

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Section 3591.29

Black Fig Fly Eradication Area

INITIAL STATEMENT OF REASONS/
PLAIN ENGLISH POLICY STATEMENT OVERVIEW

The California Department of Food and Agriculture (Department) proposes to adopt 3591.29 to provide authority to the Department to eradicate, by the established means and methods, infestations of black fig fly (*Silba adipata* McAlpine) (BFF) from within the declared eradication areas. This regulation was originally adopted as an emergency regulation that became effective on September 20, 2021 and expired on March 22, 2022.

Description of Public Problem, Administration 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

This adoption of Section 3591.29 will establish authority to eradicate the BFF. The effect of this adoption will be to provide authority for the Department to perform control and eradication activities against BFF to prevent spread of the fly to non-infested areas. This will protect California's agricultural industry. The adoption of this regulation also benefits of the general public who grow figs or host material for consumption and/or ornamentals in various rural and urban landscapes, including private and community gardens.

The factual basis for the determination by the Department that the adoption of this regulation is necessary is as follows:

The the Department finds that the adoption of a new regulation addressing BFF is necessary to avoid serious harm to the public peace, health and safety, or general welfare. On June 10, 2021, a resident in Pasadena (Los Angeles County) submitted a damaged fig fruit with pupae to county agricultural personnel. Using molecular techniques, the Department's Plant Pest Diagnostics laboratory confirmed the pupae were BFF. On June 21, 2021, a resident in Goleta (Santa Barbara County) submitted figs with larvae to county agricultural personnel. The Department also confirmed these as BFF by using molecular techniques. On June 24, 2021, a larva from a fig at the Goleta residence was collected by Department personnel and this was confirmed as BFF with molecular techniques. On June 29, 2021, an adult male was confirmed by the Department as BFF via morphology. Further finds of BFF were made in Orange, Riverside, San Bernardino, and Ventura counties.

BFF is an insect pest which attacks figs. BFF adults feed on exudates of figs and fig tree sap. Edible fig (*Ficus carica*) is the only known larval host, and both figs and caprifigs are attacked. Larvae feed inside the fruit, and this often results in premature fruit drop. In Tunisia, BFF caused "massive" fruit drop, with infestation rates exceeding 80% in some areas of the country. All varieties of figs grown locally were reported to be susceptible.

BFF has the capability of causing significant irreparable harm to California's agricultural industry as well as community and private gardens which grow figs. In 2017, California produced 31,200 tons of fresh figs and was the largest fig producer in the U.S., accounting for nearly 98% of all figs produced. Also, in that year, United States fig exports were valued at more than \$15.5 million.

Fig production in California is primarily located in Fresno, Madera, and Kern counties in the San Joaquin Valley, and Riverside and Imperial counties in Southern California. With the finding of BFF pupae, larvae and adult flies in Los Angeles, Santa Barbara, Orange,

Riverside, San Bernardino and Ventura counties, each discovery moves the infestation closer to the main areas of commercial fig production in California. As California currently has no eradication areas for BFF, it is necessary to adopt the eradication area regulation in order to successfully enforce eradication actions. California does not currently have a program in place for treatment of BFF. In the event that the Department determines an appropriate treatment program, the Department needs eradication authority to implement the treatment.

If BFF 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 markets if the United States Department of Agriculture (USDA) enact quarantines against California products which are hosts for the fly. The USDA currently maintains a quarantine on figs from Mexico to protect the United States from BFF.

Project Description

The proposed adoption of the eradication regulation 3591.29 will create eradication areas for the BFF in California. This will allow targeted actions for eradication of BFF 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 the FAC 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 the regulations which are adopted pursuant to Article 2 (commencing with Section 5321) of Chapter 5, Part 1 of the FAC 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, 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. 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.

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 adoption 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 BFF 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 BFF.

California is the only large-scale commercial producer of figs in the United States. The Californian, national, and international consumers of California figs benefit by having high quality figs and fig products available at lower cost. It is assumed that any increases in production costs will ultimately be passed on the consumer. By avoiding an infestation with BFF, these increased production costs will be avoided.

The adoption of this regulation benefits homeowners who grow figs or host material for consumption and/or ornamentals in various rural and urban landscapes. By preventing

infestation with BFF and thereby preventing damage to hosts, the regulation eliminates the need for hosts to be treated to mitigate infestations of BFF.

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 of Food and Agriculture 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 BFF 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 3591.29 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 3591.29.

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 figs and increased pesticide usage by homeowners and others. The fig trees attacked by the BFF are enjoyed by the home gardener and community gardens. If an infestation of BFF 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 BFF 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.

Assessment

The Department has made an assessment that the adoption of the regulation would not 1) create or eliminate jobs within California; 2) create new business or eliminate existing businesses with California; or 3) affect the expansion of businesses currently doing business with 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 BFF. If BFF 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 markets if the United States Department of Agriculture (USDA) enact quarantines against California products which are hosts for the fly. The USDA currently maintains a quarantine on figs from Mexico to protect the United States from BFF. Therefore, this alternative was rejected.

Information Relied Upon

The Department relied upon the following studies, reports, and documents in the proposed adoption and subsequent amendment of Section 3591.29:

Abbes, K., Hafsi, A., Harbi, A., Mars, M., and Chermiti, B. 2021. The black fig fly *Silba adipata* (Diptera: Lonchaeidae) as an emerging pest in Tunisia: preliminary data on geographic distribution, bioecology and damage. *Phytoparasitica*. <https://doi.org/10.1007/s12600-020-00871-y>

Agricultural Marketing Resource Center, 2018. A national information resource for value-added agriculture: figs

Email, 2021. From Martin Hauser, CDFA Plant Pest Diagnostics Center, June 23, 2021. Regarding Pasadena, Los Angeles County find of BFF.

Email, 2021. From Peter Kerr, CDFA Plant Pest Diagnostics Center, June 24, 2021. Regarding Goleta, Santa Barbara find of BFF.

Email, 2021. From Peter Kerr, CDFA Plant Pest Diagnostics Center, July 12, 2021. Regarding Santa Ana, Orange County find of BFF.

Email, 2021. From Peter Kerr, CDFA Plant Pest Diagnostics Center, July 15, 2021. Regarding Simi Valley, Ventura County find of BFF.

Email, 2021. From Shaun Winterton, CDFA Plant Pest Diagnostics Center, July 9, 2021. Regarding Sierra Madre, Los Angeles County find of BFF.

Email, 2021. From Shaun Winterton, CDFA Plant Pest Diagnostics Center, July 30, 2021. Regarding Rancho Cucamonga, San Bernardino County find of BFF.

Email, 2021. From Shaun Winterton, CDFA Plant Pest Diagnostics Center, August 9, 2021. Regarding Riverside, Riverside County find of BFF.

USDA, 2020. APHIS amends import requirements for fresh fig (*Ficus carica*) fruit from Mexico. DA-2020-19. September 15, 2020.