the text "notwithstanding (b)(6)" has been added to make it clear satellite infestations are different from any subsequent detections of the pest within the quarantine area that are more than three miles or one lifecycle away from the original detections.

The changes to the text in section (b)(6) describe that any subsequent detections of the pest within the quarantine area that are more than three miles or one lifecycle away from the detections comprising the quarantine will be considered independent events and will not affect the quarantine area or duration unless the quarantine trigger is met again. This is following current USDA guidelines.

3417 Mediterranean Fruit Fly Interior Quarantine

In section (b)(4) the text “notwithstanding (b)(6)” has been added to make it clear satellite infestations are different from any subsequent detections of the pest within the quarantine area that are more than three miles or one lifecycle away from the original detections.

The changes to the text in section (b)(6) describe that any subsequent detections of the pest within the quarantine area that are more than three miles or one lifecycle away from the detections comprising the quarantine will be considered independent events and will not affect the quarantine area or duration unless the quarantine trigger is met again. This follows current USDA guidelines.

3417 Oriental Fruit Fly Interior Quarantine

In section (b)(2) the text “notwithstanding (b)(5)” has been added to make it clear satellite infestations are different from any subsequent detections of the pest within the quarantine area that are more than three miles or one lifecycle away from the original detections.

The changes to the text in section (b)(5) describe any subsequent detections of the pest within the quarantine area that are more than three miles or one lifecycle away from the detections comprising the quarantine will be considered independent events and will not affect the quarantine area or duration unless the quarantine trigger is met again. This follows current USDA guidelines.

3424 Bactrocera zonata Interior Quarantine

In section (b)(2) the text “notwithstanding (b)(5)” has been added to make it clear satellite infestations are different from any subsequent detections of the pest within the quarantine area that are more than three miles or one lifecycle away from the original detections.

The changes to the text in section (b)(5) describe that any subsequent detections of the pest within the quarantine area that are more than three miles or one lifecycle away from the detections comprising the quarantine will be considered independent events and will not affect the quarantine area or duration unless the quarantine trigger is met again. This follows current USDA guidelines.

3441 Bactrocera correcta Interior Quarantine

In section (b)(2) the text “notwithstanding (b)(5)” has been added to make it clear satellite infestations are different from any subsequent detections of the pest within the quarantine area that are more than three miles or one lifecycle away from the original detections.

The changes to the text in section (b)(5) describe that any subsequent detections of the pest within the quarantine area that are more than three miles or one lifecycle away from the detections comprising the quarantine will be considered independent events and will not affect the quarantine area or duration unless the quarantine trigger is met again. This follows current USDA guidelines.

3442 Malaysian Fruit Fly Interior Quarantine

In section (b)(2) the text “notwithstanding (b)(5)” has been added to make it clear satellite infestations are different from any subsequent detections of the pest within the quarantine area that are more than three miles or one lifecycle away from the original detections.

The changes to the text in section (b)(5) describe that any subsequent detections of the pest within the quarantine area that are more than three miles or one lifecycle away from the detections comprising the quarantine will be considered independent events and will not affect the quarantine area or duration unless the quarantine trigger is met again. This follows

current USDA guidelines.

3442 Zeugodacus tau Interior Quarantine

In section (b)(1) the text “notwithstanding (b)(4)” has been added to make it clear satellite infestations are different from any subsequent detections of the pest within the quarantine area that are more than three miles or one lifecycle away from the original detections.

The changes to the text in section (b)(4) describe that any subsequent detections of the pest within the quarantine area that are more than three miles or one lifecycle away from the detections comprising the quarantine will be considered independent events and will not affect the quarantine area or duration unless the quarantine trigger is met again. This follows current USDA guidelines.

3445 Queensland Fruit Fly Interior Quarantine

In section (b)(1) the text “notwithstanding (b)(4)” has been added to make it clear satellite infestations are different from any subsequent detections of the pest within the quarantine area that are more than three miles or one lifecycle away from the original detections.

The changes to the text in section (b)(4) describe that any subsequent detections of the pest within the quarantine area that are more than three miles or one lifecycle away from the detections comprising the quarantine will be considered independent events and will not affect the quarantine area or duration unless the quarantine trigger is met again. This follows current USDA guidelines.

Current Laws & Regulations

Existing law, FAC Section 401.5, states that 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.

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 that the Secretary is directed or authorized to administer or enforce.

Existing law, FAC Section 5301, provides that the Secretary may establish, maintain, and enforce such quarantine regulations as they deem necessary to protect the agricultural industry of this state from pests. The regulations may establish a quarantine at the boundaries of this state or elsewhere within the state.

Existing law, FAC Section 5302, provides that the Secretary may make and enforce such regulations as they deem necessary to prevent any plant or thing which is, or is liable to be, infested or infected by, or which might act as a carrier of, any pest, from passing over any quarantine line which is established and proclaimed pursuant to this division.

Existing law, FAC Section 5322, provides that the Secretary may establish, maintain, and enforce quarantine, eradication, and such other regulations as are in their opinion necessary to circumscribe and exterminate or prevent the spread of any pest that 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. This amendment provides the necessary regulatory authority to prevent the artificial spread of a serious insect pests, which is a mandated statutory goal.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

The Department is the only agency that can implement plant quarantine and eradication areas. As required by Gov. Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of these regulations and has determined that it is not inconsistent or incompatible with existing state regulations.

Anticipated Benefits from This Regulatory Action

The implementation of these regulations will help prevent potential issues when future pest finds occur within a quarantine area. Following USDA guidelines will help prevent the spread of pests within California, which will prevent:

- direct damage to the agricultural industry growing host fruits
- indirect damage to the agricultural industry growing host fruits due to the implementation of quarantines by other countries and loss of export markets
- increased production costs to the affected agricultural industries
- increased pesticide use by the affected agricultural industries
- increased costs to the consumers of host fruits
- increased pesticide use by homeowners and others
- the need to implement a state interior quarantine
- the need to implement a federal domestic quarantine

California Environmental Quality Act

Prior to conducting any action authorized by this regulation, the Department shall comply with the California Environmental Quality Act of 1970 (Public Resources Code Section 21000 et. seq. as amended) and the State CEQA Guidelines (Title 14 California Code of Regulations Section 15000 et. seq.).

Mandate on Local Agencies or School Districts

The Department has determined that these regulations do not impose a mandate on local agencies or school districts.

Economic Impact Analysis (Government Code 11346.3(b))

The prevention of the spread of pests in California through the amendment and implementation of these regulations of quarantine and delimitation trappings areas prevent

economic harm to:

- the general public
- homeowners and community gardens
- agricultural industry
- the State's general fund.

Without these amendments there is a higher risk the pests could spread into the local environment via the surrounding non-agricultural ecosystems. This could adversely impact private and commercial landscape plantings, local, regional, state and national parks, other recreational sites, open habitats, and wild lands. Affected plants could become less vigorous and may produce fewer seeds. Plants/trees with low propagule output can result in major changes to plant community structure.

The Creation or Elimination of Jobs within the State

The amendments are intended to prevent the spread of pest by clarifying current USDA requirements currently followed within the state. This action only provides authority for state quarantine activities and does not require reporting, recordkeeping, or compliance by businesses. Therefore, the Department has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs in the State of California.

The Creation or Elimination of Businesses in California

The amendments are intended to prevent the spread of pest by clarifying current USDA requirements currently followed within the state. This action only provides authority for state quarantine activities and does not require reporting, recordkeeping, or compliance by businesses. Therefore, the Department has determined that this regulatory proposal will not have a significant impact on the creation of new businesses in the state of California.

The Expansion of Businesses in California

The amendments are intended to prevent the spread of pest by clarifying current USDA

requirements currently followed within the state. This action only provides authority for state quarantine activities and does not require reporting, recordkeeping, or compliance by businesses. Therefore, the Department has determined that this regulatory proposal will not have a significant impact on the expansion of businesses currently doing business in the state of California.

Worker Safety

The amendment of this regulation is not expected to have an effect on worker safety.

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

The Department of Food and Agriculture has determined that Sections 3406, 3417, 3423, 3424, 3441, 3442, 3444, and 3445 do not impose a mandate on local agencies or school districts. Therefore, no reimbursement is required under Section 17561 of the Government Code.

The Department also has determined that 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 and no nondiscretionary costs or savings to local agencies or school districts, will result from the amendment of Sections 33406, 3417, 3423, 3424, 3441, 3442, 3444, and 3445.

There are 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 and no nondiscretionary costs or savings to local agencies or school districts anticipated from the adoption of this amendment.

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.

Potential Impact to Homeowners and Community Gardens

The amendments are intended to prevent the spread of pests by clarifying current USDA requirements currently followed within the state. By having USDA guidelines following the most current information, the Department has a higher likelihood of keeping these pests out of California.

Potential Impacts to General Fund and Welfare

The proposed regulations do not have immediate or definitive impact to the general fund or general welfare. The amendments are intended to prevent the spread of invasive pests by clarifying the current USDA requirements to be followed within the state. There is a higher likelihood of keeping these pests out of California if the Department follows USDA guidelines. Programmatic delays, such as a regulation not clearly explaining quarantine area requirements, can potentially lead to pest quarantines, as well as increased production costs and potential job loss. The agricultural industry is one of the economic engines in the state. Negative impacts to agriculture impact the state's economic recovery and the general welfare of the state. Additionally, any further job losses in this area would likely be felt by low-skilled workers whose employment options are already limited. The loss of any additional agricultural jobs would likely result in an increase in the State of California's public assistance obligations which would also negatively impact the state's economic recovery.

Significant Adverse Impact on Business

The Department has determined that the proposed action will not have a significant adverse economic impact on 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 is based on the fact that this regulation does not place any requirements or restrictions on businesses. This action only provides authority for state quarantine activities and does not require reporting, recordkeeping, or compliance by businesses.

Assessment

These conclusions are based upon the same analysis related to the adverse economic impact on business above. Further the Department does not expect these actions to create jobs or businesses.

The Department has made an assessment that the amendment to these regulations would: (1) not create or eliminate jobs in the state of California, (2) not create new businesses or eliminate existing businesses in the state of California,(3) not affect the expansion of businesses currently doing business in the state of California, (4) benefit the health and welfare of California residents, (5) benefit the state's environment, and (6) not expected to benefit workers' safety.

The health and welfare of California residents: The proposed action will benefit the health and welfare of California residents as taking the correct action when a pest is found lowers the risk that the pests could spread into the local environment via the surrounding non-agricultural ecosystems. Infestations lead to increased costs to the consumers of host materials and increased pesticide usage.

The state's environment: The proposed action will benefit the environment as taking the correct action when a pest is found lowers the risk that the pests could spread into the local environment via the surrounding non-agricultural ecosystems.

Alternatives Considered

The Department of Food and Agriculture must determine that no alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as well as less burdensome to affected private persons than the proposed actions.

The Department considered taking no action. If no action is taken the regulations will not clearly outline how to follow USDA guidelines. This could lead to the Department not correctly trapping or establishing quarantine areas. This could potentially result in further quarantines throughout the state with the concomitant economic and operational impacts on

host commodity producers, venders, and home growers.

Information Relied Upon

The Department is relying upon the following studies, reports, and documents in the amendment of Sections Sections 3406 Mediterranean Fruit Fly Interior Quarantine, 3417 Mexican Fruit Fly Interior Quarantine, 3423 Oriental Fruit Fly Interior Quarantine, 3424 Bactrocera zonata Interior Quarantine, 3441 Bactrocera correcta Interior Quarantine, 3442 Malaysian Fruit Fly Interior Quarantine, 3444 Zeugodacus tau Fruit Fly Interior Quarantine, and 3445 Queensland Fruit Fly Interior Quarantine:

Email from Jason Leathers, "Fruit Fly Interior Quarantine language" May 13, 2024

United States Department of Agriculture, "Cooperative Fruit Fly Emergency Response Triggers and Guidelines", 2016