

FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture (Department) finds that an emergency exists, and that the foregoing regulation is necessary to avoid serious harm to the public peace, health and safety, or general welfare. On August 30, 2021, Caribbean fruit fly, (*Anastrepha suspensa*), 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.

CFF is a pest that infects a wide variety of agricultural products that are grown throughout California. As Santa Clara currently has no eradication area for CFF, it is necessary to amend the eradication area regulation to successfully implement eradication actions. Because CFF can disperse and populations can expand rapidly, even small delays may make the difference between a successful pest eradication and a spreading infestation. A newly mature adult requires only 14 days to mature and can lay over 300 eggs in host fruit, which larvae will emerge from in 8 to 12 days. There can be a second generation of CFF within a month. Therefore, eradication authority must be established quickly to allow early intervention and eradication.

Emergency Defined

“Emergency” means a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare,” Government Code (Gov. Code) Section 11342.545. If a state agency makes a finding that the adoption of a regulation is necessary to address an emergency, the regulation may be adopted as an emergency regulation, per Gov. Code Section 11346.1(b)(1).

In this document, the Department is providing the necessary specific facts demonstrating the existence of an emergency and the need for immediate action to prevent serious harm to the general welfare of the citizens of California, pursuant to Gov. Code Section 11346.1(b)(2).

Gov. Code Section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency.

Government Code Section 11346.1(a)(3) provides that if the emergency situation clearly poses such an immediate, serious harm that delaying action to allow public comment would be inconsistent with public interest, an agency is not required to provide notice pursuant to Government Code Section 11346.1(a)(2) (See Evidence of Emergency).

The Secretary believes that this emergency clearly poses such an immediate, serious harm that delaying action to give the notice pursuant to Government Code Section 11346.1(a)(2) would be inconsistent with the public interest, within the meaning of the Government Code Section 11349.6(b).

The information contained within this finding of emergency also meets the requirements of Government Code Sections 11346.1 and 11346.5.

The Secretary is proposing to adopt this regulation pursuant to the authority in Food and Agricultural Code (FAC) Section 407, which states, “the director 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,” and FAC Section 5322: “the director may establish, maintain, and enforce quarantine, eradication, and such other regulations as are in his or her opinion necessary to circumscribe and exterminate or prevent the spread of any pest which is described in FAC Section 5321.”

Additionally, 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,” and Section 403 states: “the department shall prevent the spread of injurious insect pests.”

Evidence of Emergency

Under Section 14.9 of the State of California Emergency Plan, dated October 1, 2017, the Department is responsible for coordinating integrated federal, state and local preparedness for response to, recovery from, and mitigation of plant diseases and pests, and overseeing the control and eradication of outbreaks of harmful or economically significant plant pests and diseases. The Department is also charged with leading the administration of programs to detect, control and eradicate pests affecting plants.

CFF is an insect pest which attacks the fruit of various plants including:

Common Name	Botanical Name
Akee	<i>Blighia sapida</i>
Allspice	<i>Pimenta dioica</i>
Ambarella	<i>Spondias cytherea</i>
Atemoya	<i>Annona cherimola</i> X <i>A. squamosa</i>
Apple	<i>Malus sylvestris</i> , <i>Malus domestica</i> <i>Malus</i> spp.
Autumn Maple Tree	<i>Bischofia javanica</i>
Avocado, except commercial fruit	<i>Persea americana</i>
Balsam Apple	<i>Momordica balsamina</i>
Barbados Cherry	<i>Malpighia glabra</i>
Bell Pepper, except commercial fruit	<i>Capsicum frutescens</i> and <i>Capsicum annuum</i>
Birchberry	<i>Eugenia ligustrina</i>
Blackberry	<i>Rubus</i> hybrid
Box Orange	<i>Severinia buxifolia</i>
Brazil Cherry	<i>Eugenia dombeyi</i>
Cabeluda	<i>Plinia glomerata</i>
Calabur	<i>Muntingia calabura</i>
Calamondin	X <i>Citrofortunella mitis</i>

Carambola	<i>Averrhoa carambola</i>
Ceylon Gooseberry	<i>Dovyalis hebecarpa</i>
Cherry of the Rio Grande	<i>Eugenia aggregata</i>
Clementine	<i>Citrus reticulata</i>
Cocoplum	<i>Chrysolbanus icaco</i>
Custard Apple, Sugar Apple	<i>Annona squamosa, Annona reticulata</i>
Egg Fruit	<i>Pouteria campechiana</i>
Date Palm	<i>Phoenix dactylifera</i>
Fig	<i>Ficus carica</i>
Garcinia aristata	<i>Garcinia aristata</i>
Garcinia	<i>Garcinia</i> spp.
Governor's Plum	<i>Flacourtia indica</i>
Grapefruit	<i>Citrus paradisi</i>
Grumichama	<i>Eugenia brasiliensis</i>
Guava (all)	<i>Psidium</i> spp.
Guiana Plum	<i>Drypetes lateriflora</i>
Hog Plum	<i>Spondias mombin</i>
Imbe	<i>Garcinia livingstonei</i>
Jaboticaba	<i>Myrciaria cauliflora</i>
Jack Orangequat	<i>Citrus nobilis</i> 'unshu' x <i>Fortunella</i> sp.
Jambolan Plum	<i>Syzygium cumini</i>
Jamboisier Rouge	<i>Eugenia pyriformis</i> Cambess. var. <i>uvalha</i>
Japanese Pear	<i>Pyrus pyrifolia</i>
Japanese Persimmon	<i>Diospyros kaki</i>
Java Apple	<i>Syzygium samarangense</i>
Kei Apple	<i>Dovyalis caffra</i>
Kieffer Pear	<i>Pyrus pyrifolia</i> x <i>Pyrus communis</i>
Kiwi	<i>Actinidia chinensis</i>
Kumquat	<i>Fortunella crassifolia</i> <i>Fortunella</i> spp.

Kumquat (oval)	<i>Fortunella margarita</i>
Kumquat (round)	<i>Fortunella japonica</i>
Kumquat, Meiwa	<i>Fortunella X crassifolia</i>
Lime	<i>Citrus aurantifolia</i>
Limeberry	<i>Triphasia trifolia</i>
Limequat	<i>X Citrofortunella floridana</i>
Longan, except commercial fruit	<i>Dimocarpus longan</i>
Loquat	<i>Eriobotrya japonica</i>
Lychee, except commercial fruit	<i>Litchi chinensis</i>
Malay Apple	<i>Syzygium lalaccense</i>
Mandarin	<i>Citrus reticulata</i>
Mango	<i>Mangifera indica</i>
Mangosteen	<i>Garcinia mangostana</i>
Miracle Fruit	<i>Synsepalum dulcificum</i>
Mombin, Purple	<i>Spondias purpurea</i>
Mombin	<i>Spondias</i> spp.
Murraya	<i>Murraya</i> spp.
Natal Plum	<i>Carissa grandiflora</i> , <i>Carissa macrocarpa</i>
Nectarine	<i>Prunus persica</i>
Orange	<i>Citrus sinensis</i>
Orange Jasmine	<i>Murraya paniculata</i>
Otaheite Apple	<i>Spondias dulcis</i> (=S. cytherea)
Panama Orange	<i>Citrofortunella mitis</i>
Papaya	<i>Carica papaya</i>
Paradise Apple	<i>Malus pumila</i>
Peach	<i>Prunus persica</i>
Pear	<i>Pyrus communis</i>
Persimmon	<i>Diospyros virginiana</i>
Pitomba	<i>Eugenia luschnathiana</i>

Plum	<i>Prunus domestica</i>
Plum, Japanese	<i>Prunus salicina</i>
Pomegranate	<i>Punica granatum</i>
Pond Apple	<i>Annona glabra</i>
Pummelo	<i>Citrus maxima</i>
Rangpur Lime	<i>Citrus limonia</i>
Raspberry	<i>Rubus idaeus</i>
Rose Apple	<i>Syzygium jambos</i>
Sapodilla	<i>Manilkara zapota, Achras zapota</i>
Satinleaf, Damson-plum	<i>Chrysophyllum oliviforme</i>
Sea-grape	<i>Coccoloba uvifera</i>
Shaddock	<i>Citrus grandis</i>
Snowflake Aralia	<i>Trevesia palmata</i>
Sour Orange	<i>Citrus aurantium</i>
Star Apple	<i>Chrysophyllum cainito</i>
Sugar Apple	<i>Annona squamosa</i>
Surinam Cherry	<i>Eugenia uniflora</i>
Sweet Lemon	<i>Citrus limetta</i>
Sweet Orange	<i>Citrus sinensis</i>
Syzygium	<i>Syzygium</i> spp.
Tangelo	<i>Citrus paradisi</i> x <i>Citrus reticulata</i>
Tangerine	<i>Citrus reticulata</i> Blanco
Temple Orange	<i>Citrus sinensis</i> x <i>Citrus reticulata</i>
Tomato, except commercial fruit	<i>Lycopersicon esculentum</i> (L. <i>lycopersicum</i>)
Triphasia	<i>Triphasia</i> spp.
Tropical Almond	<i>Terminalia catappa</i>
Velvet Apple or Velvet Persimmon	<i>Diospyros blancoi</i>
Wampi	<i>Clausena lansium</i>
White Sapote	<i>Casimiroa edulis</i>
Wild Balsam Apple	<i>Momordica charantia</i>

Wild Cinnamon

Canella winteriana

Wild Coffee

Casearia hirsuta

Wild Dilly

Manilkara jaimiqui ssp. *emarginata*

Annona hybrid

Atalantia citriodes

Eugenia coronata

Eugenia ligustrina

Eugenia spp.

Ficus altissima

Garcinia xanthochymus

Manilkara roxburghiana

Myrcianthes fragrans

Myrciaria glomerata

Pseudanmomis umbellulifera

Rheedia aristata

Terminalia muelleri

Trevisia palmata

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 California, 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. It is assumed 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.

During 2019, out of the top 20 California commodities, tomatoes ranked 11th at over \$1 billion cash receipts. Other notable crops that would be impacted are apples at \$72.9 million, pears at \$71 million and peaches at \$296 million cash receipts for the same time period.

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.

Project Description

The proposed amendment of regulation Title 3 California Code of Regulations (CCR) Section 3591.11 will expand the eradication area for the CFF in California. 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 Department relied upon the following documents:

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

California Agricultural Statistics Review 2019-2020, California Department of Food and Agriculture, 2020

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.

Authority and Reference Citations

Authority: Sections 407 and 5322, Food and Agricultural Code.

Reference: Sections 5301, 5302 and 5322, 5761, 5762, 5763 and 5764, Food and Agricultural Code (FAC).

Informative Digest

Existing law 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 (FAC Section 5321).

Existing law also provides that the Secretary may establish, maintain and enforce quarantine, eradication and other such regulations as she deems necessary to protect the agricultural industry from the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds. (FAC Sections 401 and 403).

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 which she 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 which is described in FAC section 5321.

Existing law, FAC Section 5761, provides that regulations adopted pursuant to FAC Section 5322 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, 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 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. Any expenditures for the replacement nursery stock shall not exceed an amount which is budgeted for the purpose or approved by the Director of Finance.

Existing Law, Title 3 CCR Section 3591.11, lists the counties within CFF 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. 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.

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.

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.

Section 3591.11, Caribbean Fruit Fly Eradication Area.

This emergency amendment of Section 3591.11 will establish the entire County of Santa Clara as part of the CFF eradication area. The effect of the amendment is to provide authority for the State to perform detection, control, and eradication activities against Caribbean fruit fly in this area of the State to prevent spread of the fly to non-infested areas and thereby protect California's agricultural industry. Such activities may include:

- The use of insecticides, chemicals, or other materials as spray (including soil spray treatments), dust, bait, or in any other manner as often as necessary to effect control or eradication.
- The removal and destruction of hosts, including plants of hosts, if such is a practical way of eliminating the infestation.
- The searching for all stages of the fly by visual inspection, the use of traps, or any other means.
- The removal and destruction of abandoned or unwanted hosts or plants bearing or capable of bearing hosts.
- The importation, rearing, liberation, and fostering of parasites and predators which attack the fly.
- The importation, rearing, or liberation of sterile forms of the fly. (title 3 CCR Section 3591.11(c))

California Environmental Quality Act

A Statewide Plant Pest Prevention and Management Program Environmental Impact Report (EIR) was prepared by the Department as the lead agency under the California Environmental Quality Act. The EIR addresses the potential impacts and mitigations when implementing the Statewide Plant Pest Prevention and Management Program activities related to CFF.

The EIR may be accessed at the following website:

<http://www.cdfa.ca.gov/plant/peir/>.

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 and no reimbursement is required under Section 17561 of the Government Code. All eradication activities are performed by the Department.

Cost Estimate

The Department also has determined that the regulation will involve no costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, no cost to any local agency or school district requiring reimbursement pursuant to Gov. Code 17500 et seq., and no costs or savings in federal funding to the state.