

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 amend Title 3, California Code of Regulations (CCR) Section 3591.6 Spongy Moth Eradication Area to include the entire State of California.

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

This regulation is intended to address the obligation of the Department of Food and Agriculture to protect the agricultural industry and environment from the introduction and spread of injurious plant pests within California. This amendment will allow targeted actions for eradication of spongy moth within California 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

3591.6 is necessary is as follows:

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. By increasing tree mortality significantly, spongy moth infestations can increase the risk of human injury and mortality from falling limbs and trees and from sudden road blockages.

This pest was intentionally introduced to the east coast of North America from its native range in Western Europe in 1869 for silk production. It has since spread throughout eastern North America, specifically to Maine, Wisconsin, Illinois, Indiana, Ohio, West Virginia, Virginia, North Carolina, Ontario, Quebec, New Brunswick, and Nova Scotia. A 2016 paper found that this species costs \$3.2 billion to goods and services per year in North America.

Because spongy moths are so damaging to their host plants, and the host plants, which include oaks and willows, are widespread throughout California, CDFA is amending the eradication area to include the entire state in order to aid us in maintaining the economic and environmental baseline. Spongy moth is most destructive in its larval stage, as the caterpillars devour foliage from a wide variety of trees. Insecticides can be used for its control, however these negatively affect biodiversity, can fail, and are not ideal for urban/recreational areas as they must cover the upper tree canopy in order to be effective.

Currently spongy moths are not found throughout California and when they are found CCR 3591.6 has been amended as an emergency to allow for swift treatment in the affected

area. However despite swift action on the part of the Department, the moth continues to enter California; in 2024 it was found in Alameda County for the first time, prompting an emergency amendment to CCR 3591.6. If the moth is allowed to spread and become established in host areas, California's environment would suffer losses due to decreased production of foliage and fruits, increased pesticide use, and loss of markets if other states or countries enact quarantines against California products. The urban environment also contains host plants for this pest and would be at risk as well. Therefore, the Department is proposing the amendment to Title 3 CCR Section 3591.6, Spongy Moth Eradication Area, to include the entire State of California in order to facilitate expedited action to prevent the establishment of this pest in California.

Project Description

Section 3591.6

This amendment will provide authority for the State to perform speedy detection, control, and eradication activities against spongy moth in California. This will allow targeted actions for eradication of spongy moth and reduce the chance of natural and artificial dispersal and the subsequent establishment and 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 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 allow targeted eradication activities when spongy moth is found anywhere in California. Making this change will help prevent the spread of spongy moths, 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 spongy moths in California through the adoption, amendment, and implementation of this regulation economically benefits:

The Creation or Elimination of Jobs within the State

Section 3591.6 will allow the Department to create an eradication area for spongy moths, helping prevent their spread within California should they be detected within the state.

Detection and eradication activities are currently being performed by existing state staff throughout the state by trapping and identifying invasive agricultural pests. 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

Section 3591.6 will allow the Department to create an eradication area for spongy moths, which will help prevent their spread within California should they be detected within the state. Detection and eradication activities are currently being performed by existing state staff throughout the state by trapping and identifying invasive agricultural pests. 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

Section 3591.6 will allow the Department to create an eradication area for spongy moths, which will help prevent their spread within California should they be detected within the state. Detection and eradication activities are currently being performed by existing state staff throughout the state by trapping and identifying invasive agricultural pests. 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 and 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 spongy moths 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 have an immediate or definitive impact to the general fund or general welfare. It would facilitate a fast and effective response if spongy moths are detected in the 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, including the nursery 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. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that these are the only regulations that concern spongy moth eradication areas in California.

Assessment

The amendment is designed to prevent or minimize the spread of spongy moths 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 spongy moths 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 spongy moths would be detected and treated before an infestation happens. 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 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 need to continue to amend eradication authority for spongy moths when found in new counties along with the concomitant delays in regulatory response. If these response delays allowed spongy moths to spread and become fully established in host areas, California's environment would suffer losses and loss of markets if other states or countries enact quarantines against California products which are hosts for spongy moths. 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:

“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)

Corey J.A. Bradshaw, Boris Leroy, C´eline Bellar, David Roiz, Celine Albert, Alice Fournier, Morgane Barbet-Massin, Jean-Michel Salles, Frederic Simard, Franck Courchamp,

“Massive yet grossly underestimated global costs of invasive insects” Nature Communications, 4 Oct 2016

Maria C. Boukouvala, Nickolas G. Kavallieratos, Anna Skourti, Xavier Pons, Carmen López Alonso, Matilde Eizaguirre, Enrique Benavent Fernandez, Elena Domínguez Solera, Sergio Fita, Tanja Bohinc, Stanislav Trdan, Paraskevi Agrafioti, and Christos G. Athanassiou, “*Lymantria dispar* (L.) (Lepidoptera: Erebidae): Current Status of Biology, Ecology, and Management in Europe with Notes from North America” *Insects*, September 19th, 2022, 13, 854