

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Section

Section 3591.22 False Codling Moth Eradication Area

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

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

A review of Section 3591.22 has resulted in the California Department of Agriculture (Department) making multiple clarifications, corrections to the host list species, and an addition to the Method and Means section. The Section 3591.22 host list was last updated in 2008, and since then other species have been found to be hosts. There have also been name changes among some species. An inaccurate host list in Section 3591.22 provides a source of potential confusion to the public and could result in host material unknowingly being moved, which could lead to furthering an infestation.

The regulation also did not make clear that plant parts are liable to carry the pest. Section (b) and (d) have been amended to address this.

Factual Basis

The factual basis for the determination by the Department that the amendment of Section 3591.22 necessary is as follows:

False codling moth is a destructive pest of avocado, citrus, and cotton in its native range within the African continent. Its larva causes significant damage by feeding directly on fruit. This feed can result in premature ripening, fruit drop, and secondary infection by fungi. False codling moths have been found on over 50 species of plants and in a wide range of climate zones. Many of these plants and climate zones exist in California. If false codling moth were to become established within the state, it would harm several agricultural industries, including citrus. California is a major producer of citrus fruits; in 2021 it accounted for 74 percent of the total value of the U.S. citrus crop. If false codling moth were to become established in California it would also threaten other agricultural crops.

The eradication regulation for false codling moth was created to help prevent the spread of pests within California. This regulation has not been updated since its creation in 2008. During a recent review of this regulation, it was found that the regulation's host list does not fully reflect current findings for potential hosts for this species. An accurate host list is one of the ways the Department prevents infestations of pests and ensures consistent application of regulations. The proposed amendment adds hosts to the list from a variety of sources, including a 2011 academic paper and a 2020 paper from the European Food Safety Authority. These recent publications show hosts that are not currently on the regulation's host list, and these have been added in this amendment.

The United States Department of Agriculture (USDA) published Pest Response Guidelines for the false codling moth in 2007. While reviewing this document, the Department found that plant parts are liable to carry the pest. This was not reflected in the 3591.22 regulation. Two edits have been made: Section (b) was changed to establish that plant parts of species on the e host list are considered hosts, and section (d) was changed so that removal and

destruction of all plant parts known to harbor, or capable of harboring, any stage of false codling moth is a means of control or eradication.

Project Description

Section 3591.22 (a)

Previously, this section stated that the portion of the state, now the word portion has been pluralized. This reflects that the pest may be found in multiple areas of the state, all of which would be included in eradication areas.

Section 3591.22 (b)

Plant parts have been added to the description of things that are capable of hosting the pest. This reflects USDA guidelines. Following these guidelines is a best practice for preventing the pest from becoming established in within California.

After a review of the most current pest studies the following species have been added to the host list:

<i>Scientific Name</i>	<i>Common Name</i>
<i>Vachellia (Acacia) karroo</i>	<u>Sweet thorn</u>
<i>Capparis spp.</i>	<u>Caper</u>
<i>Capsicum annuum</i>	<u>Chili pepper</u>
<i>Chrysophyllum magalis-montanum</i>	
<i>Crassula spp.</i>	<u>Jade plant</u>
<i>Diospyros virginiana</i>	<u>American Persimmon</u>
<i>Eugenia spp.</i>	<u>Stopper</u>
<i>Macadamia integrifolia</i>	<u>Macadamia nut</u>
<i>Rosa spp.</i>	<u>Rose</u>
<i>Saccharum officinarum</i>	<u>Sugarcane</u>

The following species' names have been updates:

<i>Scientific Name</i>	<i>Common Name</i>
<i>Abutilon</i> æx <u>hybridum</u>	Indian mallow
<i>Abutilon</i> spp.	Flowering-maple, Mallow
<i>Averrhoa carambola</i>	Carambola, <u>star fruit</u>
<i>Calotropis procera</i>	Sodom-apple
<i>Citrus</i> æx <u>aurantiifolia</u>	<u>Key Lime</u>
<i>Citrus</i> æx <u>limon</u>	Lemon
<i>Citrus</i> æx <u>paradisi</u>	Grapefruit
<i>Citrus</i> æx <u>paradisi</u> x <i>Citrus reticulata</i>	Tangelo
<i>Citrus reticulata</i> x <i>Citrus</i> æx <u>sinensis</u>	Temple orange
<i>Citrus</i> æx <u>sinensis</u>	Sweet orange
<i>Combretum apiculatum</i>	Red bushwillow, Rooibos
<i>Ficus capensis</i>	Wild <u>Cape fig</u>
<i>Harpephyllum</i> æx <u>cattffrum</u>	Kafir South African wild-plum
<i>Mim</i> æx <u>isops zeyheri</u>	Red milkwo <u>o</u> eed
<i>Prunus</i> æx <u>domestica</u>	<u>Plum</u> , Prune
<i>Schotia speciosa</i>	<u>Boonenboom</u> Hottentot kafir bean tree
<i>Sclerocarya caffra</i>	Marula, Kafir marvolanut
<i>Sida</i> spp.	Sida, <u>Fanpetals</u>
<i>Sorghum</i> spp.	Sorghum, <u>Broom-corn</u>
<i>Vitis vinifera</i>	Wine G grape
<i>Zea mays</i>	Corn, <u>maize</u>
<i>Ziziphus mucronata</i> æ	Buffalo thorn

In addition, the hosts *Podocarpus falcatus* and *Pennisetum purpureum*, Outeniqua yellowwood and Elephant grass, names have changed to *Afrocarpus (Podocarpus) falcatus*

and *Cenchrus (Pennisetum) purpurea*, and this change is reflected in the host list by removing the previous entry and adding the new spelling.

Section 3591.22 (d)

In Section 3591.22 (d)(1) the wording has been slightly changed to reflect that insecticides may be in spray, dust, bait, or other forms.

Section 3591.22 (d)(2) has been added to allow the removal and destruction of all plant parts which are known to harbor, or are capable of harboring, any stage of false codling moth. This addition reflects the USDA guidelines that plant parts are liable to carry the pest. Allowing removal and destruction of host plant parts will help keep this pest from becoming established in California should it be found.

Current Laws & Regulations

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 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 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, FAC section 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, ad 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 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 they thinks is necessary.

Existing Law, Title 3 CCR Section 3591.22, lists the counties within the false codling moth eradication area, the plants within this area that are consider public nuisances if infested or exposed to infestation, and the means and methods by which the Department is authorized to carry out eradication.

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, of which the host lists are part. 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 this amendment will prevent potential future issues should false codling moth be found in California. Functional, accurate host lists and eradication strategies help prevent the spread of pests within California; this 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 this regulation does 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 false codling moth host material via the amendment and implementation of this regulation preserves the economic baseline and prevents economic harm to:

- the general public via produce cost and availability
- homeowners and community gardens
- agricultural industry
- the State's general fund.

By neglecting to correctly regulate hosts of false codling moth 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 over time.

The Creation or Elimination of Jobs within the State

The Department has been conducting eradication actions throughout the state for over 30 years without causing significant creation or elimination of jobs. 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 Department has been conducting eradication actions throughout the state for over 30 years without causing significant creation or elimination of jobs. 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 Department has been conducting eradication actions throughout the state for over 30 years without causing significant impact on 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 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 has determined that Section 3591.22 does not impose a mandate on local agencies or school districts. All eradication activities would be conducted by the Department. 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 3591.22.

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 action 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 amendment is to prevention of the spread of false codling moth in California through regulation of host material. By including up-to-date host lists and regulate host material in regulation, the Department can more effectively prevent the establishment of targeted pests in California.

Potential Impacts to General Fund and Welfare

The proposed regulation does not have immediate or definitive impact to the general fund or general welfare. The amendment is to prevent the spread of false codling moth in California through regulation of host material. Programmatic response delays due to having out-of-date host lists may lead to pest quarantines, as well as to 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. Effective and non-duplicative regulation helps maintain the baseline.

Assessment

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

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 businesses 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, (6) not expected to benefit workers' safety, and (7) maintain the economic baseline.

The health and welfare of California residents: The regulation benefits industries (fruit for domestic use and exports, packing facilities), the environment (urban landscapes), and the overall California economy by preventing the spread of false codling moth. The agricultural industry is one of the economic engines in the state. Negative impacts to agriculture impact the state's economy and the general welfare of the State.

The state's environment: The amendment of this regulation benefits environment (urban landscapes) by providing the Department an eradication program to prevent the artificial spread of the false codling moth over short and long distances. False codling moth spread could cause an increase in pesticide use by industry and homeowners.

Alternatives Considered

The Department 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 eradication response will continue to not reflect current knowledge of this pest. This could lead to the Department not correctly applying appropriate restrictions to potential host material. This may result in additional 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 Section 3591.22:

California Department of Agriculture, California Agricultural Statistics Review 2021-2022, page 59

European Food Safety Authority (EFSA), Antoon Loomans, Tom van Noort, Martijn Schenk, Alice Delbianco, Sybren Vos, Pest survey card on *Thaumatotibia leucotreta*, July 30, 2020

United States Department of Agriculture, New Pest Response Guidelines False Codling Moth *Thaumatotibia leucotreta*, August 13, 2007

Proc. Entomol. Soc. Wash, Todd M. Gilligan, Marc E. Epstein, And Kevin M. Hoffman, Discovery of False Codling Moth, *Thaumatotibia Leucotreta* (Meyrick), In California (Lepidoptera: Tortricidae), 113(4), 2011, Pp. 426–435