

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Section 3602, Assessments for Broomrape Control.

INITIAL STATEMENT OF REASONS/
POLICY STATEMENT OVERVIEW

The California Department of Food and Agriculture (Department) proposes to amend Title 3 of the California Code of Regulations (CCR) Section 3602 to amend sections (a) and (b) and add sections (d) and (e) to the regular rulemaking.

Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address

This regulation is 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 3602 is to describe the correct payment and record keeping procedures for handlers and producers for the collection of Broomrape assessment fees. There are also references to the definitions of terms used. By referencing the FAC the Department is providing clarity to the definitions without repeating legislative language.

The factual basis for the determination by the Department that the amendment of Section 3602 is necessary is as follows:

The Department must outline assessment payment procedures to ensure that California producers and handlers meet the state assessment payment and record keeping

requirements. This coordination also protects the California tomato industry by creating record keeping and payment procedures.

Project Description

Sections (a) and (b) have been amended, it adds definitions of terms used. By referencing the FAC the Department is providing clarity to the definitions without repeating legislative language.

Section (d) has been added, it describes payment instructions for producers and handlers.

Section (e) has been added, it describes record keeping activities for handlers.

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.

The Legislature hereby finds and declares all of the following:

(a) Broomrape is an invasive weed that presents a clear and present danger to California's agricultural industry due to its harmful impact on crop yields and land values of commercial food crops, including, but not limited to, lettuce, tomato, cauliflower, potato, hemp, eggplant, pomegranate, peppers, beans, peas, carrot, celery, mustard, spinach, sunflower, safflower, and fennel. Susceptible food crops, with an economic value at nearly six billion dollars (\$6,000,000,000), may experience up to 70 percent annual crop losses in areas infested with broomrape. Broomrape also impacts commercial seed production and can make agricultural land unusable for planting susceptible crops for decades.

(b) Broomrape represents a clear and present danger to California's natural environment, with susceptible hosts comprising native California flora, including rare or endangered species, such as showy Indian clover (*T. amoenum*), Buck's clover (*T. buckwestiorum*),

and Monterey clover (*Trifolium trichocalyx*). The potential long-term damage to California's native biodiversity and environment from this pest may be irreparable and action must be taken to ensure the maintenance, restoration, enhancement, or protection of the environment by developing and involving regulatory procedures for protection of the environment.

(c) The state's agricultural economy and environment could be rapidly and seriously damaged if measures are not expanded to prevent the spread of broomrape, which can produce an estimated 10,000 to 100,000 seeds per infectious plant.

(d) Financial support for the purposes of this chapter shall be provided by commodities designated in this chapter or included by the board and concurred by the secretary in accordance with procedures specified in this chapter, and by public funds when available.

(e) The necessity of controlling broomrape is recognized as being in the public interest.

(f) This chapter is enacted in the exercise of the police power of the state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

Existing law, FAC Section 7405 provides that unless the context requires otherwise, the following definitions govern the construction of this chapter:

(a) "Board" means the Broomrape Board.

(b) "Broomrape" or "Orobanche" means a small parasitic herbaceous plant.

(c) (1) "Districts" consists of the following geographical areas:

(A) District 1: The Counties of Butte, Colusa, Glenn, Placer, Solano, Sutter, Yolo, and Yuba.

(B) District 2: The Counties of Alameda, Contra Costa, Sacramento, San Benito, San Joaquin, Santa Clara, and Stanislaus.

(C) District 3: The Counties of Fresno, Madera, Merced, Monterey, San Luis Obispo, Santa Barbara, and Santa Cruz.

(D) District 4: The Counties of Imperial, Kern, Kings, Riverside and Tulare, and that portion of the County of Los Angeles lying north of the San Gabriel Mountains.

(2) When necessary to accomplish the purposes of this chapter, additional areas of the state may be added to these districts or additional districts may be established through regulation when recommended by the board and approved by the secretary.

(d) "Handler" means a person or entity who receives tomatoes from a producer and who prepares the tomatoes for processing.

(e) "Person" means a producer, handler, or any other entity that holds title to tomatoes subject to assessment pursuant to this chapter.

(f) "Producer" means a person engaged in the commercial production of processing tomatoes in California.

Existing law, FAC Section 7421 provides The Legislature hereby finds and declares all of the following:

Upon receipt of a recommendation from the board for the adoption of regulations, the secretary shall do one of the following:

(a) Initiate appropriate action to implement the recommendation of the board.

(b) Decline to initiate action on the recommendation of the board and provide the board with a written statement of reasons for the decision.

(c) Request that the board provide additional information regarding the recommendation.

Existing law, FAC Section 7423 provides that the board shall authorize reimbursement of the secretary for all expenditures incurred by the secretary in carrying out the duties and responsibilities specified in this chapter.

Existing law, FAC Section 7430 provides (a) There is hereby created the Broomrape Management Account in the Department of Food and Agriculture Fund.

(b) The Broomrape Management Account may consist of funds made available from federal, industry, and other nonpublic fund sources. Money made available from federal, industry, and other nonpublic sources shall be continuously appropriated and made available for expenditure without regard to fiscal year for the purposes of this chapter.

(c) Any funds within the Broomrape Management Account shall be used to reimburse the

secretary for the costs of carrying out recommendations of the board.

Existing law, FAC Section 7431 provides that (a) The board shall recommend an assessment rate or schedule of rates for approval by the secretary.

(b) The secretary may adjust the assessment rate or schedule of rates from time to time when recommended by the board.

(c) The assessment rate or schedule of rates may vary from district to district and from commodity to commodity based on multiple factors, including the degree of vulnerability to damage from broomrape experienced by producers.

Existing law, FAC Section 7432 provides that The assessments collected from producers shall be paid by handlers to the secretary as provided by the secretary.

Existing law, FAC Section 7433 provides that (a) Any assessment that is imposed on the producer or handler pursuant to this article is a personal debt of the person assessed.

(b) Failure to collect the assessment does not exempt the person assessed from liability and does not relieve a person from the obligation to pay the assessment.

(c) Any person who fails to file a report or pay the assessment or otherwise comply with this chapter shall pay a penalty of 10 percent of the amount of the assessment determined to be due, and, in addition, shall pay 1.5 percent interest per month on the unpaid balance of the assessment and the penalty.

Existing law, FAC Section 7434 provides that (a) Any funds received pursuant to this article shall be deposited and handled in a manner determined by the board and shall be expended for the purposes, administration, and enforcement of this chapter.

(b) To the extent that revenue generated from Section 7430 is insufficient to repay the expenditures associated with this program, the Department of Food and Agriculture Fund shall be held harmless, and the secretary shall not be required to administer the provisions of this chapter.

Existing law, FAC Section 7434.5 provides that Any costs incurred by the department in establishing, administering, and enforcing the provisions of this chapter shall be solely reimbursed by the assessment. These costs include, but are not limited to, startup costs incurred by the department before collecting the assessment, the costs of developing any regulations pursuant to this chapter, and the ongoing costs associated with the statewide coordinator.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

The Department is the only agency that can implement assessments for control of Broomrape. 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

This amendment brings clear payment and record keeping instructions for tomato producers and handlers, for the collection of Broomrape assessment fees. The tomato industry must have clear and comprehensive payment instructions as tomatoes are tested and assessed for broomrape control. There are also references to the definitions of terms used. By referencing the FAC the Department is providing clarity to the definitions without repeating legislative language.

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 proposed amendment of Section 3602 would describe clear record keeping and payment instructions for producers and handlers for broomrape assessments. The activities associated with this chapter will be important to preserve the economic baseline.

This economically benefits:

- Agricultural industry
- California's natural environment

The Creation or Elimination of Jobs within the State

The amendment is designed to inform producers and handlers of their payment and record keeping requirements, from the collection of Broomrape assessment fees. No additional staff positions will be created or eliminated by this amendment. 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 amendment is designed to inform producers and handlers of their payment and record keeping requirements, from the collection of Broomrape assessment fees. No new businesses will be required, and current activities do not eliminate existing business. Therefore, the Department has determined that this regulatory proposal will not have a significant impact on the creation of new businesses or elimination of new businesses in California.

The Expansion of Businesses in California

The amendment is designed to inform producers and handlers of their payment and record keeping requirements, from the collection of Broomrape assessment fees. No new businesses will be required, and current activities do not expand existing 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 California.

Significance Adverse Impact on Business

The amendment is designed to inform producers and handlers of their payment and record keeping requirements, from the collection of Broomrape assessment fees. No businesses are currently adversely affected by these activities. Therefore, the Department has determined that this regulatory proposal may affect small businesses

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 Sections 3601 does not impose a mandate on local agencies or school districts. 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 3602.

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 amendment of this amendment.

The Department has determined that the proposed actions 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.

Potential Impact to Homeowners and Community Gardens

The amendment is designed to inform producers and handlers of their payment and record keeping requirements from the collection of Broomrape assessment fees.. Current activities do not have an impact on homeowners and community gardens. Therefore, the Department has determined that this regulatory proposal will not have any significant adverse impacts on homeowners and community gardens in California.

Potential Impacts to General Fund and Welfare

The amendment is designed to inform producers and handlers of their payment and record keeping requirements from the collection of Broomrape assessment fees.. Current activities do not have an impact on homeowners and community gardens. Therefore, the Department has determined that this regulatory proposal will not have any significant adverse impacts on the general fund or welfare in California but will have a positive impact.

Assessment

The amendment of Section 3602 is to inform producers and handlers of their payment and record keeping requirements, from the collection of Broomrape assessment fees. 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, and (4) is not 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.

Creating clear instructions for tomato producers and handlers regarding assessment payments for the control of Broomrape will benefit California's environment and agricultural industry. It will reduce the chances of a Broomrape infestation. This virus may

spread into tomato plants, which may produce fewer products. Plants/trees with low propagule output can result in major changes to the tomato agricultural industry. It is necessary for the health, safety, or welfare of the people of the state that the regulation which requires a report apply to businesses.

Business Reporting Requirement

It is necessary for the health, safety, or welfare of the people of the state that the regulation which requires a report apply to businesses.

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

Authority cited: Sections 407, 7401, 7421,7423,7430, 7431, and 7434.5, Food and Agricultural Code. Reference: Sections 7401, 7421,7423,7430, 7431, and 7434.5 Food and Agricultural Code.