

FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture (the Department) finds that an emergency exists, and that the adoption of a new regulation addressing black fig fly (*Silba adipata* McAlpine) 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 black fig fly. 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 black fig flies (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.

Fig production in California is primarily located in Fresno, Madera, and Kern counties in the San Joaquin Valley, 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 immediately adopt the eradication area regulation in order to successfully enforce eradication actions. Because BFF can disperse and populations can expand rapidly (4 to 6 generations per year), even small delays may make the difference between a successful pest eradication and a spreading infestation. Therefore, the authority for eradication must be in place when effective programmatic actions are determined.

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.

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

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.

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, it 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. 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. Should the Department not take these actions to eradicate BFF, it could cause direct catastrophic losses to California's fig industry and significant harm to the State's economy through cost impacts or prohibitions to interstate commerce and exports of host commodities.

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 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 3592.1 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 and quarantine actions taken by the Department will be in cooperation with the USDA and the affected county agricultural commissioners.

The Department also relied upon the following documents:

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

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, 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.

Authority and Reference Citations

Authority: Sections 407, 5301, 5302 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.

The existing law obligates the Secretary to investigate and determine the feasibility of controlling or eradicating pests of limited distribution, such as the black fig fly. The adoption of this regulation benefits industries and other host materials (nursery, fruit for domestic use and exports, packing facilities) and the environment (urban landscapes) by preventing the spread of BFF.

This adoption provides the necessary regulatory authority to eradicate 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 adoption of this regulation is necessary to prevent the spread of BFF to uninfested areas of the State. The overall California economy

benefits by the adoption of this regulation, which is intended to prevent BFF from becoming generally distributed in California.

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.

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.

Section 3591.2, BFF Eradication Area.

This adoption of Section 3591.2 will create an eradication authority against the BFF. The effect of this adoption will be to provide authority for the State to perform control and eradication activities against BFF to prevent spread of the fly to non-infested areas in order to protect California's agricultural industry.

California Environmental Quality Act

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.), including the CEQA tiering strategy described in the Statewide Plant Pest Prevention and Management Program

Environmental Impact Report (PEIR).”

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.

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.