

DEPARTMENT OF FOOD AND AGRICULTURE  
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Section 3591.12 and 3424(c), Peach 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.

Specific Purpose and Factual Basis

The specific purpose of Section 3591.12 and 3424(c), is to revise and update the known host list for Peach fruit fly in California regulation to coincide with the official Peach fruit fly host list promulgated recently by the USDA.

The factual basis for the determination by the Department that the emergency amendment of Section 3591.12 and 3424(c) was necessary is as follows:

Peach fruit fly is a destructive insect pest which attacks the fruit of various plants including many crops such as citrus, tomatoes, eggplant, avocados, peaches, and cherries.

The female punctures host fruit to lay eggs which develop into larvae. The punctures admit decay organisms that may cause tissue breakdown. Larval feeding causes breakdown of fruit tissue. Fruits with egg punctures and larval feeding are generally unfit for human consumption. Pupae may be found in fruit, but normally are found in soil.

The host list of Peach fruit fly was recently revised and updated by the United States Department of Agriculture (USDA). The Department follows the host lists published by USDA in order to adhere to the best available data and in order to harmonize regulatory actions on plant pests. Recently, the Department detected a Peach fruit fly in Los Angeles County and carried out delimitation activities to determine if a quarantine was needed. It is necessary to utilize an accurate host list in order to effectively place fly traps and, in the case of a quarantine, eradicate the pest by such means as fruit removal and fruit movement regulation.

Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that Sections 3591.12 and 3424(c) does not impose a mandate on local agencies or school districts, except that agricultural commissioners of counties under quarantine have a duty to enforce it. This revision has no effect on that duty. No reimbursement is required under Section 17561 of the Government Code for the quarantine because the Agricultural Commissioner will request and approve any quarantine boundaries.

The Department also has determined that no savings or increased costs to any state agency, 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, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action. Any future quarantine activities will take place as ongoing departmental activities; changes to the Peach fruit fly host list will not require additional resources or staff.

The Department has determined that the proposed action 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. The Department's determination that this action will not have a significant adverse economic impact on businesses was based on the following:

No business has gone out of business due to any host list provisions. Many businesses have benefited from the sales of safeguarding materials and others have benefited from Peach fruit fly expenditures by State and Federal governments.

Based on the above information, it was determined that the amendment of Section 3591.12 and 3424(c) will not have a significant statewide adverse economic impact on businesses. All costs associated with compliance with the regulation are relatively low.

#### 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 that 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 her opinion necessary to circumscribe and exterminate or prevent the spread of any pest that is described in FAC Section 5321.

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.

FAC Section 401.5 states, “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.” On June 16, 2017 the United States

Department of Agriculture released a revised, more extensive host list for the

Peach fruit fly, *Bactrocera zonata*. As the state had recently detected a peach fruit fly in Los Angeles County, it was necessary to adopt the revised host list in order to successfully enforce quarantines and adjust treatments to incorporate the new information. This adoption is necessary to avoid the United States Department of Agriculture (USDA) from declaring the whole state of California a quarantine zone for peach fruit fly.

If the fly were allowed to spread and become established in host fruit production areas, California's agricultural industry would suffer losses due to decreased production of marketable fruit, increased pesticide use, and loss of markets if other states or countries enacted quarantines against California products. Therefore, it is necessary to amend the eradication regulation [California Code of Regulations Title 3 (CCR) Section 3591.12 and quarantine regulation [CCR Section 3424(c)] for peach fruit fly to reflect the changes and additions in the potential host list.

### Economic Analysis

#### Background:

Peach fruit fly, is an insect which attacks the fruit of various plants, the female punctures host fruit to lay eggs which develop into larvae. The punctures admit decay organisms that may cause tissue breakdown. Larval feeding causes breakdown of fruit tissue. Fruits with egg punctures and larval feeding are generally unfit for human consumption. Pupae may be found in fruit, but normally are found in soil. Movement of hosts infested with the larvae of the fly can artificially spread the fly in an uninfested area of California. The detection of two adult Peach fruit flies within one life cycle within a three-mile radius meets the state, federal and international standards to trigger an eradication program. The Department of Food and Agriculture (CDFA) has been concerned about the establishment of Peach fruit fly in California since the 1980s.

They have been eradicating incipient infestations as they occur at intervals since the first detection in Los Angeles in 1984.

Direct damage the pest causes to industry and any environmental impacts; including environmentally sensitive areas

#### Environmental Impact:

Currently, there is no quarantine of Peach fruit fly in California, so modifying the host list will have no environmental impact. In the case of a quarantine being triggered, implementing said quarantine with localized eradication activities minimizes or eliminates the impact of this insect pest on the surrounding environment, if the quarantine effectively regulates the actual hosts of the insect. Flora and fauna within non-agricultural ecosystems, including the natural environments, will continue their existence without the quarantine as they have before this non-native pest was first detected in this county. By neglecting to regulate the movement of host fruit, this insect 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. An established Peach fruit fly population would likely result in increased insecticide usage in the areas affected, with potential negative impacts on non-target insects, along with the species that rely on them. Therefore, modifying the host list to reflect the current best evidence will have no environmental impact or (in the case of a quarantine being triggered) a potential positive environmental impact.

#### Impact to Affected Industry:

Currently, there is no quarantine of Peach fruit fly in California, so modifying the host list would result in no impacts on affected industry. If a peach fruit fly quarantine were triggered, depending on the commodities within each county quarantined for Peach fruit fly, there may be small local impacts due to the quarantine of host fruits previously

not included on the official host list. Of the hosts being added to the revised host list, only olive is a significant crop in California, amounting to about \$160,043,000 total value in 2015. Olives are grown commercially in five counties, one of which, San Joaquin, is a likely areas for Peach fruit fly quarantine based on past detections. Olives are not sold fresh but are sold as preserved fruits or pressed into olive oil. By adding olives to the peach fruit fly host list, any olive fruit grown within the quarantine zone would be subject to the quarantine. To move such fruit would require a compliance agreement from the Department that would require specific conditions for safe movement (e.g., tarping of fruit loads and slack loading of trucks/bins to prevent fruit dropping). Depending on the establishment, growers may have to change their shipping procedures for shipments moving to processors to comply with the coverage or enclosure requirements. If shippers choose to tarp cover loads of host fruit in situations they previously would not have done so, an additional cost to the grower or to the hauler would consist of that for tarps required to cover the loads while in transit. Tarps range in price from \$2,500-\$3,000 each. It will cost the grower an additional \$1 per bin (\$50 per truck load) to tarp and transport the fruit from the field to the processor.

Prevention of the establishment of Peach fruit fly by enforcing effective quarantines when necessary will protect the growers of host crops, including olive, from significant, annual losses and increased costs associated with Peach fruit fly management.

#### Nursery Stock

Currently, there is no quarantine of peach fruit fly in California, so modifying the host list would result in no impacts to nurseries. All plant sellers of host fruit plants within a Peach fruit fly quarantine area would be impacted in the event of a quarantine. Host nursery stock must be stripped of fruit and the fruit discarded in a manner consistent with Project requirements. Containerized host nursery stock bearing fruit may not be moved as it carries potential of artificially spreading the peach fruit fly. Nevertheless, revisions to the host list would have little or no effect in these potential impacts. Only

those nurseries that sell olive trees would modify practices during a peach fruit fly quarantine.

#### Fruit Sellers

Currently, there is no quarantine of peach fruit fly in California, so modifying the host list would result in no impacts to fruit sellers. In the case of a quarantine, fruit sellers must cover all host fruit, but revision of the host list will have no effect on this.

#### Impacts to the general public

##### Home Owner Issues

Currently, there is no quarantine of peach fruit fly in California, so modifying the host list would result in no impacts to the general public. In the case of a quarantine, host fruit cannot be moved off a property. Although olive trees are rather common in horticulture, their fruit is rarely used. In the rare cases in which fruit is utilized, it is generally processed on the property. Therefore, there will be no negative impacts to the general public.

#### Other economic impacts, such as tourism, scenic beauty, etc.

##### Tourism

Currently, there is no quarantine of peach fruit fly in California, so modifying the host list would result in no impacts to tourism. In the case of a quarantine, containing this insect pest through regulatory activities to a small zone of infestation will preserve the scenic beauty of the surrounding environment. The end result is no impact to tourism. Taking no action could result in this pest spreading and becoming established in the local environments outside commercial agriculture growing areas. Pesticide applications in areas, such as parks, frequented by tourists would be required to decrease the insect population levels to minimize the plant damage. The overall negative economic impact on tourism from not adopting this regulation is likely to be absent or low.

## Consumers

Currently, there is no quarantine of peach fruit fly in California, so modifying the host list would result in no impacts to consumers. By not amending the host list, it is possible that the Peach fruit fly would become established in California. If the fly were allowed to spread and become established in host fruit production areas, California's agricultural industry would suffer losses due to increased pesticide use, decreased production of marketable fruit, and loss of markets if the United States Department of Agriculture (USDA) or other states or countries enact a quarantine against California products which can host and carry the fly.

Total numbers for each type of impacted businesses and crops outside the quarantine area:

### Number and types of impacted businesses and crops outside the quarantine area

Nurseries located outside any future quarantine area will be minimally impacted. All individual host nursery stock plants grown outside the quarantine area and shipped to a destination inside the quarantine area will be stripped of its fruit within 24 hours of arrival to be eligible for sale.

Total value of crops: Host fruit crops and nursery stock outside the quarantine area will not be impacted, as they are not subjected to any quarantine requirements.

Value of exports maintained due to the regulation: Host fruit crops and nursery stock outside the quarantine area are not impacted, as they are not subjected to any quarantine regulations.

Value of interstate commerce: Host fruit crops and nursery stock outside the quarantine area will not be impacted, as they are not subjected to any quarantine requirements.



## Number and types of impacted businesses and crops within the quarantine area

### Impacted Commodities

Currently, there is no quarantine of peach fruit fly in California, so modifying the host list would result in no impacts to businesses or crops.

### Costs of compliance

The costs of compliance are stated under Impact to Affected Industry.

### Value of any economic losses.

With the exception of olives, a crop not grown in the areas subject to past Peach fruit fly quarantines, the proposed additions to the Peach fruit fly host list are not commercial crops. Therefore, the economic losses due to the revision of the Peach fruit fly host list would range from insignificant to exceedingly small, depending on the location of the quarantine. Barring a Peach fruit fly quarantine, there would be no losses.

### Program's costs/resources used or saved

The Peach fruit fly Project is located at an existing state office and is managed by a local CDFR employee who has an assigned vehicle. This office will continue to operate normally regardless of this regulation revision.

### Program description

The overall objectives of the Peach fruit fly Project are:

1. To ensure that all host nursery stock shipped from the quarantine area is free of Peach fruit fly.
2. To ensure that host fruit does not leave the Peach fruit fly Quarantine area.

### Consequences of no regulation

Will other states implement quarantines?

Yes

Will the USDA regulate the entire State?

Yes

Will other countries enact quarantine regulations?

Yes

Will there be a change in pesticide use by the public?

There will be little increase in pesticide use if this insect pest remains at low population levels. At higher levels, pesticide treatment would be necessary to harvest quality fruit.

### Alternatives to the Regulation

Can the regulation be written differently and achieve its goal?

No. Any Interior State quarantine must parallel the federal quarantine or the USDA will regulate the entire state of California as a quarantined area instead of the localized quarantine area.

If there are alternative approaches a cost/benefit analysis of each is required which justifies the approach taken. n/a

### Anticipated Benefits of the Regulation

Who will benefit.

The benefits expected from the program include:

1. Maintaining shipments of host commodities grown outside any future quarantine area to other states.
2. Maintaining exports of host commodities grown outside any future quarantine area.

3. Preventing the artificial spread of Peach fruit fly to non-infested areas of California.
4. The general public.

#### Statutory goal benefits

FAC 401.5 – 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.

FAC 403 - The department shall prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds.

FAC 407 – The Secretary may adopt such regulations as are reasonably necessary to carry out the provisions of this code which she is directed or authorized to administer or enforce.

FAC 5321 – The Secretary is obligated to investigate the existence of any pest that is not generally distributed within the State and determine the probability of its spread and the feasibility of its control or eradication.

FAC 5322 – The Secretary may establish, maintain, and enforce quarantine, eradication, and such other regulations as are in her opinion necessary to circumscribe and exterminate or prevent the spread of any pest which is described in FAC section 5321.

#### Assessment

The Department has made an assessment that the amendment to this regulation would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing

business within California.

Alternatives Considered

The Department of Food and Agriculture has determined 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 action.

Information Relied Upon

The Department is relying upon the following studies, reports, and documents in the amendment of Section 3591.12 and 3424(c):

Email from Stephen Brown (CDFA) to Dean Kelch. June 20, 2017. California Department of Food and Agriculture.

Email from Stephen Gaimari (CDFA) to various. June 20, 2017. California Department of Food and Agriculture.