

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations
Section 3591.6 Spongy Moth Eradication Area

INITIAL STATEMENT OF REASONS/
POLICY STATEMENT OVERVIEW

The California Department of Food and Agriculture (Department) proposes to make permanent the emergency amendment to Title 3, California Code of Regulations (CCR) Section 3591.6 Spongy Moth (SM) Eradication Area, which adds Alameda County to the list of eradication areas.

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 Section 3591.6 Spongy Moth Eradication is to add Alameda County to the list of eradication areas.

This will allow targeted actions for eradication of SM in Alameda 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 adoption of Section 591.6 amendment of Section 3591.6 is necessary is as follows:

On August 15, 2024, an adult male SM was confirmed in the Berkeley area of Alameda County. This is the first time SM has been detected in Alameda County. A single SM find triggers intensive trapping to determine whether an infestation exists and to delimit any infestation.

Spongy moth is a destructive insect pest which feeds on the leaves of trees and shrubs, threatening forests, urban settings, and agricultural tree crops. Between the flighted and unflighted species they feed on over 600 plant species. If not eradicated high populations are capable of defoliating millions of acres of both forest and urban trees. This not only kills and weakens trees, but the scale of devastation can also alter forest composition and destroys habitat for native fauna. Infestations can affect recreational use of forests, parks, and backyards. In urban areas this destruction would have an economic impact that would include the cost of clean-up, tree replacement, and loss of property values.

Project Description

Section 3591.6

In Title 3 CCR Section 3591.6 (a), Alameda County will be added to the list of counties that comprise the SM eradication area.

The proposed amendment of this eradication regulation will proclaim Alameda County as an eradication area. The entire county of Alameda is proposed as an eradication area because it is the political division that provides the most workable eradication area boundary for determining if an infestation exists and exterminating an established SM infestation. Host material may have already been moved from an infested area to another portion of the county.

Current Laws & Regulations

Existing law, FAC Section 401.5, states that 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.

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

The Department is the only agency that 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.

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 will allow the Department to add Alameda County to the eradication area. Making this change will help prevent the spread of SM, which will benefit:

- the general public
- homeowners and community gardens
- agricultural industry
- California's natural environment
- the State's general fund.

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 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 SM in California through the adoption, amendment, and implementation of this regulation economically benefits:

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

If SM was to become established within California it could greatly affect the general public. Host plants are widely grown in California, both native plants and agriculturally important crops. By adopting these regulations to prevent infestation the general public benefits by having a native environment and agriculture safe from this pest.

The adoption of these regulations benefits home gardeners who grow host material for consumption and/or ornamentals in various rural and urban landscapes. By preventing infestation with SM and thereby preventing damage to hosts, the regulations eliminate the need for hosts to be treated to mitigate infestations of spotted lanternfly.

California is a large-scale commercial producer of many host plants of SM. The Californian, national, and international consumers of California agriculture benefit by having high quality produce and produce products available at lower cost. It is assumed that any increases in production costs will ultimately be passed on the consumer. By avoiding an infestation with SM, these increased production costs will be avoided.

There are economic benefits to the State's general fund from these regulations. The cost of a spotted lanternfly infestation is unknown, but a study in Pennsylvania found the costs to the State would be \$324 million annually and more than 2,800 jobs. Preventing a wide scale infestation prevents an outcome that could potentially cost the State millions.

The Creation or Elimination of Jobs within the State

The Department has been conducting eradication and quarantine 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 and quarantine 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 and quarantine 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 has determined that Section 3591.6 does not impose a mandate on local agencies or school districts. All eradication activities shall be conducted by the Department

and quarantines by county agricultural commissioners. 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 Section 3591.6.

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 SM is not eradicated or prevented from spreading due to a delay in eradication and quarantine 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 SM is detected in the new designated eradication and quarantine 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 eradication and quarantine areas. 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 SM by amending Section 3591.6. The Department has made an assessment that the amendment to this regulation would: (1) not create or eliminate jobs within California, (2) not create new business or eliminate existing businesses within California,(3) not 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 is (6) not expected to benefit workers' safety.

Health and welfare: The proposed action will benefit the health and welfare of California residents by making it more likely that SM would be detected before an infestation can happen, and, if there is an infestation, the Department can react quickly and effectively. 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 state's environment: The proposed action will benefit the state's environment by increasing the chance that SM would be detected before an infestation can happen. If the

Department neglects to regulate the types of hosts, this pest could spread into the local environment via the surrounding non-agricultural ecosystems. This 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.

Alternatives Considered

The Department 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 in Alameda County. Without eradication authority to treat SM infestations in Alameda County, the Animal and Plant Health Inspection Service (USDA APHIS) could potentially designate the entire state as infested with SM 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 adoption and amendment of Section 3591.6:

Email from AnaMaria Nistor on Tuesday, September 4th, 2024 “Pest Detection Advisory”

CalOES, 2017. State of California Emergency Plan. Governor’s Office of Emergency Services. October 1, 2017.

“Action Plan for Gypsy Moth,” California Department of Food and Agriculture Plant Health and Pest Prevention Services. Revised May 2000

(Note: this document uses the spongy moth’s former name)