

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Section

Section 3436 Bactrocera albistrigata Interior Quarantine

Section 3591.23 White Striped Fruit Fly 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 Department of Food and Agriculture (Department) 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

In Section 3436 (c)(1) Bactrocera albistrigata Interior Quarantine, the host list will be removed and a reference to Section 3591.23(b), White Striped Fruit Fly Eradication Area, will be added. The host list in Section 3591.23(b) will be reformatted to be more readable and updated to match the United States Department of Agriculture (USDA) host list. Currently both these lists are incomplete and not in harmony. By the Department referencing the list in Section 3591.23 (b), there will only be one list for the public to reference, and by updating this list with current United States Department of Agriculture (USDA) information, Section 3591.23 (b) will offer the best possible regulatory guidance if this pest is found.

Factual Basis

The factual basis for the determination by the Department that the amendment of Section 3436 and 3591.23 necessary is as follows:

White striped fruit fly (WSFF) is a destructive insect pest of multiple agricultural crops. Larval feeding reduces the interior of fruit to a rotten mass. Egg punctures admit decay organisms that cause tissue breakdown. Damaged fruit is generally unfit for human consumption. Guava, one of the hosts of WSFF, is a specialty crop grown in multiple counties of California and would be at risk if this pest were allowed to spread.

The host list for WSFF was created to help prevent the spread of pests within California. Such lists are occasionally updated by the USDA, at which point the regulations are updated to match. However, the duplication of the Department's lists in regulation means that two regulations need to be updated when USDA updates its list, and in the past, inadvertently, only one list was in fact updated. Section 3436 provides State regulation of host movement and possible carriers of *Bactrocera albistrigata* within and from the area under quarantine to prevent artificial spread of the pest to noninfested areas to protect California's agricultural industry. Section 3591.23 is a proclamation where the white striped fruit fly, *Bactrocera albistrigata*, is known to exist, is hereby proclaimed to be an eradication area with respect to said pest.

To prevent this type of error from continuing in the future, the Department is proposing to remove one of the duplicate host lists and instead include text that directs the public to a single host list.

Project Description

In Section 3436 (c)(1) *Bactrocera albistrigata* Interior Quarantine, the host list will be removed and a reference to Section 3591.23(b) will be added. The lists in regulations 3436 and 3591.23 are both missing species currently in the USDA host lists, so the list in 3591.23 will have several species added to bring it into harmony with the USDA list.

The following species will be added to the Section 3591.23f list in order to harmonize with the current host list maintained by the USDA:

Scientific Name	Common Name
<i>Averrhoa carambola</i> L.	Carambola, starfruit
<i>Mimusops elengi</i> L.	Medlar, Spanish-cherry
<i>Ochrosia oppositifolia</i> (Lam.) K. Schum	Mangga laut
<i>Scolopia spinosa</i> Warb.	N/A
<i>Syzygium samarangense</i> (Blume) Merr. & L. M. Perry	Java-apple, semarange rose-apple, wax apple
<i>Terminalia procera</i> Roxb.	White bombway

Current 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 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 Section 5761, provides that the Secretary 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 the Secretary may proclaim 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, FAC Section 5763, provides that the Secretary, 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, FAC Section 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. 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 help prevent potential future issues when the WSFF host list needs to be amended. Functional and accurate host lists 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 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 WSFF host material via the amendment and implementation of this regulation prevents economic harm to:

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

By neglecting to correctly regulate hosts of WSFF 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 amendment is to remove the host list of WSFF in Section 3436 and direct the public to the same host list in the corresponding eradication area regulation, Section 3591.23, and update the host list. 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 amendment is to remove the host list of WSFF in Section 3436 and direct the public to the same host list in the corresponding eradication area regulation, Section 3591.23, and

update the host list. 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 amendment is to remove the host list of WSFF in Section 3436 and direct the public to the same host list in the corresponding Eradication Area regulation, Section 3591.23, and update the host list. 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 Sections 3436 and 3591.23 do not impose a mandate on local agencies or school districts. All eradication activities shall 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 3436 and 3591.23.

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 remove the host list of WSFF in Section 3436 and direct the public to the same host list in the corresponding eradication area regulation, Section 3591.23, and update the host list. By maintaining host lists that contain up-to-date information, the Department has a higher likelihood of keeping the pest out of 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 remove the host list of WSFF in Section 3436 and direct the public to the same host list in the corresponding eradication area regulation, Section 3591.23, and update the host list. Programmatic delays resulting from out-of-date host lists can lead to pest quarantines, increased production costs, and job loss. The agricultural industry is one of the economic engines in California. Negative impacts to agriculture can impact the state's economy and the general welfare of the state. 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 economy.

Assessment

These conclusions are based upon the same analysis related to the adverse economic impact on business above. Furthermore, 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 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, 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 by preventing programmatic delays resulting from out of date - host lists , can lead to pest quarantines, increased production costs and job loss. The agricultural industry is one of the economic engines in the California. 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 the environment as correctly regulating hosts of WSFF lowers the risk that the pests could spread into the local environment via the surrounding non-agricultural ecosystems. WSFF spreading 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.

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 incorrect and repeated in multiple places. This could lead to the host lists becoming out of sync as the updates are applied, which could lead to public confusion concerning host material and regulatory delays. This would potentially result in further quarantines throughout California 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 3436 and 3591.23:

Animal and Plant Health Inspection Service (APHIS), White Striped Fruit Fly, *Bactrocera albistrigata*, Host List, August 2019

Margaret L. Margosian, USDA-APHIS-PPQ-CPHST-STT, Manhattan, KS
Christie A. Bertone, Daniel M. Borchert, Yu Takeuchi, USDA-APHIS-PPQ-CPHST-PERAL, Raleigh, NC, Identification of Areas Susceptible to the Establishment of Fifty-three *Bactrocera* spp. (Diptera: Tephritidae: Dacinae) in the United States

Email, From Khoa Lam, RE: Question About Guava, Thursday, September 21, 2023

Email, From Porfirio Mancillas, RE: Question About Guava, Thursday, September 21, 2023