

DEPARTMENT OF FOOD AND AGRICULTURE
Title 3 of the California Code of Regulations
Section 3591.15 Melon Fruit Fly Eradication Area

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

The California Department of Food and Agriculture (Department) proposes to amend the host list in Title 3 of the California Code of Regulations (CCR) Section 3591.15 Melon Fruit Fly Eradication Area, which provides authority to the Department to allow effective eradication and quarantine activities to prevent Melon Fruit Fly (*Bactrocera cucurbitae*) from spreading throughout California.

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 July 8, 2024. The Department will consider only comments received at the Department offices by that date or postmarked no later than July 8, 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 3591.15 pursuant to the authority vested by Sections 407, 5322, and 5761 of the Food and Agricultural Code.

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 5762 and 5763 of the Food and Agricultural Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The specific purpose of amending Section 3591.15 Melon Fruit Fly Eradication Area is to revise and update the known host list for Melon Fruit Fly (MFF) to coincide with the official MFF host list promulgated in September, 2016 by the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS).

EXISTING LAWS & REGULATIONS

Existing law, FAC Section 401.5, states that 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.

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 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.

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.

ANTICIPATED BENEFITS OF THE PROPOSED AMENDMENT

The amendment of the host list will allow the Department to have the authority to eradicate a serious insect pest, which is a mandated, statutory goal.

This regulation is necessary to prevent the spread of MFF 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 MFF.

The amendment of this regulation benefits the citrus and tomato (nursery, fruit for domestic use and exports, packing facilities) industries, and the environment (urban landscapes) by providing the Department an accurate host list to prevent the artificial spread of the MFF over short and long distances.

The California, national and international consumers of California citrus and tomatoes benefit by having high quality produce 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.

By working with an up-to-date host list the Department is more likely to prevent infestation with MFF and thereby preventing damage to hosts, the regulation eliminates any future need for hosts to be treated to mitigate infestations of MFF.

There is no existing, comparable federal regulations or statute regulating the intrastate movement of MFF.

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 MFF, and it found that these are the proposed amendments are the only regulations dealing with this subject, and the Department is the only state agency which can designate these eradication areas for plant pests. As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of Section 3591.15 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.

Cost or savings to any state agency: Compliance activities are currently being performed by existing state staff throughout quarantine areas within the state. The Department is currently monitoring for pests, and thus there is no change to the cost due to these regulations. The Department has determined that no savings or increased costs to any state agency and no costs or savings in federal funding to the state will result from the amendment of Section 3591.15. The amendment of this regulation would have no fiscal impact on the Department.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None and no nondiscretionary costs or savings to local agencies or school districts.

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 amendment of Section 3591.15. will provide authority for the Department to conduct eradication and quarantine activities against MFF and there are no known private sector cost impacts. 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 none and 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

Significance Adverse Impact on Business: The amendment is designed to minimize the spread of MFF in California through regulation of host material. Detection activities are currently being performed by existing CDFA staff throughout the state by trapping and identifying pests. No businesses are currently adversely affected by these activities.

Therefore, the Department has determined that this regulatory proposal will not have any significant adverse impacts on businesses currently doing business in California.

Small business determination: The proposed action will not affect small business because compliance activities are currently being performed by existing state staff throughout quarantine areas within the state without any impact on small business.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS / ASSESSMENT

The amendment of Section 3591.15 is designed to prevent or minimize the spread of MFF. 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.

Health and welfare: The proposed action will benefit the health and welfare of California residents by making it more likely that MFF would be detected before an infestation can happen, and, if there is an infestation, the Department can react quickly and effectively. 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 state's environment: The proposed action will benefit the state's environment by increasing the chance that MFF would be detected before an infestation can happen. If the Department neglects to regulate the types of hosts, this pest 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.

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.cdfa.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 adopt 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.