

DEPARTMENT OF FOOD AND AGRICULTURE
Title 3 of the California Code of Regulations

Notice of Proposed Rulemaking

45 – Day Notice

The Department of Food and Agriculture amended subsection 3591.2 of the regulations in Title 3 of the California Code of Regulations pertaining Oriental Fruit Fly Eradication Area as an emergency action that was effective on August 2, 2018. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than January 29, 2019.

This notice is being provided in compliance with Government Code Section 11346.4.

PUBLIC HEARING

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed amendment to the Department. Comments may be submitted by mail, facsimile (FAX) at 916.651.2900 or by email to Dean.Kelch@cdfa.ca.gov. The written comment period closes at 5:00 p.m. on December 31, 2018. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Dean Kelch
Department of Food and Agriculture
Plant Health and Pest Prevention Services
1220 N Street
Sacramento, CA 95814
Dean.Kelch@cdfa.ca.gov
916.406.6650
916.651.2900 (FAX)

Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this state and determine the probability of its spread and the feasibility of its control or eradication (FAC Section 5321).

Existing law also provides that the Secretary may establish, maintain and enforce quarantine, eradication and other such regulations as she deemed necessary to protect the agricultural industry from the introduction and spread of pests (FAC Sections 401, 403, 407 and 5322).

Anticipated Benefits from This Regulatory Action

Existing law, FAC section 403, provides that the department shall 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 which the Secretary is directed or authorized to administer or enforce.

Existing law, FAC section 5321, provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this State and determine the probability of its spread, and the feasibility of its control or eradication.

Existing law, FAC section 5322, provides that the Secretary may establish, maintain, and enforce quarantine, eradication, and such other regulations as are in the Secretary's opinion necessary to circumscribe and exterminate or prevent the spread of any pest which is described in FAC section 5321.

Existing law, CCR Section 3591.2, defines the state's eradication areas for Oriental fruit fly.

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.

This regulation will benefit the public's general welfare by providing authority for the State to perform detection, control, and eradication activities against Oriental fruit fly in El Dorado and Shasta counties and amend the host list in state regulation.

The implementation of this regulation 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

There is no existing, comparable federal regulation or statute regulating the intrastate movement.

The Department considered any other possible related regulations in this area, and it found that these are the only regulations dealing in this subject area, and the Department is the only State agency which can implement these eradication areas for plant pests. 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.

AMENDED TEXT

This emergency rulemaking action added El Dorado and Shasta counties to the Oriental Fruit Fly Eradication Area. The effect of the amendment of this regulation is to provide authority for the State to perform eradication activities against Oriental fruit fly in the counties of El Dorado and Shasta. This emergency rulemaking action also standardized the known host list for Oriental fruit fly in California regulation to coincide with the official Oriental fruit fly host list promulgated in 2016 by the United States Department of Agriculture (USDA).

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None and no nondiscretionary costs or savings to local agencies or school districts.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or business: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Small Business Determination

The Department has determined that the proposed regulations may affect small businesses.

Significant effect on housing costs: None.

Results of the Economic Impact Analysis

Amendment of these regulations will not:

- (1) Create or eliminate jobs within California;
- (2) Create new businesses or eliminate existing businesses within California; or
- (3) Affect the expansion of businesses currently doing business within California

The Department has determined the amendment of this regulation would benefit:

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

There are no known specific benefits to worker safety or the health of California residents.

ALTERNATIVES CONSIDERED

The Department must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either 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 or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Notice.

AUTHORITY

The Department proposes to amend subsections 3591. 2 pursuant to the authority vested by Sections 407 and 5322 of the Food and Agricultural Code.

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 407, 5322, 5761, 5762 and 5763 of the Food and Agricultural Code.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed to is: Dean Kelch, Department of Food and Agriculture, Plant

Health and Pest Prevention Services, 1220 N Street, Room 210, Sacramento, California 95814, (916) 403-6650, FAX (916) 651-2900, E-mail: Dean.Kelch@cdfa.ca.gov. In his absence, you may contact Laura Petro at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Dean Kelch.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet Web site (www.cdfa.ca.gov/plant/Regulations.html).

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed actions, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, when completed, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations adopted by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption.

Any interested person may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.