

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Section 3277

Cereal Leaf Beetle Exterior 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 into California.

Specific Purpose and Factual Basis

The specific purpose of Section 3277 is to provide authority to the State to regulate the movement of hosts and possible carriers of Cereal Leaf Beetle (CLB), from infested states and Canada into California.

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

In August 2013 CLB was detected in California wheat and barley fields in two separate Northern California counties. Further trapping determined that infestations existed in Modoc and Siskiyou counties. These counties are located just across the border opposite the Klamath Basin in Oregon where CLB infestations already exist. The Department had several conference calls with the affected industries, county agricultural commissioners and staff from the Oregon Department of Agriculture. As a result of these calls, the Department formed the California Cereal Leaf Beetle Management Working Group (CCLBMWG). The CCLBMWG held its first teleconference on February 19, 2014 and updates were given on detection, regulatory, biocontrol and funding issues. Additionally, discussion items included: leading edge survey, statewide survey, proposed CLB quarantine status, quarantine enforcement, the development of best management practices, implementation of biocontrol and other sources of funding.

The Department discussed that in order to continue to maintain its exterior quarantine against CLB pertaining to interstate commerce, it would need to adopt a parallel interior quarantine for CLB. To adopt a CLB interior quarantine would require a source of dedicated funding for quarantine enforcement and being compliant with the California Environmental Quality Act (CEQA).

The CCLBMWG discussed the feasibility of industry assessments as a source of funding. The Department concluded that it did not have the statutory authority for implementing industry assessments and that was not a feasible option. The CCLBMWG discussed the feasibility of adopting a CLB interior quarantine as an emergency rulemaking. The Department concluded that was not a feasible option in February 2014 as the initiating events occurred in August 2014 and a normal rulemaking could have been completed within this time frame. As a CLB interior quarantine would require treatments, the Department concluded that it would have to complete an environmental impact report (EIR) in order to be compliant with CEQA. This brought up another funding issue; the Department does not have a source of funding to develop an EIR. Additionally, even if a source of funding was identified in the near future, an EIR could not be completed in less than a year.

The CCLBMWG discussed the feasibility of eradication. The Department again concluded that it would have to complete an environmental impact report (EIR) in order to be compliant with CEQA. Additionally, no state has successfully eradicated CLB. Eradication is not feasible, and all states with CLB infestations have developed Integrated Pest Management programs, which includes bio-control, to keep this destructive insect pest below economic threshold levels. It feeds on many grass species and is a major pest of barley, oats, and wheat. Oats and wheat appear to be the favorite host plants. It also feeds on corn, rice and rye. Adult beetles cause minimal damage. One immature larva per stem can result in significant loss of grain yield and quality. Plant damage is generally minor in winter grain plantings and more severe in spring grain plantings.

During the CCLBMWG it was determined that the Department cannot adopt a CLB interior quarantine and therefore cannot halt the potential artificial human assisted spread of CLB out of the infested area to other California locations. Also the Department cannot adopt a CLB eradication regulation to enable the suppression of the established CLB populations in both

affected counties. Therefore the CLB populations will grow in size and eventually be spread naturally and artificially from the current infested areas. The Department then concluded that maintaining a CLB exterior quarantine would unnecessarily interfere with interstate commerce where it had no parallel regulation for intrastate commerce. Additionally, under the National Plant Board's principles for plant quarantine, the Department is obligated to now repeal the CLB exterior quarantine

(http://nationalplantboard.org/history_principles/NPB-Principles_files/frame.htm).

Since this insect pest now exists in California, the CDFA believes that repealing this quarantine will not have any adverse affects. Beetle infestations within this state can be managed without any state mandated quarantine required activities.Project Description

The effect of the repeal of this regulation is to remove the State's authority to regulate the interstate movement of CLB host material and other regulated articles. perform quarantine activities against the CLB in the additional areas.

Instead, the Department will continue to collaborate with the CCLBMWG to pursue sources of funding, develop best management practices for CLB, conduct leading edge and statewide surveys for CLB..

Background

Cereal Leaf Beetle (CLB) is an invasive insect pest from Europe and Asia that was first discovered in the United States in Michigan in 1962. This insect has since spread to several states and was found in Oregon and Washington in 1999. In August 2013 it was detected in California wheat and barley fields. Currently Modoc and Siskiyou Counties have CLB infestations which most likely were a result of natural migration from the infested areas in Oregon, or through the artificial movement of overwintering adult beetles in cut Christmas trees. Eradication is not feasible, and all states with CLB infestations have developed Integrated Pest Management programs, which includes bio-control, to keep this destructive insect pest below economic threshold levels. It feeds on many grass species and is a major pest of barley, oats, and wheat. Oats and wheat appear to be the favorite host plants. It also feeds on corn, rice and rye. Adult beetles cause minimal damage. One immature larva per stem can result in significant loss of grain yield and quality. Plant damage is generally minor in winter grain plantings and more severe in spring grain plantings. The California Department of Food and Agriculture

(CDFA) currently has a CLB State Exterior Quarantine in place to prevent the introduction of this pest from CLB infested states and Canada. Since this insect pest now exists in California, the CDFA believes that repealing this quarantine will not have any adverse affects. Beetle infestations within this state can be managed without any state mandated quarantine required activities.

Economic Impact Analysis

Economic losses due to CLB will be minimal to none when the grower employs Integrated Pest Management strategies. Economic losses can be severe if no control measures are implemented. This has occurred in some states where bio-control releases had not yet begun, and the grower did not conduct a timely pesticide application. In these cases yield losses can be as high as 50-75%.

Anticipated Benefits from This Regulatory Action

The repeal of this regulation benefits the California Border Protection Stations will benefit because inspectors will no longer be required to conduct Cereal Leaf Beetle inspections on incoming cereal grains, host plants, and harvesting/baling equipment. The repeal of this regulation will enable the interstate movement of CLB hosts and regulated articles to be on par with the intrastate movement requirements. Interstate shippers will no longer have to obtain CLB quarantine certificates from their origin state department of agriculture alleviating the costs for certification and the inspector's time.

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.

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 repeal of Section 3277 does not impose a mandate on local agencies or school districts and no reimbursement is required under Section 17561 of the Government Code.

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 repeal of Section 3277.

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:

There are no costs for compliance as the repeal of this regulation removes all regulatory requirements.

Economic losses will be minimal to none when the affected growers employ Integrated Pest Management strategies. Economic losses can be severe if no control measures are implemented. This has occurred in some states where bio-control releases had not yet begun, and the grower did not conduct a timely pesticide application. In these cases yield losses can be as high as 50-75%. However, with a robust Integrated Pest Management Program there should be no loss of exports.

Based on the preceding information, it was determined that the repeal of Section 3277 does not have a Statewide adverse economic impact on a representative business or private party.

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 adoption of Section 3277:

Economic Analysis for Deregulation CCR 3277 – Cereal Leaf Beetle State Exterior
Quarantine-Prepared February 13, 2014

Pest and Damage Record Numbers AL0P0601498, MV1P06113554, MVAP06098819,
AL0P06014898 and MV1P06113553.