

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations
Section 3425. Melon Fruit Fly Interior Quarantine
Section 3436. White Striped Fruit Fly Interior Quarantine

INITIAL STATEMENT OF REASONS/
POLICY STATEMENT OVERVIEW

The California Department of Food and Agriculture (Department) proposes to make amendments to Title 3, California Code of Regulations (CCR) Section 3425, Melon Fruit Fly Interior Quarantine and adopt Title 3 CCR Section 3436, White striped fruit fly Interior Quarantine, which provide authority to the Department to allow effective quarantine activities to prevent these pests from spreading throughout California.

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 and Factual Basis

The specific purpose of amending CCR Section 3425 Melon Fruit Fly Interior Quarantine and CCR Section 3436 White striped fruit fly Interior Quarantine is to update the regulations to define the criteria for quarantine boundary placement, as the Department currently has with several other the fruit fly quarantine areas.

This will allow for quicker responses to any Melon fruit fly or White striped fruit fly found in

California and reduce the chance of allowing natural and artificial dispersal and the subsequent spread of the pest within California. Any necessary quarantine actions taken by the Department will be in cooperation with the USDA and the affected county agricultural commissioners.

There is also a non-substantive change to alter the title of CCR 3436 from “*Bactrocera albistrigata* Interior Quarantine” to “White Striped Fruit Fly Interior Quarantine,” as White Striped Fruit Fly is the common name of this species and more easily recognized by the public than its scientific name.

The factual basis for the determination by the Department that the amendment of Section 3425 and of Section 3436 is necessary is as follows:

Melon fruit fly is a major agricultural pest within Asia and areas of artificial introduction, and many of its host plants are grown in California. Melon fruit fly attacks the fruit of various plants that are part of California’s economic and agricultural landscape, including citrus, stone fruits, and tomatoes. The female punctures host fruit to lay eggs which develop into larvae. In some hosts it also lays eggs in the flowers, stems, and exposed roots. The punctures admit decay organisms that may cause tissue breakdown. Larval feeding causes the breakdown of fruit tissue. Fruits with egg punctures and larval feeding are generally unfit for human consumption. The California Agriculture Statistics Review 2021-2022 lists the value of tomatoes at 1.2 billion dollars and California as the largest citrus-producing state in the United States. Tomatoes and citrus are hosts to Melon fruit fly.

White striped fruit fly is a destructive insect pest of multiple agricultural crops. 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. Guava, one of the hosts of White striped fruit fly, is a specialty crop grown in multiple counties of California and would be at risk if this pest were allowed to spread.

If these pests were allowed to spread and become established in host fruit production areas, California's agricultural industry would suffer losses due to increased pesticide use, decreased production of marketable fruit, and loss of markets if the USDA, states, or countries enact a quarantine against California products which can host and carry the fly.

These pests have the capability of causing significant harm to California's agricultural industry and some possible adverse environmental impacts because these species may find native hosts. Should the Department fail to amend Title 3 CCR Sections 3425 and 3436, these pests are more likely to cause direct losses to California's affected agricultural industries and significant harm to the state's economy through cost impacts or prohibitions to interstate commerce and exports of host commodities.

Project Description

Section 3425

Title 3 CCR Section 3425(a) identifies that the pest subject to the quarantine is Melon fruit fly, which is necessary for the quarantine requirements to be properly applied.

Title 3 CCR Section 3425(b) establishes that an area shall be designated as a quarantine area when an infestation is present, the local California county agricultural commissioner (CAC) has been notified and requests the quarantine, the area description is posted to the Department's website, and that any interested party may receive notification, including through a list serve option. To establish a quarantine, there is a need to communicate with the local affected CAC(s) and other interested parties and provide a boundary description. This subsection meets those needs.

Title 3 CCR Section 3425(b)(1) establishes when an infestation or satellite infestation is present, including whether the area is undergoing sterile insect release to eradicate an infestation. There is a need for the CAC(s) and other interested parties to understand what constitutes an incipient infestation and what may trigger an expansion. Title 3 CCR Section 3425(b)(1)(A) establishes when an infestation is present. Title 3 CCR Section 3425(b)(1)(B)

establishes when a satellite infestation is present and may expand the quarantine area. These subsections reflect the current national standard established by the USDA and accepted by international trading partners.

Title 3 CCR Section 3425(b)(2) establishes a minimum radius of 4.5 miles surrounding qualifying detection sites as the epicenter used under Title 3 CCR Section 3425(b)(1)(A) for qualifying detections (the number of pest detections needed to trigger a quarantine area designation), that known mapping features be used when possible, and that imaginary lines may be used with or without latitude and longitude points. There is a need for the CAC(s) and other interested parties to understand how the size and boundary line of a quarantine area are determined. This subsection reflects the current national standard established by the USDA and it is also an internationally accepted standard. This harmonization is necessary to facilitate the efficient export of the host-related commodities.

Title 3 CCR Section 3425(b)(3) establishes that any interested party may appeal the quarantine area designation and the process to do so. There is a need to have continued opportunity for both local and public input on the Department's regulatory measures. This subsection provides that opportunity and the contact information to do so.

Title 3 CCR Section 3425(b)(4) establishes the duration of the quarantine. There is a need for the CAC(s) and other interested parties to understand the justification for the length of the quarantine. Three life cycles without detections of a fruit fly life stage is the current national standard for a quarantine's length established by the USDA; it is also an internationally accepted standard.

Title 3 CCR Section 3425 (b)(5) establishes the life cycle of Melon fruit fly. It is necessary to understand the biology of the fly in order to determine when life cycles have been completed. This subsection establishes the scientifically known life cycle of Melon fruit fly that is currently recognized by the USDA and is also internationally accepted.

Section 3436

Title 3 CCR Section 3436(b) establishes that an area shall be designated as a quarantine area when an infestation is present, the local California county agricultural commissioner (CAC) has been notified and requests the quarantine, the area description is posted to the Department's website, and that any interested party may receive notification, including through a list serve option. To establish a quarantine, there is a need to communicate with the local affected CAC(s) and other interested parties and provide a boundary description. This subsection meets those needs.

Title 3 CCR Section 3426(b) establishes that an area shall be designated as a quarantine area when an infestation is present, the local California county agricultural commissioner (CAC) has been notified and requests the quarantine, the area description is posted to the Department's website, and that any interested party may receive notification, including through a list serve option. To establish a quarantine, there is a need to communicate with the local affected CAC(s) and other interested parties and provide a boundary description. This subsection meets those needs.

Title 3 CCR Section 3426(b)(1) establishes when an infestation or satellite infestation is present, including whether the area is undergoing sterile insect release to eradicate an infestation. There is a need for the CAC(s) and other interested parties to understand what constitutes an incipient infestation and what may trigger an expansion. Title 3 CCR Section 3426(b)(1)(A) establishes when an infestation is present. Title 3 CCR Section 3426(b)(1)(B) establishes when a satellite infestation is present and may expand the quarantine area. These subsections reflect the current national standard established by the USDA and accepted by international trading partners.

Title 3 CCR Section 3426(b)(2) establishes a minimum radius of 4.5 miles surrounding qualifying detection sites as the epicenter used under Title 3 CCR Section 3426(b)(1)(A) for qualifying detections (the number of pest detections needed to trigger a quarantine area designation), that known mapping features be used when possible, and that imaginary lines

may be used with or without latitude and longitude points. There is a need for the CAC(s) and other interested parties to understand how the size and boundary line of a quarantine area are determined. This subsection reflects the current national standard established by the USDA and it is also an internationally accepted standard. This harmonization is necessary to facilitate the efficient export of the host-related commodities.

Title 3 CCR Section 3426(b)(3) establishes that any interested party may appeal the quarantine area designation and the process to do so. There is a need to have continued opportunity for both local and public input on the Department's regulatory measures. This subsection provides that opportunity and the contact information to do so.

Title 3 CCR Section 3426(b)(4) establishes the duration of the quarantine. There is a need for the CAC(s) and other interested parties to understand the justification for the length of the quarantine. Three life cycles without detections of a fruit fly life stage is the current national standard for a quarantine's length established by the USDA; it is also an internationally accepted standard.

Title 3 CCR Section 3426 (b)(5) establishes the life cycle of White striped fruit fly. It is necessary to understand the biology of the fly in order to determine when life cycles have been completed. This subsection establishes the scientifically known life cycle of Melon fruit fly that is currently recognized by the USDA and is also internationally accepted

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 laws 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 amendments provides the necessary regulatory authority to prevent the artificial spread of 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 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.

Anticipated Benefits from This Regulatory Action

The adoption of this regulation provides the necessary regulatory authority to establish quarantines against a serious insect pest. This is a mandated, statutory goal.

This regulation is necessary to prevent the spread of Melon fruit fly and White striped fruit fly to un-infested areas of the state. The regulation benefits industries (nursery, fruit for domestic use and exports, packing facilities), the environment (urban landscapes), and the overall California economy by preventing the spread of these pests.

The amendment of this regulation benefits the citrus, tomato, and guava production industry (including nursery, fruit for domestic use and exports, and packing facilities) and the environment (urban landscapes) by providing the Department an effective but limited quarantine program to prevent the artificial spread of these pests over short and long distances.

California, national and international consumers of California citrus, tomato, and guava benefit by having high quality produce available at lower cost. It is assumed that any future increases in production costs will ultimately be passed on the consumer. This amended regulation will help maintain the economic baseline.

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

The adoption of this regulation may benefit homeowners who grow host material for consumption and/or ornamentals in various rural and urban landscapes. By providing a basis to prevent infestation with Melon fruit fly and White striped fruit fly and thereby preventing damage to hosts, the regulation eliminates any future need for hosts to be treated to mitigate infestations of Melon fruit fly and White striped fruit fly.

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 this regulation does not impose a mandate on local agencies or school districts.

Economic Impact Analysis (Government Code 11346.3(b))

The prevention of the spread of Melon fruit fly and White striped fruit fly in California through the amendment and implementation of this regulation economically benefits:

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

The Creation or Elimination of Jobs within the State

The amendments are intended to prevent the spread of pest by creating an administrative process for interior quarantines 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 creating an administrative process for interior quarantines 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 new businesses in the state of California. Rather, this amended regulation will help maintain the economic baseline.

The Expansion of Businesses in California

The amendments are intended to prevent the spread of pest by creating an administrative process for interior quarantines 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. Rather, this amended regulation will help maintain the economic baseline.

Worker Safety

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 has determined that Sections 3425 and 3436 does not impose a mandate on local agencies or school districts. All quarantine activities shall be conducted by the Department and quarantines by county agricultural commissioners. 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 3425 and 3436.

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 creating an administrative process for interior quarantines within the state. By being able to quickly react to these pests the Department has a higher likelihood of keeping these pests out of California and maintaining the baseline.

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 pests by creating an administrative process for interior quarantines within the state. This action only provides authority for state quarantine activities and does not require reporting, recordkeeping, or compliance by businesses. Programmatic delays, such as a regulation not having an administrative quarantine in place, can potentially lead to extending the dimensions and duration of 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 amendments are intended to prevent the spread of pests by creating an administrative

process for interior quarantines within the state. This action only provides authority for state quarantine activities and does not require reporting, recordkeeping, or compliance by businesses. 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

The adoption of Section 3425 and amendment of Section 3436 are designed to prevent or minimize the spread of Melon fruit fly and White striped fruit fly.. The Department has made an assessment that the amendment to this regulation would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California,(3) affect the expansion of businesses currently doing business within California, (4) is expected to benefit the health and welfare of California residents, (5) is expected to benefit the state's environment, and (6) is 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 by preventing increased costs to the consumers of host materials and increased pesticide usage.

The state's environment: The amendment of this regulation benefits the environment (urban landscapes) by providing the Department a quarantine program to prevent the artificial spread of the Melon fruit fly and White striped fruit fly over short and long distances.

Alternatives Considered

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or

would be as effective as and less burdensome to affected private persons than the proposed action.

The Department considered taking no action. If no action is taken the regulations will not use administrative quarantines, which allow for faster response time when pests are found. This could lead to the pests spreading throughout the state. 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 3425 and 3436:

California Department of Food and Agriculture, California Agriculture Statistics Review 2021-2022, page 57

California Department of Food and Agriculture, Melon Fruit Fly Pest Profile, https://www.cdffa.ca.gov/plant/pdep/target_pest_disease_profiles/melon_ff_profile.html, visited May 1, 2024

Governor's Office of Emergency Services, State of California Emergency Plan, October 1, 2017, pages 132-133

Margaret L. Margosian, USDA-APHIS-PPQ-CPHST-STT, Manhattan, KS
Christie A. Bertone, Daniel M. Borchert, Yu Takeuchi, USDA-APHIS-PPQ-CPHST-PERAL, Raleigh, NC, Identification of Areas Susceptible to the Establishment of Fifty-three *Bactrocera* spp. (Diptera: Tephritidae: Dacinae) in the United States

Email, From Khoa Lam, RE: Question About Guava, Thursday, September 21, 2023

Email, From Porfirio Mancillas, RE: Question About Guava, Thursday, September 21, 2023