

DEPARTMENT OF FOOD AND AGRICULTURE  
Title 3 of the California Code of Regulations

Section 3423 Oriental Fruit Fly Interior Quarantine  
Section 3591.2 Oriental Fruit Fly Eradication Area  
**Notice of Proposed Rulemaking**  
**45 – Day Notice**

The Department of Food and Agriculture (Department) proposes to amend Title 3 of the California Code of Regulations (CCR) Section 3423 Oriental Fruit Fly Interior Quarantine and Section 3591.2 Oriental Fruit Fly Eradication Area.

**PUBLIC HEARING**

A public hearing is not scheduled. However, a public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

**WRITTEN COMMENT PERIOD**

Any interested person or his or her authorized representative may submit written comments relevant to the proposed regulations to the Department. Comments may be submitted by USPS, FAX or email. The written comment period closes on November 7, 2023, 2023. The Department will consider only comments received at the Department offices by that date or postmarked no later than November 7, 2023. Submit comments to:

Erin Lovig, Senior Environmental Scientist Supervisor  
California Department of Food and Agriculture Plant Health and  
Pest Prevention Services  
1220 N St,  
Sacramento, CA 95814  
916.403.6650  
Permits@cdfa.ca.gov

Questions regarding the substance of the proposed regulation should be directed to Erin Lovig. In her absence, you may contact Rachel Avila at (916) 698-2947 or [rachel.avila@cdfa.ca.gov](mailto:rachel.avila@cdfa.ca.gov).

Unless there are substantial changes to the proposed regulations prior to amendment, the Department of Food and Agriculture may adopt the proposal as set forth in this notice without further notice to the public. Following the public hearing, if one is requested, or following the written comment period if none is requested, the Department, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

## **AUTHORITY**

The Department proposes to amend Sections 3423 and 3591.2 pursuant to the authority vested by Sections 407, 5301, 5302, and 5322 of the Food and Agricultural Code (FAC).

## **REFERENCE**

The Department proposes this action to implement, interpret and make specific Sections 5301, 5302, 5322, 5761, 5762, 5763, and 5764 of the FAC.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The specific purpose of the proposed amendment of the regulation Section 3423 is to remove the host list and add a reference to Section 3591.2(b). Currently, the Section 3423 (c)(1) host list is missing multiple species, all of which are included in the host list in Section 3591.2 (b). An incomplete host list in Section 3423 provides a source of potential confusion to the public, and could result in host material unknowingly being moved, which could lead to furthering an infestation. By referencing the list in Section 3591.2 (b) the confusion is removed and the regulations can be harmonized.

The specific purpose of the proposed amendment of the regulation 3591.2 is to update the host list so it is in accord with the United State Department of Agriculture (USDA) list, add a footnote so pumpkins are correctly regulated, and remove a section of the host list that was mistakenly duplicated. Only species listed twice are being removed, which will fix an existing error.

## **EXISTING 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 which 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 her opinion necessary to circumscribe and exterminate or prevent the spread of any pest which is described in FAC section 5321.

Existing law, FAC Section 5761, provides that the Secretary may proclaim any portion of the state to be an eradication area with respect to the pest, prescribe the boundaries of such area, and name the pest and the hosts of the pest which are known to exist within the area, together with the means or methods which are to be used in the eradication or control of such pest.

Existing law, FAC Section 5762, provides that the Secretary may proclaim any pest with respect to which an eradication area has been proclaimed, and any stages of the pest, its hosts and carriers, and any premises, plants, and things infested or infected or exposed to infestation or infection with such pest or its hosts or carriers, within such area, are public nuisances, which are subject to all laws and remedies which relate to the prevention and abatement of public nuisances.

Existing law, FAC Section 5763, provides that the Secretary, or the commissioner acting under the supervision and direction of the director, in a summary manner, may disinfect or take such other action, including removal or destruction, with reference to any such public nuisance, which he thinks is necessary.

Existing law, FAC Section 5764, provides that if an eradication area has been proclaimed with respect to a species of fruit flies and the removal of host plants of such species is involved, the director may enter into an agreement with the owner of such host plants to remove and replace them with suitable nursery stock in lieu of treatment.

### **ANTICIPATED BENEFITS OF THE PROPOSED AMENDMENT**

The implementation of this amendment will help prevent potential future issues when the Oriental fruit fly host list need to be amended in the future. Have functional accurate hosts list 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

There is no existing, comparable federal regulations or statute.

There are no known specific benefits to worker safety or the health of California residents.

### **EVALUATION OF INCONSISTENCY / INCOMPATIBILITY WITH EXISTING STATE REGULATIONS**

As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of Section 3423 and 3591.2 and has determined that they are not inconsistent or incompatible with existing state regulations.

### **DISCLOSURES REGARDING THE PROPOSED ACTION**

*The Department has made the following initial determinations:*

There is 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 3423 and 3591.2.

Cost or savings to any state agency: None

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative private person or business: The agency is not aware of any cost impacts that a representative person or business would necessarily incur in reasonable compliance with the proposed action.

Significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states: The cost impacts are expected to be none and minimal/non-consequential. The Department makes the initial determination that the proposed action will not have a significant, statewide adverse economic impact.

Significant effect on housing costs: None

Small business determination: The proposed action will not affect small business because compliance activities are currently being performed by existing staff throughout quarantine areas within the state without any impact on small business.

### **RESULTS OF THE ECONOMIC IMPACT ANALYSIS / ASSESSMENT**

The Department has concluded that the Section 3423 and 3591.2 amendment (1) will have no significant impact on the creation or elimination of jobs in the State of California,

(2) will have no impact on the creation or elimination of businesses within the state of California, (3) will have no impact on the expansion of businesses within the State of 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 harm or benefit workers' safety.

The health and welfare of California residents: The proposed action will benefit the health and welfare of California residents by preventing programmatic delays, such as having host lists out of date, that can potentially can 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.

The state's environment: The amendment of this regulation benefits the environment as correctly regulating hosts of OFF lowers the risk that the pests could spread into the local environment via the surrounding non-agricultural ecosystems. OFF spreading 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.

## **CONSIDERATION OF ALTERNATIVES**

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention 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.

The Department invites interested persons to present alternatives during the written comment period.

## **AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE**

The Department has prepared an initial statement of reasons for the proposed action, and has made available all the information upon which its proposal is based and the express terms of the proposed action. The Department has posted the information regarding this proposed regulatory action on its Internet website ([www.cdfa.ca.gov/plant/Regulations.html](http://www.cdfa.ca.gov/plant/Regulations.html)). A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After the comment period and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer named herein. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the agency officer named herein.