

DEPARTMENT OF FOOD AND AGRICULTURE  
Title 3 of the California Code of Regulations Section 3280

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

The Department of Food and Agriculture (Department) proposes to adopt Section 3591.29 of title 3 of the California Code of Regulations (CCR) pertaining to the Black Fig Fly Eradication Area.

**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 regulation to the Department. Comments may be submitted by USPS, FAX or email. The written comment period closes on July 18, 2022. The Department will consider only comments received at the Department offices by that date or postmarked no later than July 18, 2022. Submit comments to:

Dean Kelch  
Department of Food and Agriculture  
Plant Health and Pest Prevention Services  
1220 N Street  
Sacramento, CA 95814  
dean.kelch@cdfa.ca.gov  
Tel. (916) 261-9252

Questions regarding the substance of the proposed regulation should be directed to Dean Kelch. In his absence, you may contact Erin Lovig at (916) 654-1017 or erin.lovig@cdfa.ca.gov, FAX number (916) 651-2900.

Unless there are substantial changes to the proposed regulation 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 of Food and Agriculture, 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 adopt Section 3591.29 pursuant to the authority vested by Sections 407 and 5322 of the Food and Agricultural Code (FAC) of California.

**REFERENCE**

The Department proposes this action to implement, interpret and make specific Sections 5761, 5762, 5763, and 5764 of the FAC.

**INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW**

The California Department of Food and Agriculture (Department) is proposing to adopt the Section 3591.29 Black Fig Fly Eradication Area to provide authority for the Department, by the established means and methods, to eradicate infestations of black fig fly (*Silba adipata* McAlpine) 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.

### **EXISTING 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 which the Secretary 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.

### **ANTICIPATED BENEFITS OF THE PROPOSED AMENDMENTS**

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.

### **EVALUATION OF INCONSISTENCY / INCOMPATIBILITY WITH EXISTING STATE REGULATIONS**

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.

**CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Prior to conducting any action authorized by this regulation, the Department shall conduct 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.).

**DISCLOSURES REGARDING THE PROPOSED ACTION**

Mandates on local agencies or school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: None

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 Department is not aware of any cost impacts that a representative private 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: None.

The Department has been conducting eradication actions throughout the State for over 30 years without causing significant impact on businesses. Therefore, the Department does not anticipate that these amendments will affect small businesses.

Significant effect on housing costs: None

**RESULTS OF THE ECONOMIC IMPACT ANALYSIS / ASSESSMENT**

The Department has concluded that this Section 3280 amendment (1) will have no significant impact on the creation or elimination of jobs in the State of California, (2) will have no impact on the creation or elimination of businesses within the State of California, and (3) will have no impact on the expansion of businesses within the State of California.

Small business determination: There are no known private sector cost impacts.

There are no known specific benefits to worker safety or the health of California residents.

**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 effect in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private

person 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 statements or 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, has available all the information upon which its proposal is based, and has available 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](http://www.cdfa.ca.gov/plant/Regulations.html)). Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed at this website or available upon request.

### **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 (contact) 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 (contact) named herein.