

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE  
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Sections

3406 Mediterranean Fruit Fly Interior Quarantine, 3424 Bactrocera zonata Interior Quarantine, 3425 Melon Fruit Fly Interior Quarantine, 3429 Sweetpotato Weevil Interior Quarantine, 3441 Bactrocera correcta Interior Quarantine, and 3442 Malaysian 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 as required by Food and Agricultural Code (FAC) Sections 401 and 403.

Purpose

The specific purpose of amending California Code of Regulations (CCR) Sections 3406 Mediterranean Fruit Fly Interior Quarantine, 3424 Bactrocera zonata Interior Quarantine, 3425 Melon Fruit Fly Interior Quarantine, 3429 Sweetpotato Weevil Interior Quarantine, 3441 Bactrocera correcta Interior Quarantine, and 3442 Malaysian Fruit Fly Interior Quarantine is to remove the host lists of these species and direct the public to the host lists in the corresponding Eradication Area regulations. No species are being removed or added; the only change is that the host lists will no longer be double listed within the CCR.

Factual Basis

The factual basis for the determination by the Department of Food and Agriculture (Department) that the amendment of Sections 3406, 3424, 3425, 3429, 3441, and 3442 necessary is as follows:

The host lists for these species were created to help prevent the spread of pests within California. These lists are occasionally updated by the United State Department of Agriculture (USDA), at which point the regulations are updated to match. However, the duplication of the list means two regulations need to be updated when this happens, and in the past some regulations have fallen out of sync as only one was updated.

To prevent this type of error from continuing in the future, the Department is proposing to remove one of the duplicate lists and instead include text that directs the public to the host list. By only having the host list of a given pest in one location, the potential for this error is eliminated.

#### Project Description

This amendment will remove the host lists from the regulations being amended and replace the removed host lists with text that directs the public to the host list within another regulation.

#### **3406 Mediterranean Fruit Fly Interior Quarantine (c)(1)**

The host list has been removed and the text has been edited to direct the public to the host list located in CCR 3591.5 (b) Mediterranean Fruit Fly Eradication Area. There is no change to the host species as the lists are in harmony.

#### **3424 Bactrocera zonata Interior Quarantine (c)(1)**

The host list has been removed and the text has been edited to direct the public to the host list located in CCR 3591.12 (b) Peach Fruit Fly Eradication Area. There is no change to the host species as the lists are in harmony.

### **3425 Melon Fruit Fly Interior Quarantine (c)(1) and (3)**

The host lists have been removed and the text has been edited to direct the public to the host lists located in CCR 3591.15 (b)(1) Melon Fruit Fly Eradication Area and CCR 3591.15 (b)(2) Melon Fruit Fly Eradication Area. There is no change to the host species as the lists are in harmony.

### **3429 Sweetpotato Weevil Interior Quarantine (c)(1)**

The host list has been removed and the text has been edited to direct the public to the host list located in CCR 3581 (b) Sweetpotato Weevil Control Area. There is no change to the host species as the lists are in harmony.

### **3441 Bactrocera correcta Interior Quarantine(c)(1)**

The host list has been removed and the text has been edited to direct the public to the host list located in CCR 3591.13 (b)(1) Guava Fruit Fly Eradication Area. There is no change to the host species as the lists are in harmony.

### **3442 Malaysian Fruit Fly Interior Quarantine (c)(1)**

The host list has been removed and the text has been edited to direct the public to the host list located in CCR 3591.26 (b)(1) Malaysian Fruit Fly Eradication Area. There is no change to the host species as the lists are in harmony.

### 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 5301, provides that the Secretary may establish, maintain, and enforce such quarantine regulations as they deem necessary to protect the agricultural industry of this state from pests. The regulations may establish a quarantine at the boundaries of this state or elsewhere within the state.

Existing law, FAC Section 5302, provides that the Secretary may make and enforce such regulations as they deem necessary to prevent any plant or thing which is, or is liable to be, infested or infected by, or which might act as a carrier of, any pest, from passing over any quarantine line which is established and proclaimed pursuant to this division.

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, 5761, provides that the regulations which are adopted pursuant to Article 2 (commencing with Section 5321) of Chapter 5, Part 1 of this division 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, 5762, provides that 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, 5763, provides that the director, 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, 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.

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

#### Evaluation of Inconsistency/Incompatibility with Existing State Regulations

The Department is the only agency that can implement plant quarantine and eradication areas, which the host lists are part of. As required by Gov. Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of these regulations and has determined that it is not inconsistent or incompatible with existing state regulations.

#### Anticipated Benefits from This Regulatory Action

The implementation of these regulations will help prevent potential future issues when the host lists need to be amended in the future. Have functional accurate hosts list will help prevent the spread of pests within California, which will prevent:

- direct damage to the agricultural industry growing host fruits

- indirect damage to the agricultural industry growing host fruits due 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 a State interior quarantine
- the need to implement a federal domestic quarantine

#### 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 these regulations do not impose a mandate on local agencies or school districts.

#### Economic Impact Analysis (Government Code 11346.3(b))

The prevention of the spread of pests in California through regulation of host material via the amendment and implementation of these regulations prevent economic harm to:

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

Without these amendments there is a higher risk the pests 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.

#### *The Creation or Elimination of Jobs within the State*

The amendments are intended to remove the host lists of these species from the regulations being amended and direct the public to host lists in the corresponding Eradication Area regulations. There are no changes to the host material being regulated. 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 amendments are intended to remove the host lists of these species from the regulations being amended and direct the public to the host lists in corresponding Eradication Area regulations. There are no changes to the host material being regulated. 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 amendments are intended to remove the host lists of these species from the regulations being amended and direct the public to host lists in corresponding Eradication Area regulations. There are no changes to the host material being regulated. 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*

The amendment of 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 Sections 3406, 3424, 3425, 3429, 3441, and 3442 do 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 Sections 3406, 3424, 3425, 3429, 3441, and 3442.

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 amendments are intended to remove the host lists of these species from the regulations being amended and direct the public to host lists in corresponding Eradication Area regulations. There are no changes to the host material being regulated. By having host lists that are maintained with the most current information the Department has a higher likelihood of keeping these pests out of California.

#### *Potential Impacts to General Fund and Welfare*

The proposed regulations do not have immediate or definitive impact to the general fund or general welfare. The amendments are intended to remove the host lists of these species from the regulations being amended and direct the public to host lists in corresponding



Eradication Area regulations. There are no changes to the host material being regulated. Speed of response is key to eradicating an incipient pest infestation. Programmatic delays, such as out-of-date host lists, can potentially 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.

### Assessment

These conclusions are based upon the same analysis related to the adverse economic impact on business above. Further we don't expect these actions to create jobs or businesses.

The Department has made an assessment that the amendment to these regulations would: (1) not create or eliminate jobs in the state of California, (2) not create new business or eliminate existing businesses in the state of California,(3) not affect the expansion of businesses currently doing business in the state of California, (4) benefit the health and welfare of California residents, (5) benefit the state's environment, and (6) 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 as programmatic delays create a higher risk that the pests could spread into the local environment via the surrounding non-agricultural ecosystems. This leads to increased costs to the consumers of host materials and increased pesticide usage.

The state's environment: The proposed action will benefit the environment as programmatic delays create a higher risk that the pests could spread into the local environment via the

surrounding non-agricultural ecosystems.

### Alternatives Considered

The Department of Food and Agriculture must determine that no alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as well as less burdensome to affected private persons than the proposed actions.

The Department considered taking no action. If no action is taken the host lists will continue to be repeated in multiple places. This could lead to the host lists becoming out of sync as the updates are applied, which could lead to the Department not correctly applying any quarantines to all potential host material. This could potentially result in further quarantines throughout the State with the concomitant economic and operational impacts on host commodity producers, venders, and home growers.

### Information Relied Upon

The Department is relying upon the following studies, reports, and documents in the amendment of Sections 3406 Mediterranean Fruit Fly Interior Quarantine, 3424 Bactrocera zonata Interior Quarantine, 3425 Melon Fruit Fly Interior Quarantine, 3429 Sweetpotato Weevil Interior Quarantine, 3441 Bactrocera correcta Interior Quarantine, and 3442 Malaysian Fruit Fly Interior Quarantine:

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