

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Section 3558, Insects Which May Be Imported or
Shipped Within California Without a Permit

INITIAL STATEMENT OF REASONS/
POLICY STATEMENT OVERVIEW

The California Department of Food and Agriculture (Department) proposes to amend Title 3 of the California Code of Regulations (CCR) Section 3558 to incorporate by reference a list of native and permitted species for use and movement in California.

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

This regulation is intended to address the obligations of the California Department of Food and Agriculture to protect the agricultural industry of California and prevent the introduction and spread of injurious plant pests. The Department receives requests from the public to approve ownership and use of various native species. For the public benefit, the Department proposes to maintain a public list of native species that do not require a permit after they have been evaluated by the Primary State Entomologist and determined to be beneficial or useful, low risk for California agriculture and environment, and of common occurrence in California. Determining species that do and do not require a permit and posting this information on an easily accessible website will simplify and clarify the process for both the public and the Department.

Purpose and Factual Basis

The specific purpose of Section 3558 is to identify the live insects and other organisms that qualify under certain exemptions as not needing a permit obtained from the Secretary or the United States Department of Agriculture (USDA) to be imported into or shipped or transported within California. These exemptions include common pests that are useful in agricultural research, beneficial species that have previously been permitted for release in

the state, other useful insects of common occurrence in the state, and insects that are not plant pests.

The factual basis for the determination by the Department that the amendment of Section 3558 is necessary is as follows:

The Department receives inquiries from the public requesting permits for native species, including ants, that are of common occurrence in the state. From 2020 to October, 2024, 94 permits were issued for the common harvester ant *Pogonomyrmex occidentalis*. These inquiries and the issuance of permits require significant Department resources and require the public to delay their activities as they wait for a response. When a person is required to obtain a permit to keep or move a common, native insect species, it has the unintended effect of eroding the public's opinion of state regulations in general and of the state's effectiveness in preventing harm to California agriculture and the environment. Amending the regulation to allow any party to move and use specified native species permitted for release, and providing public lists of these and other species previously released under state permit as harmless or beneficial and therefore no longer regulated will be helpful both to the public and the Department. The amendment ensures that the public is easily able to determine which species are allowed movement without increased risk to California agriculture and the environment.

Project Description

An edit has been made to the title of this regulation and throughout: "and other organisms" has been added when appropriate. Several species named within the regulation are not insects but other organisms and this edit creates more accurate regulation.

The "List of insects for which a permit is not required" has been removed. Instead the public is directed to a list on the Department website, which has been incorporated by reference. Removing the list from the regulation and incorporating this list by reference allows the list to be located in a more publicly accessible space. This list includes species previously

listed within the regulation and has been updated with commonly requested insects and other organisms that have already been assessed, as well as spelling and italicization corrections. Duplicating the list in two locations was considered, however the risk of two lists falling out of harmony was considered high, so this was rejected.

Section 3558 (b)(6) has been removed as the updated list being incorporate by reference has these species included.

Current Laws & Regulations

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 5302, provides that the Secretary may make and enforce such regulations as he deems 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 6305, provides that it is unlawful for any person to willfully import into, or ship or transport within, the state any live insect or any pest as such, unless the shipment or transportation and subsequent use and handling is authorized prior to shipment under written permit and the regulations of the director or the United States Department of Agriculture, except the following:

- (a) Honey bees of the species of *Apis mellifera*.
- (b) Weeds for the purpose of identification.
- (c) Beneficial or useful insects of common occurrence in the state.
- (d) Insects or other organisms of public health or animal health interest, which are not plant pests, when imported, shipped, or transported by any governmental public health agency.

Any shipment which is not authorized by this section shall be immediately destroyed unless

it is determined by the inspecting officer that the nature of the contents of the shipment is such that no damage can be caused to agriculture in this state through its shipment out of the state or return of the shipment to the point of origin. In such case, the shipment out of the state or the return of the shipment to point of origin shall be allowed at the expense of the owner or bailee of the shipment within the time which is specified by the inspecting officer.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

The Department is the only agency that can regulate live insects or any pests. 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

This amendment adds clarity to an existing regulation and relieves an unnecessary regulatory burden for the public and the Department. By amending Section 3885, the public can quickly determine if an insect or other organism requires a permit. This amendment will also reduce the workload on the Department's permit staff and thus enable them to devote more time to critical functions.

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 proposed amendment of Section 3558 would relieve an unnecessary regulatory burden on the Department and the public which economically benefits:

- the general public
- the State's general fund

The Creation or Elimination of Jobs within the State

The amendment is designed to relieve an unnecessary regulatory burden on the Department and the public. No additional staff positions will be created or eliminated by this amendment. 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 amendment is designed to relieve an unnecessary regulatory burden on the Department and the public. No new businesses will be required, and current activities do not eliminate existing business. Therefore, the Department has determined that this regulatory proposal will not have a significant impact on the creation of new businesses or elimination of new businesses in California.

The Expansion of Businesses in California

The amendment is designed to relieve an unnecessary regulatory burden on the Department and the public. No new businesses will be required, and current activities do not expand existing 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 California.

Significance Adverse Impact on Business

The amendment is designed to relieve an unnecessary regulatory burden on the Department and the public. No businesses are currently adversely affected by these activities. Therefore, the Department has determined that this regulatory proposal will not have any significant adverse impacts on businesses currently doing business in California.

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 3558 does 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 Section 3558.

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 amendment 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 amendment is designed to relieve an unnecessary regulatory burden on the Department and the public. Current activities do not have an impact on homeowners and community gardens. Therefore, the Department has determined that this regulatory proposal will not have any significant adverse impacts on homeowners and community gardens in California.

Potential Impacts to General Fund and Welfare

The proposed regulation will impact the general fund or general welfare. The amendment is designed to relieve an unnecessary regulatory burden on the Department and the public. By relieving this burden, the staff currently responding to the public's permit inquiries will be able to direct more of their attention to other projects. Therefore, the Department has determined that this regulatory proposal will not have any significant adverse impacts on the general fund or welfare in California but will have a positive impact.

Assessment

The amendment of Section 3558 is designed to relieve an unnecessary regulatory burden on the Department and the public. The Department has made an assessment that the amendment to this regulation would: (1) not create or eliminate jobs within California, (2) not create new business or eliminate existing businesses within California, (3) not affect the expansion of businesses currently doing business within California, and (4) is not expected to benefit the health and welfare of California residents, (5) is not expected to benefit the state's environment, and (6) is not expected to benefit workers' safety.

This amendment clarifies an existing regulation and relieves an unnecessary regulatory burden for the public and the Department. By amending Section 3885, the public can quickly determine if a species requires a permit. This amendment will also reduce the workload of the Department's permit staff and thus enable them to devote more time to more critical functions. There are no existing comparable federal regulations or statutes.

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 and less burdensome to affected private persons than the proposed action. The Department considered not incorporating by reference the list "Insects and other organisms that may be imported or shipped into or within California without a permit". If this list was not incorporated the current issues of significant Department resources being diverted and public delay to their activities would continue. Therefore this alternative was rejected.

Information Relied Upon

CDFA Plant Health and Pest Prevention Permit Database, Search for *Pogonomyrmex occidentalis*, on 10/23/2024