

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations
Section 3591.2 Oriental Fruit Fly Eradication Area

INITIAL STATEMENT OF REASONS/
POLICY STATEMENT OVERVIEW

The California Department of Food and Agriculture (Department) proposes to amend 3591.2 to provide authority to the Department to eradicate, by the established means and methods, infestations of Oriental fruit fly (*Bactrocera dorsalis*) (OFF) in Fresno County.

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 as required by Food and Agricultural Code (FAC) Sections 401 and 403.

Purpose and Factual Basis

The specific purpose of amending California Code of Regulations (CCR) 3591.2 Oriental Fruit Fly Eradication Area is to expand the eradication area for the OFF in California to include Fresno County. This will allow targeted actions for eradication of OFF in Fresno County, as necessary, and reduce the chance of allowing natural and artificial dispersal and the subsequent spread of the pest in California. Any necessary eradication and quarantine actions taken by the Department will be in cooperation with the USDA and the affected county agricultural commissioners.

The factual basis for the determination by the Department that the amendment of Section 3591.2 is necessary is as follows:

On May 31, 2023, an adult male Oriental fruit fly was taken from a trap in the Fresno area of Fresno County. This detection of an adult Oriental fruit fly is indicative of a possible incipient infestation of the fly in Oriental County.

Because Oriental fruit flies are so damaging, CDFA is amending the eradication area in order to aid the Department in maintaining the economic baseline. Oriental fruit fly is a destructive insect pest of a large number of commercial agricultural crops. Fruits (including nuts, dates, and berries), many kinds of vegetables, and the fruiting bodies of many 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. It has been estimated that the cost of not eradicating Oriental fruit fly in California would be at least \$44 million in crop losses, additional pesticide use, and quarantine requirements. Thus, this incipient infestation presents a clear, imminent danger to the agricultural industry in California.

Occurrence of future Oriental fruit flies can trigger the delimitation response as outlined in the United States Department of Agriculture's Cooperative Fruit Fly Emergency Response Triggers & Guidelines. This response requires CDFA to have eradication authority in Fresno County to carry out the delimitation response.

The implementation of this proposed regulatory action is necessary to prevent the United States Department of Agriculture's Animal and Plant Health Inspection Service (USDA APHIS) from designating the entire state as infested with Oriental fruit fly, rather than just Fresno County. If USDA APHIS were to consider the entire state infested, there would likely be detrimental quarantine requirements directed against California host commodities by the USDA APHIS and our international trade partners.

This regulation will avoid harm to the public's general welfare by providing authority for the Department to perform detection, control, and eradication activities against Oriental fruit fly in Fresno County long enough to ensure that eradication is effective. It is necessary to have eradication authority to prevent spread of the fly to non-infested areas. In addition, now that a pathway for this pest into Fresno County has been established, it may be more likely that infestations will occur in the future. The amendment will allow timely response to any future detections of Oriental fruit fly in Fresno County. Therefore, it is necessary to amend this regulation to allow for eradication activities in Fresno County.

The entire county of Fresno is being proposed as an eradication area because the utilization of the county's political boundaries will avoid frequent amendments to the regulation. If the Oriental fruit fly is detected elsewhere within this county, there will be no associated regulatory impacts in areas of the county where no flies are found. By the time there is a detection, flies may have already spread naturally from the initially recognized infested area, resulting in small infestations outside the current known infested area. Additionally, these fly finds may be linked to smuggled uncertified fruit shipments which have been distributed within the area which spread flies from the initial detection to small infestations. Only through the implementation of this regulation would the Department be able to rapidly treat these small infestations in the affected county as they are detected.

If the Oriental fruit 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, if other states or countries enacted quarantines against California products, loss of markets.

Project Description

This amendment will provide authority for the State to perform specific detection, control, and eradication activities against OFF in Fresno County. This will allow targeted actions for eradication of OFF and reduce the chance of natural and artificial dispersal and the

subsequent spread of the pest in California. Any eradication actions taken by the Department will be in cooperation with the USDA and the affected county agricultural commissioners.

Current Laws & Regulations

Existing law, FAC Section 401 provides that the department will promote and protect the agricultural industry of the state.

Existing law, FAC Section 403, provides that the department will prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds.

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 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 that 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.

Expenditures, if any, allocated for the replacement nursery stock shall not exceed an amount which is budgeted for the purpose or approved by the Director of Finance.

The existing laws 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.

This amendment provides the necessary regulatory authority to prevent the artificial spread of a serious insect pest which is a mandated statutory goal.

FAC Section 401.5 states, “the department shall seek to protect the general welfare and economy of the state and seek to maintain the economic well-being of agriculturally dependent rural communities in this state.” The amendment of this regulation is preventing the potential spread of the OFF to uninfested areas of the State.

Anticipated Benefits from This Regulatory Action

The adoption of this regulation provides the necessary regulatory authority to eradicate a serious insect pest; this is a mandated, statutory goal.

This regulation is necessary to prevent the spread of OFF to un-infested areas of the State. The regulation benefits industries (nursery, fruit for domestic use and exports, packing facilities), the environment (urban landscapes), and the overall California economy by preventing the spread of OFF.

The amendment of this regulation benefits the nuts, dates, and berries (nursery, fruit for domestic use and exports, packing facilities) and the environment (urban landscapes) by enabling the Department to implement an eradication program to prevent the artificial spread of the OFF over short and long distances.

The California, national and international consumers of California nuts, dates, and berries benefit by having high quality fruit available at lower cost. It is assumed that any increases in production costs will ultimately be passed on the consumer.

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

The adoption of this regulation may benefit homeowners who grow host material for consumption and/or ornamentals in various rural and urban landscapes. By providing a basis to prevent infestation with OFF and thereby preventing damage to hosts, the regulation eliminates any future need for hosts to be treated to mitigate infestations of OFF.

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 of Food and Agriculture 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 eradication and prevention of the spread of OFF in California through the amendment and implementation of this regulation economically benefits:

- the general public
- homeowners and community gardens
- the agricultural industry
- the State's general fund

The Creation or Elimination of Jobs within the State

The Department has been conducting eradication actions throughout the State for over 30 years without causing significant creation or elimination of jobs. 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 Department has been conducting eradication actions throughout the State for over 30 years without causing significant creation of new businesses. Therefore, the Department has determined that this regulatory proposal will not have a significant impact on the creation of new businesses in the State of California.

The Expansion of Businesses in California

The Department has been conducting eradication actions throughout the State for over 30 years without causing significant impact on 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 the State of 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 of Food and Agriculture has determined that Section 3591.2 does not impose a mandate on local agencies or school districts. All eradication activities shall be conducted by the Department. 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 subsection 3591.2.

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 adoption 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 implementation of this regulation will aid in preventing increased costs to the consumers of host materials and increased pesticide usage by homeowners and others. If an infestation of OFF is not eradicated due to a delay in eradication efforts, then homeowners and community gardeners would be negatively impacted.

Potential Impacts to General Fund and Welfare

The proposed amendment does not have immediate or definitive impact to the general fund or general welfare. Rather, it would facilitate a fast and effective response if OFF is detected in the new designated eradication area. Speed of response is key to eradicating an incipient pest infestation. Programmatic delays 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. Additionally, any further job losses in this area would likely be felt by low-skilled workers whose employment options are already limited. The loss of any additional 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.

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.

Assessment

The amendment is designed to prevent or minimize the spread of OFF by amending Section 3591.2 to include Fresno County. The Department has made an assessment that the amendment to this regulation would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, (3) affect the expansion of businesses currently doing business within 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 benefit workers' safety.

The health and welfare of California residents: The proposed action will benefit the health and welfare of California residents by preventing increased costs to the consumers of host materials and increased pesticide usage.

The state's environment: The amendment of this regulation benefits the environment (urban landscapes) by providing the Department an eradication program to prevent the artificial spread of the OFF over short and long distances.

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 as and less burdensome to affected private persons than the proposed action.

The Department considered taking no action. If no action is taken, the Department would not have eradication authority for OFF in Fresno County. However, further OFF finds in Fresno could triggered the delimitation response as outlined in the United States Department of Agriculture's Cooperative Fruit Fly Emergency Response Triggers & Guidelines in Fresno County. This response requires CDFA to have eradication authority in Fresno County.

Without eradication authority to treat fruit fly infestations in Fresno County the Animal and Plant Health Inspection Service (USDA APHIS) could potentially designate the entire state as infested with OFF, rather than just infested counties. If USDA APHIS were to consider the entire state infested, there would likely be additional detrimental quarantine requirements directed against California host commodities by the USDA APHIS and our international trade partners. Therefore, this alternative was rejected.

Information Relied Upon

The Department is relying upon the following studies, reports, and documents in the amendment of Section 3591.2:

Email from Kyle Beucke on Monday, July 3, 2023 “Eradication authority for OFF & PFF”

California Department of Food and Agriculture. Pest profile: Oriental fruit fly. Accessed July 2, 2023:

https://www.cdfa.ca.gov/plant/factsheets/OFF_FactSheet.pdf

“Action Plan for Methyl Eugenol Attracted Fruit flies, including the Oriental Fruit Fly, *Bactrocera dorsalis* (Hendel),” April 2000, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.