

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations
Section 3591.11 Caribbean Fruit Fly Eradication Area

INITIAL STATEMENT OF REASONS/
POLICY STATEMENT OVERVIEW

The California Department of Food and Agriculture (Department) proposes to adopt 3591.11 to provide authority to the Department to eradicate, by the established means and methods, infestations of Caribbean fruit fly (*Anastrepha suspensa*) (CFF) from within the declared eradication areas.

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 to protect the agricultural industry from the movement and spread of injurious plant pests within California as required by Food and Agricultural Code (FAC) Sections 401 and 403.

Purpose and Factual Basis

The specific purpose of amending California Code of Regulations (CCR) 3591.11 Caribbean Fruit Fly Eradication Area is to expand the eradication area for the Caribbean fruit fly in California to include Santa Clara County. This will allow targeted actions for eradication of CFF in Santa Clara County and reduce the chance of allowing natural and artificial dispersal and the subsequent spread of the pest in California. Any eradication and quarantine actions taken by the Department will be in cooperation with the USDA and the affected county agricultural commissioners.

The factual basis for the determination by the Department that the amendment of Section

3591.11 is necessary is as follows:

The CFF 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 drop out and are found in soil.

The detection of an adult CFF meets the State's, national and international standards that mandate intensive delimitation efforts to determine if an incipient infestation of the fly exists in these areas.

The Californian, national and international consumers of California's apples, citrus, peaches, tomatoes, and other host crops benefit from adoption of this regulation by having high quality fruit available at lower cost. The Department that any increases in production costs will ultimately be passed on the consumer. The adoption of this regulation also benefits homeowners who grow their own host fruits for consumption.

On August 30, 2021 a CFF was unexpectedly trapped in Santa Clara County, in the San Jose area. This is the first time Caribbean fruit fly (CFF) has been detected in Santa Clara County. The entire County of Santa Clara is being proposed as eradication area because the utilization of these political boundaries will avoid frequent amendments to the regulation if the CFF is detected elsewhere within this county. There are no associated impacts with the regulation if no flies are found. The detection of one CFF is the trigger for delimitation trapping to confirm either there are no other flies present and no further actions are necessary, or treatment activities begin upon the detection of a second fly. If delimitation trapping is not implemented, then one fly is the trigger for a quarantine and by default this would include the entire County of Santa Clara. This would have a significant impact on many of California's exports of CFF host material. Many trading partners do not accept host material produced or transiting through a quarantine area. China, Japan and South Korea may all refuse to accept host material in the event of a quarantine.

If the fly were allowed to spread and become further 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 available markets. This regulation will avoid harm to the public's general welfare by providing authority for the State to perform detection, control, and eradication activities against CFF in Santa Clara County. Therefore, the inclusion of the entire County of Santa Clara in the eradication area for CFF will help maintain the economic baseline.

Project Description

This amendment will provide authority for the State to perform specific detection, control, and eradication activities against CFF in Santa Clara County. This will allow targeted actions for eradication of CFF and reduce the chance of allowing natural and artificial dispersal and the subsequent spread of the pest in California. Any eradication actions taken by the Department will be in cooperation with the USDA and the affected county agricultural commissioners.

Current Laws & Regulations

Existing law, FAC Section 401 provides that the department will promote and protect the agricultural industry of the state.

Existing law, FAC Section 403, provides that the department will 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 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.

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.

Although host removal is not currently a component of fruit fly eradication activities, 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.

Expenditures, if any, allocated for the replacement nursery stock shall not exceed an amount which is budgeted for the purpose or approved by the Director of Finance.

The existing laws described above 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. The amendment of this regulation benefits the apple, citrus, date, fig, guava, loquat, mango, peach, pear, pomegranate and tomato industries (nursery, fruit for domestic use and exports, packing facilities) and the environment (urban landscapes) by having an eradication program to prevent the artificial spread of the CFF over short and long distances.

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.” The amendment of this regulation is preventing the potential spread of the CFF to uninfested areas of the State.

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 this regulation and has determined that it is not inconsistent or incompatible with existing state regulations.

Anticipated Benefits from This Regulatory Action

The amendment of this regulation provides the necessary regulatory authority to eradicate a serious insect pest which is a mandated statutory goal.

This regulation is necessary to prevent the spread of CFF to un-infested areas of the State. The regulation benefits industries (nursery, fruit for domestic use and exports, packing facilities), the environment (urban landscapes), and the overall California economy by preventing the spread of CFF.

The California, national and international consumers of California apples, citrus, peaches and tomatoes benefit by having high quality fruit available at lower cost. It is assumed that any increases in production costs will ultimately be passed on the consumer.

The amendment of this regulation benefits homeowners who grow their own host fruits for consumption and host material which is planted as ornamentals in various rural and urban landscapes.

California Environmental Quality Act

Prior to conducting any action authorized by this regulation, the Department will conduct an environmental analysis pursuant to 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 eradication and prevention of the spread of CFF in California through the amendment and implementation of this regulation economically benefits:

- the general public
- homeowners and community gardens
- the agricultural industry

- the State's general fund

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 of new businesses. 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

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 of Food and Agriculture has determined that Section 3591.11 does 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 subsection 3591.11.

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 actions 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 implementation of this regulation will prevent increased costs to the consumers of fruit affected by CFF and increased pesticide usage by homeowners and others. If an infestation of CFF is not eradicated due to a delay in eradication efforts, then homeowners and community gardeners would be negatively impacted.

Potential Impacts to General Fund and Welfare

The proposed regulation does not have immediate or definitive impact to the general fund or general welfare. Rather, it would facilitate a fast and effective response if CFF is detected in the designated eradication area. Speed of response is key to eradicating an incipient pest infestation. Programmatic delays potentially can lead to pest quarantines, as well as 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.

The Department is the only agency which can implement plant quarantines. 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.

Assessment

The amendment is designed to minimize the spread of CFF by amending Section 3591.11 to include Santa Clara County. 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 must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

The Department considered taking no action. If no action is taken, the Department would not have eradication authority for CFF in Santa Clara County. However, the CFF finds in Santa Clara County triggered the delimitation response as outlined in the United States Department of Agriculture's Cooperative Fruit Fly Emergency Response Triggers & Guidelines in Santa Clara County. This response requires CDFA to have eradication authority in Santa Clara County.

Without eradication authority to treat the fruit fly infestation in Santa Clara County the Animal and Plant Health Inspection Service (USDA APHIS) could potentially designate the

entire state as infested with CFF, rather than just Santa Clara County. If USDA APHIS were to consider the entire state infested, there would likely be additional detrimental quarantine requirements directed against California host commodities by USDA APHIS and California's international trade partners. Therefore, this alternative was rejected.

Information Relied Upon

The Department is relying upon the following studies, reports, and documents in the amendment of Section 3591.11:

Action Plan for Caribbean Fruit Fly, California Department of Food and Agriculture, Revised April 2000

CalOES, 2017. State of California Emergency Plan. Governor's Office of Emergency Services. October 1, 2017.

Email, 2021. From Martin Hauser, CDFA Plant Pest Diagnostics Center, August 31, 2021. Regarding San Jose, Santa Clara County find of CFF.