DEPARTMENT OF FOOD AND AGRICULTURE

PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Section 3423(b), Oriental Fruit Fly Interior Quarantine

INITIAL STATEMENT OF REASONS/

POLICY STATEMENT OVERVIEW

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.

Specific Purpose and Factual Basis

The specific purpose of Section 3423 is to provide for the State to regulate the movement and possible carriers of Oriental fruit fly from the area under quarantine to prevent the artificial spread of the fly to noninfested areas to protect California's agricultural industry.

The factual basis for the determination by the Department that the amendment of Section 3423(b) is necessary is as follows:

Oriental fruit fly is a destructive insect pest of innumerable commercial agricultural crops. Many kinds of fruit, including apple, apricot, avocado, cherry, citrus, cucumber, date, fig, grape, guava, nectarine, peach, pear, peppers, persimmon, plums, pomegranate and tomato, and the fruiting bodies of some wild and ornamental plants are known to be hosts or possible hosts of the Oriental fruit fly. 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. Movement of hosts infested with the larvae of the fly can artificially spread the fly.

If the fly 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 United States Department of Agriculture or other states or countries enact a quarantine against California products which can host and carry the fly.

Oriental fruit fly has been introduced into California a number of times, through the movement of prohibited host fruits and vegetables into the State, and has always been successfully eradicated. Oriental fruit fly quarantine areas are established when the quarantine triggers are met and removed when the eradication criteria are met. In the past, the Department has established the quarantine boundaries through an emergency rulemaking action, then provided public notification as required under the California Administrative Procedure Act and Government Code and then filed a Certificate of Compliance to retain the regulation. To remove the quarantine area the Department has used the same process or let the quarantine area be removed through the operation of law by not filing a Certificate of Compliance or used the normal rulemaking process to remove the quarantine area.

The Department concluded that a more effective and efficient responsive approach is necessary which ensures adequate protections are in place when needed and can be removed in a consistent timely matter when unnecessary. The purpose of this proposed amendment is to accomplish that in a transparent manner which can be more easily understood by those who may be affected by this regulation in the future. This amendment specifies the process for adding and removing quarantine areas, establishing the initial size of the area, establishing how the area may be expanded if there are additional detections of Oriental fruit fly within the quarantine area; establishes an appeal process, a list serve option and the life cycle for Oriental fruit fly.

Subsection 3423(b)(1) establishes that an area shall be designated as a quarantine area when an infestation is present, the local California county Agricultural Commissioner 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.

Subsection 3423(b)(2) establishes when an infestation is present (including for satellite infestations), including if the area is undergoing the sterile insect technique to eradicate an infestation.

Subsection 3423(b)(3) establishes a minimum radius of 4.5 miles is used surrounding qualifying detection sites as the epicenter what qualifying detections are and the number needed to trigger a quarantine area designation, that known mapping features are used when possible and that imaginary lines may be used with or without latitude and longitude points.

Subsection 3423(b)(4) establishes that any interested party may appeal the quarantine area designation and the process to do so.

Subsection 3423(b)(5) establishes when the quarantine area designation shall be removed.

Subsection 3423(b)(6) establishes the life cycle of Oriental fruit fly.

California Environmental Quality Act

A Final Programmatic Environmental Impact Report (PEIR), "The Exotic Fruit Fly Eradication Program Utilizing Male Annihilation and Allied Methods," was prepared by the Department as the lead agency under the California Environmental Quality Act (CEQA). The PEIR was assigned State Clearinghouse Number 90021212. The PEIR addresses the potential environmental impacts that would result from implementation of alternatives for the eradication of the Oriental fruit fly. The PEIR is available upon request from the Department.

Economic Impact Analysis

This amendment of the regulation establishes the processes for designating Oriental fruit fly quarantine areas and removing such areas. There are no current economic impacts as a result of this proposed amendment.

However, preventing the spread of Oriental fruit fly in California in the future through the amendment and implementation of this regulation economically benefits:

- The general public
- Homeowners and Community Gardens
- Agricultural industry
- The State's general fund

Potential Agricultural Industry Impacts

If the fly were allowed to spread and become established in host fruit production areas, California's agricultural industry would suffer losses due to decreased production of marketable fruit, increased pesticide use, and loss of markets if other states or countries enacted quarantines against California products. Host fruit includes, but is not limited to apple, apricot, avocado, cherry, citrus, cucumber, date, fig, grape, guava, nectarine, peach, pear, peppers, persimmon, plums, pomegranate and tomato.

California is the number one economic citrus state in the nation, with the USDA putting the value of California citrus at $1,131,851,000 (Federal Register Vol. 71 No.83; published May 1, 2006; pg 25487). A 2002 report by the Arizona State University School of Business indicates that there is at least $825.6 million of direct economic output and another $1.6 billion when all upstream suppliers and downstream retailers are included. This represents over 25,000 direct and indirect employees.

The 2010-2011 California Agricultural Resource placed the approximate value of the following hosts at: apples-$66 million, apricots-$37 million, avocados-$207 million, cherries-$185 million, cucumbers-$42 million, dates-$28 million, figs-$30 million, grapes-

$3,267 million, nectarines-$134 million, peaches-$326 million, pears-$93 million, peppers-$279 million, plums-$252 million and tomatoes-$1,510 million.

All of our Asian and South American country trading partners, Australia, New Zealand, the Philippines and European Union consider Oriental fruit fly a pest of quarantine concern and California exports host commodities to these countries.

Other listed hosts are being grown as specialty crops in California. These niche markets would also be negatively impacted.

Potential Impact to Homeowners and Community Gardens

Many of the host fruit attacked by the Oriental fruit fly are favorites for the home gardener and community gardens. Therefore, if Oriental fruit fly is not quarantined and is allowed to spread homeowners and community gardeners would be negatively impacted.

Potential Impacts to General Fund and Welfare

California's unemployment rate in March 2013 dropped to 9.6 per cent. During the preceding 12 months prior to March 2013, agricultural employment was up by 2.8 per cent. The agricultural industry is one of the economic engines which are lowering the State's unemployment rate. Additionally, any job losses in this area would likely be felt by low-skilled workers whose employment options are already limited. The loss of any agricultural jobs would likely result in an increase in the State's public assistance obligations which would also negatively impact the State's economic recovery.

Anticipated Benefits from This Regulatory Action

One of the Department's broad statutory objective is to prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds (FAC section 403) and that it may adopt regulations as are reasonably necessary to achieve this (FAC section 407). The Department is obligated to investigate the existence of any pest that is not generally distributed within this State and determine the probability of its spread, and the

feasibility of its control or eradication (FAC section 5321) and may establish and maintain quarantine regulations (FAC section 5322).

The existing law 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. The amendment of this regulation benefits the apple, apricot, avocado, citrus, nectarine, peach, pear, persimmon, plum and pomegranate industries (nursery, fruit for domestic use and exports, packing facilities) and the environment (urban landscapes) by having a quarantine program to prevent the spread of Oriental fruit fly should it be introduced as an incipient population.

The Department is also obligated to protect the general welfare and economy of the State and to seek to maintain the economic well-being of agriculturally dependent rural communities in this State (FAC Section 401.5). The activities authorized by this amendment of this regulation are preventing the establishment and potential spread of the Oriental fruit fly to uninfested areas of the State; including agriculturally dependent rural communities. Historically, most Oriental fruit fly quarantines in California have been associated with introductions into the urban environment.

Should it be necessary to establish a quarantine for Oriental fruit fly, the California, national and international consumers of California host fruit benefit by having high quality fruit available at lower cost. It is assumed that any increases in production costs would ultimately be passed on the consumer.

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

This regulation will benefit the public's general welfare by providing authority for the State to perform quarantine activities against Oriental fruit fly in the State.

The implementation of this regulation will prevent:

- Direct damage to the agricultural industry growing host fruits outside the quarantine area.
- Indirect damage to the agricultural industry growing host fruits do 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 an unnecessary federal regulation for the entire State.

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 with California; or 3) affect the expansion of businesses currently doing business with California. The Department has been conducting quarantine projects, primarily in southern California for over 20 years without creating or eliminating businesses.

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 or Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that Section 3423 does not impose a mandate on local agencies or school districts, except that agricultural commissioners of counties under quarantine have a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because an area will not be

designated as a quarantine area unless requested by the affected California Agricultural Commissioner(s).

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 proposed action.

The cost impact of the changes in the regulations on private persons or businesses is not expected to be significant.

The Department has determined that the proposed action will not have a significant adverse economic impact on housing costs or California businesses, including the ability of California businesses to compete with businesses in other states. The Department's determination that this action will not have a significant adverse economic impact on businesses was based on the following:

Historically, within the quarantine area, the Department identifies markets/produce vendors. These businesses must maintain quarantine commodities in a manner that precludes exposure to Oriental fruit fly. Approved safeguards include maintaining the commodities indoors, in coolers, in plastic bags, enclosed behind window screen, or covered with fine mesh or plastic. All of these methods are very inexpensive. These businesses may experience a little reduction in sales and reduced shelf life of the commodities. Neither of these reductions would represent a significant economic impact.

The Department also identifies nurseries in the area under quarantine that must treat the soil of host plants and strip the fruit of host plants before they may be moved from or within the area under quarantine. The required treatment is a soil drench with diazinon. This treatment does not have to be repeated if the fruit is kept stripped from the plants. The

cost of the treatment is low and existing nursery personnel perform the treatment and fruit stripping. The fruit is placed in plastic bags for landfill disposal. The plastic bags are inexpensive and the extra material for landfill disposal does not add appreciably to their existing disposal costs.

The Department identifies farmers' market/swap meets in the area under quarantine. Businesses selling host produce at these locations must maintain the quarantine commodities in a manner that precludes exposure to Oriental fruit fly. Approved safeguards include maintaining the commodities in coolers, in plastic bags, or covered with fine mesh or plastic. All of these methods are very inexpensive. These businesses may experience a little reduction in sales and reduced shelf life of the commodities. Neither of these reductions would represent a significant economic impact.

The Department also identifies conventional and organic growers within the quarantine area. Conventional ground spray costs are approximately $5.4 per acre. Spray applications may be made by a commercial applicator or by the growers. The total costs for organic growers may be approximately $96 per acre. Growers routinely spray for other plant pests so the additional applications should not be a significant expense and would be incurred anyway if there was no regulation and they wanted to mitigate the damage that Oriental fruit fly would cause to their host crops; except those costs would be ongoing.

The Department is not aware of any business going out of business due to a quarantine.

Based on the above information, it was determined that the amendment of Section 3423(b) will not have a significant adverse economic impact on businesses. All costs associated with compliance with the regulation are relatively low and, for the most part, a number of optional ways to comply are available to businesses so they may select the means with the lowest cost and easiest implementation for them. For many businesses, no additional costs were incurred.

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.

Information Relied Upon

The Department is relying upon the following studies, reports, and documents in the amendment of Section 3423(b):

> "Annual Fruit Fly Quarantine Cost Basis," California Department of Food and Agriculture, Plant Health and Pest Prevention Services, Permits and Regulations, January 8, 2008.
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> "Action Plan for Oriental Fruit Fly, *Bactrocera dorsalis*," Revised April 2000, California Department of Food and Agriculture.