

FINDING OF EMERGENCY

The Secretary of the California Department of Food and Agriculture (Department) determined that an emergency exists: detection of Caribbean Fruit Fly (CFF) in California and the foregoing amendment to Title 3 of the California Code of Regulations (CCR) Section 3591.11 Caribbean Fruit Fly Eradication Area and adopt Title 3 CCR Section 3422 Caribbean Fruit Fly Interior Quarantine is necessary to avoid serious harm to the public peace, health and safety, or general welfare. On August 20, 2024, an adult unmated female CFF was confirmed in the Santa Ana area of Orange County. This is the first time CFF has been detected in Orange County. To begin effective eradication activities and to prevent this pest from spreading throughout California, the Department needs to add Orange County to the list of eradication areas, create an interior quarantine, and update the host list for CFF to match the current United States Department of Agriculture (USDA) list. Therefore, the Department proposes to adopt this emergency amendment to address this issue immediately and allow for eradication activities of this pest to target the correct host plants.

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.

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 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. Government 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 Government Code Section 11346.1(b)(2).

Government 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 implement this regulation pursuant to the authority in Food and Agricultural Code (FAC) Section 407: “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 an Emergency

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 2022, tomatoes exports valued at over \$682 million. Other notable crops that would be peaches at \$149 million exports for the same time period.

The entire County of Orange 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 Orange. 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 CFF were allowed to spread and become established in host fruit and vegetable production areas, California's agricultural industry would suffer losses due to decreased production of marketable fruit, increased pesticide use, and loss of markets if other states or countries enacted quarantines against California products. The pest could also find hosts in natural and urban environments. Therefore, it is necessary to amend the eradication regulation Title 3 CCR Section 3591.11, and adopt the interior quarantine Title 3 CCR Section 3422.

Background

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 State's administration of programs to detect, control, and eradicate pests affecting plants.

The specific purpose of Title 3 CCR Section 3591.11 is to add Orange County to the eradication area and update the known host list for CFF in California regulations to coincide with the official CFF host list promulgated by the USDA.

The specific purpose of Title 3 CCR Section 3422 is to allow the Department to create an interior quarantine where CFF is found to prevent its further spread throughout the state of California.

The survey, fruit removal, and treatment activities authorized under this regulation must begin immediately to ensure that the fly is contained, and this infestation does not grow and cause additional significant damage to the growers in the immediate and adjacent areas. Therefore, the Secretary believes that the five-calendar-day public comment period should be waived.

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 Orange County.

CFF is a pest that infects a wide variety of agricultural products that are grown throughout California. As Orange County 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.

CFF has the capability of causing significant irreparable harm to California's agricultural industry and some possible adverse environmental impacts since this species could possibly find native hosts. Should the Department fail to amend Title 3 CCR Sections 3591.11 and adopt 3422, CFF could cause direct catastrophic losses to California's affected agricultural industries and significant harm to the State's economy through cost impacts or prohibitions to interstate commerce and exports of host commodities. Therefore, it is necessary to amend Title 3 CCR Section 3591.11 and adopt the interior quarantine Title 3 CCR 3422 on an emergency basis.

Project Description

Section 3591.11

In Title 3 CCR Section 3591.11 (a), Orange County will be added to the list of counties that comprise the CFF eradication area.

In Title 3 CCR Section 3591.11 (b)(1), the host list will be updated using the current USDA list, which involves adding species and correcting spelling of species currently on the list. Having a host list with the most accurate information allows the Department to more effectively carry out eradication activities. Scientific names will now be listed in alphabetical order with common names in the second column. This is the preferred format of the USDA and the majority of the Department's host lists. The following species are being added:

Scientific Name	Host Name
<i>Ananas comosus</i> (L.)	Pineapple
<i>Coffea arabica</i> L.	Arabian coffee, arabica coffee, coffee, coffeetree
<i>Eugenia coronata</i> Schumach.	Spanish stopper, boxleaf stopper, red stopper, Surinam cherry
<i>Eugenia involucrata</i> DC.	Cherry-of-the-Rio Grande
<i>Ficus altissima</i> Blume	Counciltree, false banyan, lofty fig
<i>Garcinia intermedia</i> (Pittier) Hammel	Lemon drop mangosteen, monkey fruit
<i>Garcinia xanthochymus</i> Hook. f.	Gambogetree, sour mangosteen
<i>Malpighia emarginata</i> DC.	Acerola, Barbados-cherry, West Indian-cherry
<i>Manilkara roxburghiana</i> (Wight) Dubard	Bulletwood
<i>Myrcianthes fragrans</i> (Sw.) McVaugh	Twinberry
<i>Plinia cauliflora</i> (Mart.) Kausel	Brazilian grapetree, jaboticaba
<i>Pseudanmomis umbellulifera</i> (Kunth) Kausel	Monos plum
<i>Pyrus</i> × <i>lecontei</i> Rehder	Le Conte pear
<i>Solanum lycopersicum</i> L. var. <i>lycopersicum</i>	Tomato
<i>Swietenia mahagoni</i> (L.) Jacq.I	Cuban mahogany, Spanish mahogany, West Indian mahogany

<i>Terminalia muelleri</i> Benth.	Australian-almond
<i>Ximenia americana</i> L.	False sandalwood, tallownut, tallowwood, yellow-plum

The amendment is correcting the names of the following host species:

Scientific Name	Host Name
<i>Annona glabra</i> L.	Alligator-apple, corkwood, cow-apple, mangrove anona, monkey apple, pond-apple
<i>Annona squamosa</i> L.	Custard-apple, sugar-apple, sweetsop
<i>Atalantia citroides</i> Pierre ex Guillaumin	Cochin China, Atalantia
<i>Averrhoa carambola</i> L.	Carambola, five-corner, starfruit
<i>Blighia sapida</i> K. D. Koenig	Akee, akee-apple
<i>Canella winterana</i> (L.) Gaertn.	Wild cinnamon
<i>Capsicum frutescens</i> L.	Bird pepper, hot pepper, red chili, spur pepper, Tabasco pepper
<i>Carica papaya</i> L.	Papaya, pawpaw
<i>Carissa macrocarpa</i> (Eckl.) A. DC.	Natal-plum
<i>Casimiroa edulis</i> La Llave & Lex.	Mexican-apple, white sapote
<i>Chrysobalanus icaco</i> L.	Coco-plum
<i>Chrysophyllum oliviforme</i> L.	Damson-plum, stainleaf, wild star-apple
<i>Citrus ×aurantiifolia</i> (Christm.) Swingle	Egyptian lime, Indian lime, Key lime, lime, Mexican lime, sour lime, West Indian lime
<i>Citrus ×aurantium</i> L.	Bitter orange, clementine, Seville orange, sour orange, tangelo
<i>Citrus ×aurantium</i> L. var. <i>racemosa</i> (Risso) ined.	Grapefruit, pomelo
<i>Citrus ×aurantium</i> L. var. <i>sinensis</i> L.	Blood orange, navel, navel orange, orange, sweet orange, Valencia orange
<i>Citrus ×floridana</i> (J. W. Ingram & H. E. Moore) Mabb.	Limequat
<i>Citrus japonica</i> Thunb.	Changshou kumquat, golden-bean kumquat, Hong Kong kumquat, marumi kumquat, meiwa kumquat, nagami kumquat, oval cumquat, oval kumquat, round cumquat, round kumquat
<i>Citrus ×limon</i> (L.) Osbeck	Balotin bergamot, Canton lemon, chine lemon, Chinese dwarf lemon, cravo lemon, dwarf lemon, hime lemon, jaune

	orange, lemandarin, lemon, lumia of the Mediterranean, mandarin lime, marmalade lime, Meyer lemon, Otaheite orange, Rangpur lime, red lemon, sweet lemon, sweet lime
<i>Citrus ×microcarpa</i> Bunge	Calamandarin, calamondin, China-orange, golden-lime, musk-lime, Panama-orange, Philippine-lime
<i>Citrus ×nobilis</i> Lour.	King of Siam, king orange, tangor
<i>Citrus nobilis</i> × <i>Fortunella</i> sp.	N/A
<i>Citrus reticulata</i> Blanco	Cleopatra mandarin, dancy tangerine, honey mandarin, Italian tangerine, jimikan mandarin, King of Siam, king orange, Mediterranean mandarin, Satsuma mandarin, Satsuma orange, sour mandarin, spice mandarin, sunki mandarin, tachibana orange, tangerine, tangor, temple orange, Tim kat mandarin, willow-leaf mandarin
<i>Clausena lansium</i> (Lour.) Skeels	Chinese clausena, wampi
<i>Coccoloba uvifera</i> (L.) L.	Jamaican kino, platterleaf, sea-grape, shore sea-grape
<i>Diospyros blancoi</i> A. DC.	Mabola-tree, velvet persimmon, velvet-apple
<i>Diospyros kaki</i> Thunb.	Chinese persimmon, Japanese persimmon, kaki persimmon, Oriental persimmon
<i>Dovyalis caffra</i> (Hook. f. & Harv.) Warb.	Kei-apple
<i>Dovyalis hebecarpa</i> (Gardner) Warb.	Ceylon-gooseberry
<i>Drypetes lateriflora</i> (Sw.) Krug & Urb.	Milk bark tree, Guiana plum
<i>Eriobotrya japonica</i> (Thunb.) Lindl.	Japanese-medlar, loquat
<i>Eugenia brasiliensis</i> Lam.	Brazil-cherry
<i>Eugenia ligustrina</i> (Sw.) Willd.	Birchberry, privet stopper
<i>Eugenia luschnathiana</i> (O. Berg) Klotzsch ex B. D. Jacks.	Pitomba
<i>Eugenia uniflora</i> L.	Brazil-cherry, Surinam-cherry
<i>Ficus carica</i> L.	Common fig, fig
<i>Flacourtia indica</i> (Burm. f.) Merr.	Batoko-plum, governor's-plum, Indian-plum, Madagascar-plum
<i>Garcinia aristata</i> (Griseb.) Borhidi	Cuban mangosteen
<i>Garcinia livingstonei</i> T. Anderson	African mangosteen

<i>Litchi chinensis</i> Sonn.	Lychee
<i>Malpighia glabra</i> L.	Escobillo
<i>Malus sylvestris</i> (L.) Mill.	Crab apple, European crab apple
<i>Mangifera indica</i> L.	Common mango, Indian mango, mango
<i>Manilkara jaimiqui</i> (C. Wright) Dubard subsp. <i>emarginata</i> (L.) Cronquist	Wild dilly, wild sapodilla
<i>Manilkara zapota</i> (L.) P. Royen	Chicle, chico sapote, naseberry, sapodilla, sapote
<i>Momordica charantia</i> L.	Balsam-apple, balsam-pear, bitter gourd, bitter-cucumber, bitter-melon, carilla gourd
<i>Muntingia calabura</i> L.	Calabur-tree, capulin, Jamaica-cherry, Panama-berry, strawberry-tree
<i>Murraya paniculata</i> (L.) Jack	Barktree, Burmese-boxwood, China-box, Chinese-box, Chinese-boxwood, Chinese-myrtle, cosmetic-bark-tree, Hawaiian-mock orange, jasmine-orange, mock orange, orange-jasmine, satinwood
<i>Myrciaria glomerata</i> O. Berg	Red cabeludinha, red-haired jaboticaba
<i>Persea americana</i> Mill.	Avocado
<i>Phoenix dactylifera</i> L.	Date, date palm
<i>Pimenta dioica</i> (L.) Merr.	Allspice, clover-pepper, Jamaica-pepper, pimento
<i>Pouteria campechiana</i> (Kunth) Baehni	Canistel, eggfruit-tree, yellow sapote
<i>Prunus persica</i> (L.) Batsch var. <i>persica</i>	Peach, common peach
<i>Prunus persica</i> (L.) Batsch var. <i>nucipersica</i> (Suckow) C. K. Schneid.	Nectarine
<i>Psidium cattleianum</i> Sabine	Cherry guava, strawberry guava
<i>Psidium cattleianum</i> Sabine var. <i>cattleianum</i>	Cattley guava, purple guava, purple strawberry guava, red strawberry guava, Strawberry guava
<i>Psidium friedrichsthalianum</i> (O. Berg) Nied.	Costa Rican guava
<i>Psidium guajava</i> L.	Common guava, guava, lemon guava, yellow guava
<i>Punica granatum</i> L.	Pomegranate
<i>Pyrus communis</i> L.	Pear
<i>Pyrus pyrifolia</i> (Burm. f.) Nakai	Asian pear
<i>Rubus hybrid</i>	Marionberry, Olallieberry, youngberry
<i>Rubus idaeus</i> L.	Raspberry, red raspberry
<i>Severinia buxifolia</i> (Poir.) Ten.	Chinese box-orange
<i>Spondias dulcis</i> Sol. ex Parkinson	Ambarella, golden-apple, June-plum,

	Otaheite-apple, Polynesian-plum, yellow-plum
<i>Spondias mombin</i> L.	Hog-plum, Jamaica-plum, mombin, yellow mombin
<i>Spondias purpurea</i> L.	Hog-plum, purple mombin, red mombin, Spanish-plum
<i>Synsepalum dulcificum</i> (Schumach.) Daniell	Miracle-fruit, miraculous-berry
<i>Syzygium cumini</i> (L.) Skeels	Java-plum, Malabar-plum, Portuguese-plum, rose-apple
<i>Syzygium jambos</i> (L.) Alston	Malabar-plum, rose-apple, yambo
<i>Syzygium malaccense</i> (L.) Merr. & L. M. Perry	Malay-apple, mountain-apple, Otaheite-apple, pink satin-ash, rose-apple
<i>Syzygium samarangense</i> (Blume) Merr. & L. M. Perry	Java-apple, Semarang rose-apple, wax jambu
<i>Terminalia catappa</i> L.	Country-almond, Indian-almond, Malabar-almond, sea-almond, tropical-almond
<i>Trevesia palmata</i> (Roxb. ex Lindl.) Vis.	Snowflakeplant, snowflaketree
<i>Triphasia trifolia</i> (Burm. f.) P. Wilson	Limeberry, trifoliolate limeberry, triphasia

The following species are being removed:

Scientific Name	Host Name
<i>Actinidia chinensis</i>	Kiwi
<i>Annona cherimola</i> X <i>A. squamosa</i>	Atemoya
<i>Bischofia javanica</i>	Autumn Maple Tree
<i>Casearia hirsuta</i>	Wild Coffee
<i>Chrysophyllum cainito</i>	Star Apple
<i>Dimocarpus longan</i>	Longan, except commercial fruit
<i>Diospyros virginiana</i>	Persimmon
<i>Eugenia aggregata</i>	Cherry of the Rio Grande
<i>Eugenia pyriformis</i> Cambess. var. <i>uvalha</i>	Jamboisier Rouge
<i>Malus pumila</i>	Paradise Apple
<i>Prunus domestica</i>	Plum
<i>Pyrus pyrifolia</i> x <i>Pyrus communis</i>	Kieffer Pear
<i>Rheedia aristata</i>	

Section 3422

Title 3 CCR Section 3422(a) identifies that the pest subject to the quarantine is Caribbean fruit fly (*Anastrepha suspensa*), which is necessary for the quarantine requirements to be properly applied.

Title 3 CCR Section 3422 (b) establishes that an area shall be designated as a quarantine area when an infestation is present, the local California county agricultural commissioner (CAC) has been notified and requests the quarantine, the area description is posted to the Department's website, and that any interested party may receive notification, including through a list serve option. To establish a quarantine there is a need to communicate with the local affected CAC(s) and other interested parties and provide a boundary description. This subsection meets those needs.

Title 3 CCR Section 3422(b)(1) establishes when an infestation or satellite infestation is present, including whether the area is undergoing sterile insect release to eradicate an infestation. There is a need for the CAC(s) and other interested parties to understand what constitutes an incipient infestation and what may trigger an expansion. Title 3 CCR Section 3422(b)(1)(A) establishes when an infestation is present. Title 3 CCR Section 3422(b)(1)(B) establishes when a satellite infestation is present and may expand the quarantine area. These subsections reflect the current national standard established by the USDA, which is internationally accepted by our trading partners.

Title 3 CCR Section 3422(b)(2) establishes a minimum radius of 4.5 miles surrounding qualifying detection sites as the epicenter used under Title 3 CCR Section 3422(b)(1)(A) for qualifying detections, the number of pest detections needed to trigger a quarantine area designation, that known mapping features be used when possible and that imaginary lines may be used with or without latitude and longitude points. There is a need for the California Agricultural Commissioners and other interested parties to understand how the size and boundary line of a quarantine area is determined. This subsection reflects the current national standard established by the USDA and it is also an internationally recognized standard accepted by our trading partners.

Title 3 CCR Section 3422(b)(3) establishes that any interested party may appeal the quarantine area designation and the process to do so. There is a need to have continued opportunity for both local and public input on the Department's regulatory measures. This subsection provides that opportunity and the contact information to do so.

“ ‘Emergency’ means a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare” per GC 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 GC Section 11346.1(b)(1). It is necessary to continue to recognize the emergency nature in this proposed quarantine regulation. Therefore, it is necessary that any appeal of an area designation be held to a high standard, and this is achieved through requiring the appeal to contain clear and convincing evidence. The Office of Administrative Law has up to 10 days to render its decision regarding a proposed emergency action. This subsection provides the same timeframe.

Title 3 CCR Section 3422(b)(4) establishes the duration of the quarantine. There is a need for the CAC(s) and other interested parties to understand the justification for the length of the quarantine. Three life cycles without detections of a fruit fly life stage is the current national standard for a quarantine's length established by the USDA; it is also an internationally accepted standard.

Title 3 CCR Section 3422(b)(5) establishes the life cycle of CFF. It is necessary to understand the biology of the fly in order to determine when life cycles have been completed. This subsection establishes the scientifically known life cycle of Caribbean fruit fly that is currently recognized by the USDA and is also internationally accepted.

Title 3 CCR Section 3422 (c) establishes the articles and commodities covered by the regulation. Title 3 CCR Section 3422 (c)(1) establishes that soil within the dripline of plants producing, or which have produced host fruit, vegetables, or berries is regulated. Caribbean fruit fly attacks the host fruit, vegetables, or berries by laying eggs, these mature into larvae, and the larvae tunnel out of the host and drop into the soil to pupate and then emerge from the soil as adults. Moving soil contaminated with larvae or pupae to an uninfested area could lead to a new infestation. Title 3 CCR Section 3422(c)(2) establishes that other products, articles or means of conveyance may be regulated when it is determined by the Secretary or CAC that they may pose a danger of spreading live life stages of CFF fly; they may be regulated when the relevant parties have been so notified. The methods of notification are listed in the regulatory text. CFF is an exotic pest and has not been tested against all possible hosts. California could support a new host that Caribbean fruit fly attacks that is not a currently recognized host. A trailer could have contained host fruit and the CFF larvae could have dropped out and pupated on the trailer floor. In both these cases there would be a threat of moving live life stages of CFF. There are many other possible permutations of different scenarios that necessitate a potential broad restriction. All of the above subsections are necessary to prevent the movement of live CFF life stages from a quarantined area. Human assisted movement is the primary way new infestations are begun over long distances.

Title 3 CCR Section 3422(d) establishes the quarantine restrictions for the articles and commodities covered in regulation. Title 3 CCR Section subsection 3422(d)(1) establishes that, at the wholesale level, articles and commodities covered in subsection (c) are prohibited movement within or from the area under quarantine and the exceptions. This is necessary to prevent the further spread of the CFF. Title 3 CCR Section subsection 3422(d)(1)(A) establishes that the article or commodity covered can move if treated in a manner to eliminate CFF, it is transported in a manner to preclude exposure to CFF, and it is accompanied by a written certificate issued by an authorized State or county agricultural official affirming compliance with this subsection. Title 3

CCR Section 34CFF(d)(1)(B) establishes that a regulated article or commodity can move if it is moving for treatment for CFF or processing in a manner to eliminate to CFF and it is also accompanied by a written certificate issued by an authorized State or county agricultural official affirming such movement has been authorized under this subsection. At the wholesale level, businesses dealing with a large volume of host material need to know how to obtain host commodities from others within the regulated area. Additionally, some wholesalers may have growers under contract within the regulated area and need to know how to move the product for treatment or processing. These two subsections are necessary and provide the clarity for how this is accomplished.

Title 3 CCR Section subsection 3422(d)(2) establishes that at the wholesale level, articles and commodities covered in subsection (c) which have been commercially produced outside the area under quarantine are prohibited movement into the area under quarantine except when accompanied by a shipping document indicating the point of origin and destination and moved in compliance with certain restrictions. It is necessary to establish separate restrictions for the wholesale movement of host commodities produced outside the quarantine area. It is a standard industry practice to use shipping documents for deliveries and this subsection authorizes utilization of that practice. Host material produced outside the quarantine area does not pose a potential pest risk until it moves within the quarantine area. Therefore, it is necessary to mitigate the potential pest risk to prevent the artificial movement of CFF life stages. Title 3 CCR Section subsection 3422(d)(2)(A) establishes compliance with the regulation when the article or commodity is moving directly through the quarantine area without delay by a direct route and it is safeguarded. Title 3 CCR Section subsection 3422(d)(2)(B) establishes compliance with the regulation when the article or commodity is destined to a wholesale or retail establishment within the quarantined area and, if moving between 9 a.m. and sunset, is transported in an enclosed vehicle or container or completely enclosed by a covering to prevent exposure to the CFF. The danger from adult female CFF laying eggs only exists after the morning warms and ends at sunset when the flies are at rest. Title 3 CCR Section 3422(d)(2)(C) establishes compliance with the

regulation when the article or commodity is destined for a commercial processing facility, and no additional safeguarding is needed.

Title 3 CCR Section 3422(d)(3) establishes that, at the retail level for commercial articles and commodities covered, all that is needed by the person in possession is a sales receipt or comparable document to be in compliance with the regulation. This is a standard industry practice and ensures the host material originated from a certified source without being overly burdensome on interested parties.

Title 3 CCR Section 3422(d)(4) establishes that articles and commodities covered which have been noncommercially produced within the area under quarantine, including “backyard” production, are prohibited movement from the premises where grown except under written authorization of the Department or CAC. Sharing home-produced fruits and vegetables can be both a family and cultural tradition. In general, within the quarantine area, noncommercial host commodities pose the highest risk of being infested with CFF. There are regulatory options for this plant material to be certified if the person in possession chooses to pursue them. This subsection meets the need to prohibit the movement of the highest risk articles and commodities covered unless such movement is officially authorized.

Title 3 CCR Section 3422(d)(5) establishes that articles and commodities covered which have been noncommercially produced outside the area under quarantine are prohibited movement into the area under quarantine except when the person in possession has signed a statement showing the commodity, amount, origin, destination, and date of transportation. During past quarantine projects, investigations determined there were instances of people moving backyard fruit produced within the quarantine area for distribution to neighbors inside and outside the quarantine area but when initially questioned stated the fruit was moved into the quarantine area from a source outside the area. This subsection provides for the sharing of berries, fruits and vegetables which do not pose a pest risk.

Title 3 CCR Section 3422(d)(6) establishes that within the area under quarantine, no wholesale or retail establishment shall handle, sell, or offer for sale any article or commodity covered unless such commodities at all times are maintained in a manner that precludes exposure to CFF. No commodity covered shall be held for sale or sold from a truck, trailer, or other mobile vehicle. There are many open-air businesses which may display host berries, fruits, and vegetables for sale. Adult female CFF are mobile by nature and can “sting” and lay eggs in exposed host commodities. Therefore, to prevent host commodities from becoming infested while on display, the commodities need to be safeguarded. This performance standard can be successfully accomplished including the use of “air curtains” in entry ways, keeping the host commodities cold so the female CFF will not attempt to sting it, covering the host commodities with plastic tarps or fine mesh screens, or placing transparent solid lids over the display containers, etc. In past quarantine projects, the Department has experienced significant issues with mobile vendors of host berries, fruits, and vegetables. These vendors tend to move frequently into and out of the quarantine area and within the quarantine area with the host commodities fully exposed. Encountering a mobile vendor with exposed host commodities leads to the host commodities being confiscated; this creates tension between the vendors and the regulatory staff. To prevent the unnecessary confiscation of host commodities and increase public safety for the regulatory officials, it is necessary to ban the sale of host commodities from mobile vendors within the quarantine area. Quarantine regulatory officials map the quarantine area in the different languages used in the area, and distribute the maps directly to the mobile vendors as community outreach.

All of the above subsections are necessary to ensure:

- the targeted pest is known to the public

- the processes for establishing and removing potential quarantine boundaries are easily understood, transparent, can be accomplished within a biologically timely manner, and provide an opportunity to appeal the action with cause
- the articles and commodities covered are known
- the quarantine restrictions are known

In the case of a quarantine being triggered, implementing said quarantine with localized eradication activities minimizes or eliminates the impact of this insect pest on the surrounding environment, if the quarantine effectively regulates the actual hosts of the insect. Flora and fauna within non-agricultural ecosystems, including the natural environments, will continue their existence without the quarantine as they have before this non-native pest was first detected in this county if the pest is eradicated before it spreads to native species. If the Department neglects to regulate the movement of host fruit, CFF 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. An established CFF population would likely result in increased insecticide usage in the areas affected, with potential negative impacts on non-target insects, along with the species that rely on them. Therefore, modifying the host list to reflect the current best evidence will have no environmental impact or (in the case of a quarantine being triggered) a potential positive environmental impact.

The Department also relied upon the following documents for determining this proposed emergency rulemaking:

Caribbean Fruit Fly, *Anastrepha suspensa*, Regulated Host List, United States Department of Agriculture. May 2024

Email from Dayna Napolollo on Wednesday, August 21, 2024 “Caribbean Fruit Fly (CFF), Orange County”

CalOES, 2017. State of California Emergency Plan. Governor’s Office of Emergency Services. October 1, 2017.

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

California Agricultural Statistics Review 2022-2023, California Department of Food and Agriculture, 2024, page 10

Authority and Reference Citations

Authority: Sections 407, 5301, 5302, and 5322 Food and Agricultural Code

Reference: Sections 407, 5301, 5302, 5322, 5761, 5762, 5763, and 5764 Food and Agricultural Code

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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 5301, provides that the Secretary may establish, maintain, and enforce such quarantine regulations as they deem necessary to protect the agricultural industry of this state from pests. The regulations may establish a quarantine at the boundaries of this state or elsewhere within the state.

Existing law, FAC Section 5302, provides that the Secretary may make and enforce such regulations as they deem necessary to prevent any plant or thing which is, or is

liable to be, infested or infected by, or which might act as a carrier of, any pest, from passing over any quarantine line which is established and proclaimed pursuant to this division.

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.

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.

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.

The existing laws 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.

This amendment and adoption provides the necessary regulatory authority to prevent the artificial spread of a serious insect pest which is a mandated statutory goal.

The Department is the only agency that 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 3422 Caribbean Fruit Fly Interior Quarantine and Section 3591.11 Caribbean Fruit Fly Eradication Area.

This amendment of Title 3 CCR Section 3591.11 and adoption of Title 3 CCR Section 3422 will allow the Department to create an interior quarantine, add Orange County to the eradication area, and update the CFF host list to be in harmony with the most current USDA list.

Anticipated Benefits from This Regulatory Action

This regulatory action will allow the Department to create an interior quarantine, add Orange County to the eradication area, and update the CFF host list to be in harmony with the most current USDA list. Making these changes will help prevent the spread of CFF, which will benefit:

- the general public
- homeowners and community gardens
- agricultural industry
- the State's general fund.

Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department has determined that the amendment of Title 3 CCR Section 3591.11 and adoption of Section 3422 does not impose a mandate on local agencies or school districts and no reimbursement is required under Section 17561 of the Government Code.

The Department also has determined that no savings or increased costs to any state agency, 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, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the amendment of Title 3 CCR Sections 3591.11 or adoption of Section 3422.