

**State of California
Office of Administrative Law**

In re:
Department of Food and Agriculture

Regulatory Action:

Title 03, California Code of Regulations

Adopt sections:

Amend sections: 3162, 3408, 3591.6

Repeal sections:

**NOTICE OF APPROVAL OF CHANGES
WITHOUT REGULATORY EFFECT**

**California Code of Regulations, Title 1,
Section 100**

OAL Matter Number: 2022-0613-02

OAL Matter Type: Nonsubstantive (N)

This action by the Department of Food and Agriculture makes changes without regulatory effect to update the common name of species *Lymantria dispar* from "gypsy moth" to "spongy moth."

OAL approves this change without regulatory effect as meeting the requirements of California Code of Regulations, title 1, section 100.

Date: July 26, 2022



Nicole C. Carrillo
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Karen Ross, Secretary

Copy: Rachel Avila

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW
NOTICE PUBLICATION/REGULATORY ACTION SUBMISSION

STD. 400 (REV. 10/2019)

NONSUBSTANTIVE

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2022-0613-02	EMERGENCY NUMBER N
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

JUL 26 2022

1:48 PM

OFFICE OF ADMIN. LAW
2022 JUN 13 AM 11:34

AGENCY WITH RULEMAKING AUTHORITY <i>Department of Food + Agriculture</i>	per agency <i>NLC</i> request <i>7/26/22</i>	AGENCY FILE NUMBER (If any)
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER		PUBLICATION DATE	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) <i>Gypsy Moth</i>		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)		
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT	
	AMEND	
TITLE(S)	REPEAL	

3. TYPE OF FILING		
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____
<input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input checked="" type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			

7. CONTACT PERSON <i>Rachel Avila</i>	TELEPHONE NUMBER <i>916-698-2947</i>	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) <i>rachel.avila@cdfa.ca.gov</i>
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Mark A. McLoughlin</i>	DATE <i>05/31/2022</i>
TYPED NAME AND TITLE OF SIGNATORY <i>Mark A. McLoughlin, Director Plant Health and Pest Prevention Services</i>	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUL 26 2022

Office of Administrative Law

§ 3162. Pest Ratings and Official Control Actions.

(a) Definitions.

- (1) "Commissioner" - a California County Agricultural Commissioner and staff.
- (2) "General Distribution" - the pest occupies a majority of its potential distribution range in California.
- (3) "Identifying Scientist" - A professional scientist, with specialization in one of several agricultural disciplines (e.g. botany, entomology, nematology, plant pathology, etc.), who has been designated to assign authoritative identifications to organisms of real or potential threat to California agriculture and/or the environment.
- (4) "Limited Distribution" - the pest occurs in the state but is limited to a small portion of its potential distribution or to a few small geographic areas that are widely separated within the state (widely but not generally distributed).
- (5) "Known Not to Occur" - surveys have been conducted for the pest and it has not been found to be established in California.
- (6) "Not Known to Occur" - there are no official records of the pest being established in California.
- (7) "Official control" - by State regulation or statute, the conduct by the Department/Commissioner of quarantine, eradication, control or suppression activities including various treatments, quarantines, and other measures with the goal of preventing the entry of a pest, eliminating an isolated infestation, or prevention of further spread to or within the vulnerable area(s).
- (8) "Pest Rating" - characterizing the potential of the pest to harm agriculture, the environment, or society through the completion of a "California Pest Rating Proposal." "Society" can include interference with home/urban gardening, human health, worker safety, food safety, jobs or cultural practices in California. The pest rating guides what official control measures are appropriate if the pest is encountered in California.
- (9) "Potential Distribution" - the area within the state of California that a species is considered likely to establish. Suitable climate, presence of hosts, and other factors may be considered.
- (10) "Quarantine" - actions mitigating the pest risk including, but not limited to: confinement or restriction of entry, movement, shipment, or transportation of plants, plant products, conveyances, appliances, or anything else known or suspected to be infected or infested with pests.
- (11) "Vulnerable Area" - an area where ecological factors favor the establishment of a pest whose presence in the area may result in economical loss or environmental damage.

(b) California Pest Rating Proposal. This form shall be completed to determine a pest rating and all applicable sections with known information shall be completed:

California Pest Rating Proposal

Scientific Name (Common Name)

Current Rating: A, B, C, D, Q, Z

Proposed Rating: A, B, C, D

Initiating Event: Identify the organism considered for the pest rating and the event(s) that triggered this pest rating proposal.

History & Status:

Background: Describe what is known about the biology of the pest, its host range, and potential pathways and spread.

Worldwide Distribution: Identify the native range of the pest. Also identify other countries and states that it has invaded.

Official Control: Is the pest under official control in any countries or states?

California Distribution: Identify where the pest has been found in the environment of California.

California Interceptions: Identify where the pest has been found in regulatory situations in California (e.g., at the airports, border stations, nurseries, ports, seed receivers, etc.).

The risk [taxon name] would pose to California is evaluated below.

Consequences of Introduction:

1) Climate/Host Interaction: Evaluate if the pest would have suitable hosts and climate to establish in California. Score:

- Low (1) Not likely to establish in California; or likely to establish in very limited areas.
- Medium (2) may be able to establish in a larger but limited part of California.
- High (3) likely to establish a widespread distribution in California.

2) Known Pest Host Range: Evaluate the host range of the pest. Score:

- Low (1) has a very limited host range.
- Medium (2) has a moderate host range.
- High (3) has a wide host range.

3) Pest Dispersal Potential: Evaluate the natural and artificial dispersal potential of the pest. Score:

- Low (1) does not have high reproductive or dispersal potential.
- Medium (2) has either high reproductive or dispersal potential.
- High (3) has both high reproduction and dispersal potential.

4) Economic Impact: Evaluate the likely economic impacts of the pest to California using the criteria below. Score:

- A. The pest could lower crop yield.
 - B. The pest could lower crop value (includes increasing crop production costs).
 - C. The pest could trigger the loss of markets (includes quarantines).
 - D. The pest could negatively change normal cultural practices.
 - E. The pest can vector, or is vectored, by another pestiferous organism.
 - F. The organism is injurious or poisonous to agriculturally important animals.
 - G. The organism can interfere with the delivery or supply of water for agricultural uses.
- Low (1) causes 0 or 1 of these impacts.
 - Medium (2) causes 2 of these impacts.
 - High (3) causes 3 or more of these impacts.

5) Environmental Impact: Taking into account other, established pests, evaluate the additional environmental impact of the pest on California using the criteria below.

- A. The pest could have a significant environmental impact such as lowering biodiversity, disrupting natural communities, or changing ecosystem processes.
- B. The pest could directly affect threatened or vulnerable species.
- C. The pest could impact threatened or vulnerable species by disrupting critical habitats.
- D. The pest could trigger additional official or private treatment programs.
- E. The pest significantly impacts cultural practices, home/urban gardening or ornamental plantings.

Score the pest for Environmental Impact. Score:

- Low (1) causes none of the above to occur.
- Medium (2) causes one of the above to occur.
- High (3) causes two or more of the above to occur.

Consequences of Introduction to California for [taxon name]:

Add up the score for the above five consequences and include it here. (Score)

- Low = 5-8 points
- Medium = 9-12 points
- High = 13-15 points

6) Post Entry Distribution and Survey Information: Evaluate the known distribution in California. Only official records identified by a taxonomic expert and supported by voucher specimens deposited in natural history collections or an official Pest Damage Record should be considered. Pest incursions that have been eradicated, are under eradication, or have been delimited with no further detections should not be included. (Score)

- Not established (0) Pest never detected in California, or known only from incursions.
- Low (-1) Pest has a localized distribution in California, or is established in one suitable climate/host area (region).
- Medium (-2) Pest is widespread in California but not fully established in the vulnerable area, or pest established in two contiguous suitable climate/host areas.
- High (-3) Pest has fully established in the vulnerable area, or pest is reported in more than two contiguous or non-contiguous suitable climate/host areas.

7) The final score is the consequences of introduction score minus the post entry distribution and survey information score: (Score)

Uncertainty: It is important to separate out uncertainty from risk. Use this section to evaluate any uncertainty associated with the introduction of the pest to California. Include anything that may cause it to be a greater or lesser pest here than in other places.

Conclusion and Rating Justification: Draw conclusions of the risk associated with this pest to California using all of the evidence presented above. Propose a pest rating.

References: List references used in the above assessments. Include links to online information wherever possible.

Responsible Party: Name, address, telephone number and email address of the rater.

(c) Pest Rating Process.

(1) Any interested party/organization may complete the California Pest Rating Proposal Form to either propose a change or propose a new pest rating and submit it to the Department. The form and instructions for submitting the form are available at the following Website: http://cdfa.ca.gov/plant/regs_pestrating.html

(2) Within 30 days of its completion, a California Pest Rating Proposal Form shall be posted for a 45-day public comment period on the Department's Website at: http://cdfa.ca.gov/plant/regs_pestrating.html

(3) The Department shall respond to any posted comments within 30 working days and shall make the final determination of the pest rating for the organism under consideration.

(4) All Department pest ratings shall be posted: http://cdfa.ca.gov/plant/regs_pestrating.html

(d) The Department shall complete a review of all "Q" pest ratings and propose a permanent pest rating within two years of the assignment of the temporary pest rating.

(e) The "A"-rating is for pests of agriculture or environment that score high under Section 3162 (b) analysis and that are or may be placed under official control in the State of California or are not known to occur in California .

Authorized official control actions:

(1) Plants, plant products, shipments, or appliances, that do not meet California regulations for movement into or within the State or are moving into California in violation of Title 7, Code of Federal Regulations Chapter III, Part 301, Domestic Quarantine Notices; Part 318, State of Hawaii and Territories Quarantine Notices; Part 319, Foreign Quarantine Notices; Part 330, Federal Plant Pest Regulations; General; Plant Pests; Soil, Stone, and Quarry Products; Garbage; Part 360, Noxious Weed Regulations; or Part 361, Importation of Seed and Screenings Under the Federal Seed Act 9 or are found to be infested or infected with, or exposed to, an "A"-rated pest shall be refused entry, held for inspection, returned to the owner, quarantined, treated, or destroyed as specified by the Department or by an authorized representative of the Department.

(2) The destruction, quarantine, treatment, or return of a shipment shall be under the direction of the Department or Commissioner and may be at the expense of the owner. If the Department or Commissioner incurs any costs, payment to the Department or Commissioner for such expense may be required before shipping may resume.

(3) A Notice of Rejection, a form prescribed by the Department, shall be completed for all shipments being refused entry, returned to the owner, quarantined, treated, or destroyed as specified by the Department or Commissioner. The following data which pertains to the rejection may be collected and used as appropriate to complete the form:

A. Time In

B. Date In

C. I.D. Number

D. Time Out

E. Date Out

F. PDR Number

G. Bill Number

H. Material Transported By (e.g. bus, car, mail, truck, etc.)

I. Check boxes for whether the entire or portion of the shipment was rejected

J. Check boxes for whether the shipment was commercial or E-commerce

K. Material rejected, type (e.g. plants, fruit, etc.), common and scientific names, variety, quantity, container size, origin county, state, country, explanatory remarks and check the appropriate boxes if the material rejected contains soil, roots or is a drug.

L. Reason for Rejection

M. Shipper's Complete Name, Address, City, State, Zip Code, Country, E-Mail Address, Latitude and Longitude, Phone and Fax Numbers

N. Receiver's Complete Name, Address, City, State, Zip Code, County, Country, E-Mail Address, Latitude and Longitude, Phone and Fax Numbers

O. Driver's Complete Name, Date of Birth, Driver's License Number and Issuing State

P. Carrier's Name, Address, City, State, Zip Code, Phone and Fax numbers and E-mail Address

Q. Carrier's Vehicle Unit Number, Trailer License and State

R. Issuing Agricultural Officer's Name, Address, City, State, Phone and Fax Numbers, and Commissioner's name if issued by a county office.

S. Name of involved State Program, and number of any related documentation (Pest and Damage Record, Quarantine Warning/Hold Notice or Gypsy Spongy Moth Warning/Hold Notice)

T. Explanatory Remarks

U. Check boxes for copies sent to: Shipper, Receiver, Carrier, Commissioner at Origin, Commissioner at Destination or Other; including if by E-mail

V. Check boxes to the Shipper that the material will be disposed of unless, at their option, expense and risk, they agree to: Return to Shipper or Ship Out of State or Authorize Treatment or Obtain the Necessary Certificate or Permit or Other with a Description

W. A Box for the Driver to Sign and Date

X. Disposition including Option Chosen, Date, County Location, Name of Agricultural Officer and any Explanatory Remarks.

Y. Check boxes for "Violator had a compliance agreement?" or "Permit?," "Violator was aware of regulation?" (yes/no), "Violator comments" (how informed and when), "Carrier was aware of regulation?" (yes/no), "Carrier comments" (how informed and when), "Violator or carrier's statement of the violation" and "Agricultural Officer's statement of the violation"

(4) A Hold Notice, a form prescribed by the Department, shall be completed for all shipments being held and shall have the following information completed:

A. The Name of the Establishment

B. Telephone Number

C. Address, City and Zip Code

D. Description and Number of Items Held on Premises

E. Reason for the Hold

F. Printed Name and Title of Person contacted

G. Signature of the Person Contacted and Date

H. Signature of the Agricultural Officer and Date

I. Address, City, Zip Code, Telephone and Fax Number of the issuing Agricultural Office

J. A date by which the responsible person can submit documentation of compliance

K. A date the Hold Notice is released

(f) The "B"-rating is for pests of agriculture or environment that score medium to high under Section 3162 (b) analysis and that are of limited distribution in California.

Authorized official control actions: Plants and plant products that are found to be infested or infected with, or exposed to, a "B"-rated pest may be subject to being refused entry, held for inspection, returned to the owner, quarantined, treated, or destroyed as specified by the Department or by an authorized representative of the Department.

(g) The "C"-rating is for pests of agriculture or environment that score low under Section 3162 (b) analysis and/or are of common occurrence and generally distributed in California.

Authorized official control actions: Plants and plant products that are found to be infested or infected with or exposed to a "C"-rated pest are not subject any State enforced regulatory actions listed under subsection 3162 (e).

(h) The "D"-rating is for an organism that scores low or that is expected to score low in the professional opinion of a CDFA identifying scientist under Section 3162 (b) analysis and is known to be beneficial or to cause no harm to agriculture or the environment. "D"-rated organisms include, but are not limited to, biological control agents that have been approved for release in the state by permit, plants included in the list of agricultural seeds for planting under Title 3, California Code of Regulations, section 3899, organisms native to California that neither adversely affect living plants nor plant parts, and horticultural plants that have no demonstrated history of invasiveness in California or areas with similar climate.

Authorized official control actions: None.

(i) The "Q"-rating is for a pest of agriculture or environment that may be expected to score high in the professional opinion of a CDFA identifying scientist under Section 3162 (b) analysis and that is not known to occur in California or where its California distribution is unknown and that is otherwise suspected of being harmful to agriculture or the environment and that may not be completely identified or for which there is inadequate available scientific information to complete a Pest Rating Proposal.

Authorized official control actions: Plants and plant products that are found to be infested or infected with, or exposed to, a "Q"-rated pest may be refused entry, held for inspection, returned to the owner, quarantined, treated, or destroyed as specified by the Department or by an authorized representative of the Department prior to the Department determining the appropriate permanent pest rating.

(j) The "Z"-rating is for pests of agriculture or environment that may be expected to score low in the professional opinion of a CDFA identifying scientist under Section 3162 (b) analysis and/or that are of common occurrence and generally distributed in California.

Authorized official control actions: None.

(k) The plant pest ratings shall be used in the enforcement of the nursery stock standards of cleanliness under Title 3, California Code of Regulations, section 3060.2.

Note: Authority cited: Sections 407, 5261 and 5262, Food and Agricultural Code.
Reference: Sections 407, 5261 and 5262, Food and Agricultural Code.

§ 3408. Gypsy Spongy Moth Interior Quarantine.

A quarantine is established against the following pest, its hosts, and possible carriers.

(a) Pest. Gypsy Spongy moth (*Lymantria dispar*) a lepidopterous insect of the family Lymantriidae which in the larval stage defoliates many species of trees and shrubs.

(b) Area Under Quarantine. [Reserved]

(c) Articles and Commodities Covered. (Hosts and Carriers)

(1) Trees, shrubs with persistent woody stems, and parts of such trees and shrubs except seeds, fruits, and cones.

(2) Timber and building materials, including such items as lumber, planks, poles, logs, firewood, fencing and building blocks.

(3) Mobile homes, recreational vehicles, trailers, boats, and associated equipment.

(4) Outdoor household articles including furniture, garden tools and garden machinery.

(5) Any other items or means of conveyance not covered above when it is determined by a State plant quarantine officer that the item presents a hazard of spread of the gypsy spongy moth and the person in possession thereof has been so notified.

(d) Restrictions. Items under quarantine are prohibited movement from the area under quarantine except under the following conditions:

(1) Any item under quarantine may be inspected and certified by a State plant quarantine officer if, in his opinion and judgment, it is free of all stages of gypsy spongy moth. Any item that in the opinion and judgment of a State plant quarantine officer is too large or for other reasons cannot be adequately inspected for all stages of gypsy spongy moth will not be certified except as indicated in paragraphs (3) and (4) below.

(2) Garden prunings from trees and shrubs may be moved to the city or county dumps where such material is to be buried, incinerated, composted, or otherwise treated or handled in a manner that is approved by the County Agricultural Commissioner.

Certification is not necessary for such material picked up by city or county vehicles or trucking companies under contract to haul such material.

(3) Any item which cannot be adequately inspected as stated in (1) above may be moved from the quarantine area if cleaned or treated as prescribed by the Secretary and in a manner satisfactory to the County Agricultural Commissioner. Items cleaned or treated shall be certified by the County Agricultural Commissioner or a State plant quarantine officer for movement from the quarantine area.

(4) The County Agricultural Commissioner or State plant quarantine inspectors may also certify items for movement when in their judgment the item has not been exposed to infestation, or has not been exposed to infestation after properly being inspected, cleaned, or treated.

(e) Director May Issue Special Permits. The Director may issue special permits allowing movement of articles or commodities otherwise prohibited. The permit shall state any and all mandatory provisions or conditions under which movement will be allowed.

Note: Authority cited: Sections 407, 5301, 5302 and 5322, Food and Agricultural Code.
Reference: Sections 5301, 5302 and 5322, Food and Agricultural Code.

§ 3591.6. Gypsy Spongy Moth Eradication Area.

(a) Proclamation of Eradication Area. That portion of the State of California described as follows, within which gypsy spongy moth, *Lymantria dispar*, is known to exist, is hereby proclaimed to be an eradication area with respect to said pest, and as such is amenable to the provisions of Article 4 (Sections 5761, 5762, and 5763) of Chapter 8, Part 1, Division 4, of the Food and Agricultural Code of California.

(1) The entire counties of Butte, Los Angeles, Marin, Nevada, Orange, Riverside, San Diego, San Mateo, Santa Barbara, Santa Clara, Santa Cruz and Ventura.

(b) Hosts and Possible Carriers. Trees, shrubs with persistent woody stems, and parts of such trees and shrubs (except seed, fruits, and cones); timber and timber products, including but not limited to lumber, planks, poles, logs, cordwood, and pulpwood; mobile homes and recreational vehicles, and associated equipment, moving from infested properties; outdoor furniture; and any other products, articles, or means of conveyance, of any character whatsoever when it is determined by an inspector that they present a hazard of spread of the gypsy spongy moth and the person in possession thereof has been so notified. All these items that are infested or are exposed to infestation by gypsy spongy moth are declared a public nuisance.

(c) Means and Methods. The following means and methods may be used in the eradication and control of said pest in said area.

(1) The use of insecticides, chemicals, or other materials as spray, dust, bait, or in any other form as often as necessary to effect control.

(2) The removal and destruction of trees and shrubs if permission is received from the property owner, or if such action is the only practical way of eliminating the infestation of a host or possible carrier.

(3) The searching for all stages of gypsy spongy moth by visual inspection, the use of traps, or any other means.

(4) The removal and destruction of abandoned or unwanted hosts or possible carriers bearing or capable of bearing gypsy spongy moth in any stage.

(5) The importation, rearing, liberation, and fostering of parasites and predators of the gypsy spongy moth.

(6) The importation, rearing, or liberation of sterile forms of the gypsy spongy moth.

Note: Authority cited: Sections 407 and 5322, Food and Agricultural Code. Reference: Sections 5322, 5761, 5762 and 5763, Food and Agricultural Code.