

DEPARTMENT OF FOOD AND AGRICULTURE  
Title 3 of the California Code of Regulations  
Section 3591.22 False Codling Moth Eradication Area

**Notice of Proposed Rulemaking  
45 – Day Notice**

The California Department of Food and Agriculture (Department) proposes to make an amendment to Title 3 of the California Code of Regulations (CCR) Section 3591.22 False Codling Moth Eradication Area to make multiple clarity edits, corrections to the host list species, and an addition to the Method and Means section.

**PUBLIC HEARING**

A public hearing is not scheduled. However, 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 regulations to the Department. Comments may be submitted by USPS, FAX or email. The written comment period closes on May 28th, 2024. The Department will consider only comments received at the Department offices by that date or postmarked no later than May 28th, 2024. Submit comments to:

Erin Lovig, Senior Environmental Scientist Supervisor  
California Department of Food and Agriculture 1220 N St,  
Sacramento, CA 95814  
Permits@cdfa.ca.gov  
916.403.6650  
916.651.2900 (FAX)

Questions regarding the substance of the proposed regulation should be directed to Erin Lovig. In her absence, you may contact Dean Kelch at (916) 261-9252 or dean.kelch@cdfa.ca.gov, FAX number (916) 651-2900.

Unless there are substantial changes to the proposed regulations prior to adoption, the Department may adopt the proposal as set forth in this notice without further notice to the public. Following the public hearing, if one is requested, or following the written comment period if none is requested, the Department, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

## **AUTHORITY**

The Department proposes to amend Section 3591.22 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.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

A review of Section 3591.22 has resulted in the Department making multiple clarifications, corrections to the host list species, and an addition to the Method and Means section. Section 3591.22's 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.

## **EXISTING 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 which the Secretary is directed or authorized to administer or enforce.

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.

## **ANTICIPATED BENEFITS OF THE PROPOSED AMENDMENT**

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

There are no existing, comparable federal regulations or statutes regulating false codling moths.

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

## **EVALUATION OF INCONSISTENCY / INCOMPATIBILITY WITH EXISTING STATE REGULATIONS**

The Department considered any other possible regulations addressing the pest false codling moth, and it found that the proposed amendment is the only regulation dealing with this subject, and the Department is the only State agency which can manage eradication areas. As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of Section 3591.22 and has determined that it is not inconsistent or incompatible with existing state regulations.

## **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

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.).

## **DISCLOSURES REGARDING THE PROPOSED ACTION**

*The Department has made the following initial determinations:*

Mandate on local agencies or school districts: None.

There is 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.

Cost or savings to any state agency: None

Other nondiscretionary cost or savings imposed on local agencies: None.

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

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

Significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states: The cost impacts are expected to be minimal/non-consequential. The Department makes the initial determination that the proposed action will not have a significant, statewide adverse economic impact.

Significant effect on housing costs: None

Small business determination: The proposed regulation would be unlikely to affect small business. The Department has been conducting eradication actions throughout the state for over 30 years without causing significant creation or elimination of jobs or causing any other significant impact on businesses..

## **RESULTS OF THE ECONOMIC IMPACT ANALYSIS / ASSESSMENT**

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, (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 allowing a quick response to prevent 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, as well as the loss of home fruit.

### **CONSIDERATION OF ALTERNATIVES**

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, 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.

The Department invites interested persons to present alternatives during the written comment period.

### **AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE**

The Department has prepared an initial statement of reasons for the proposed action and has made available all the information upon which its proposal is based and the express terms of the proposed action. The Department has posted the information regarding this proposed regulatory action on its Internet website ([www.cdffa.ca.gov/plant/Regulations.html](http://www.cdffa.ca.gov/plant/Regulations.html)). 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, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After the comment period and considering all timely and relevant comments received, the Department may amend the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer named herein. The Department will accept

written comments on the modified regulations for 15 days after the date on which they are made available.

**AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the agency officer named herein.