

FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists, and that the foregoing amendment of a regulation is necessary for an immediate action to avoid serious harm to the public peace, health, safety or general welfare, within the meaning of Government Code Section 11342.545 and Public Resources Code Section 21080. The Secretary has also determined that this emergency clearly poses such an immediate, serious harm that delaying action by providing five working days advance notice to allow public comment would be inconsistent with the public interest, within the meaning of Government Code Section 11346.1(a)(3). Further, the Secretary believes that this emergency clearly poses such an immediate, serious harm that delaying action by the Office of Administrative Law providing five calendar days advance notice to allow public comment would also be inconsistent with the public interest, within the meaning of Government Code Section 11349.6(b).

Specific Facts Showing the Need for Immediate Action

Mediterranean fruit fly is a destructive insect pest which attacks the fruit of various plants including over 260 crops such as citrus, tomatoes, grapes, avocados, peaches, and cherries. The 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 are found in soil.

Mediterranean fruit flies were detected in the County of San Diego. In November of 2008 multiple life stages of adult Mediterranean fruit flies were detected in the El Cajon area of San Diego County. As a result, an emergency quarantine was implemented which was effective November 26, 2008. In December of 2008, additional Mediterranean fruit flies were detected in the El Cajon area away from the existing epicenter. As a result, the regulated area was expanded as an emergency action which was effective on December 18, 2008. In May of 2009, more Mediterranean fruit flies were detected and a new quarantine area of approximately 106 square miles was established surrounding the Mira

Mesa area of San Diego County which was effective on June 1, 2009. Effective July 22, 2009, the Department removed a portion, approximately 105 square miles, of the El Cajon area of San Diego County from that area under quarantine (approximately 198 square miles) for Mediterranean fruit fly.

On July 30, 2009 (Pest and Damage Record (PDR) #1442992), an adult mated female Mediterranean fruit fly was taken from a trap in the Imperial Beach area of San Diego County. The detection of mated female adult Mediterranean fruit flies is indicative of an incipient infestation of the fly in the Imperial Beach area of San Diego County. The United States Department of Agriculture's Animal and Plant Health Inspection Service also accepts this standard as the trigger for an additional quarantine response (see "Mediterranean Fruit Fly Action Plan," dated December, 2003, United States Department of Agriculture, Plant Protection and Quarantine). The Food and Agriculture Organization of the United Nations has a similar international standard established.

This proposed emergency action will establish a new quarantine area in the Imperial Beach area of San Diego County. This includes the initial detection site as the epicenter and a buffer zone which extends approximately 4-1/2 miles in each direction from the epicenter. A buffer zone is necessary because the fly can spread naturally (as well as being spread artificially in infested hosts). The proposed boundary line was drawn jointly by the United States Department of Agriculture, the California Department of Food and Agriculture, and the San Diego County Agricultural Commissioner. The proposed quarantine area is considered the minimum area around the initial detection sites which should be regulated to prevent artificial spread of Mediterranean fruit fly to noninfested areas.

This amendment will establish a new quarantine area in the Imperial Beach area (approximately 37 square miles) of San Diego County for a total of approximately 236 square miles surrounding the Mediterranean fruit fly infestations in San Diego County. It is necessary to amend this regulation on an emergency basis to establish restrictions on the movement of hosts and possible carriers from the proposed regulated area surrounding the Imperial Beach area of San Diego County. Host crops are being or will be harvested in

this area soon. Whether produced by growers or members of the public, host fruits and vegetables need to be immediately restricted from leaving the proposed regulated area unless they are properly certified to prevent the possible spread of the fly to uninfested areas of California. Our international trading partners are keenly aware of Mediterranean fruit fly infestations in California and implement restrictions on our international trade of host commodities. Some of our major trading partners, like Japan, will not accept any host commodities produced or packed within a regulated area. Without the immediate implementation of this regulation, these trading partners may consider all of California infested with Mediterranean fruit fly.

The Department is also relying upon the following document for this proposed action:

Letter dated August 4, 2009, from Robert G. Atkins to A.G. Kawamura.

Authority and Reference Citations

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

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Informative Digest

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry of California and prevent the spread of injurious pests (Food and Agricultural Code, Sections 401 and 403). Existing law provides that the Secretary may establish, maintain, and enforce such quarantine regulations as he deems necessary to circumscribe and exterminate or prevent the spread of pests to protect California's agricultural industry.

Section 3406. Mediterranean Fruit Fly Interior Quarantine.

This amendment will establish a new quarantine area for Mediterranean fruit fly of approximately 37 square miles surrounding the Imperial Beach area of San Diego County.

The effect of the amendment is to establish the authority for the State to regulate movement of hosts and possible carriers of Mediterranean fruit fly within and from this new area under quarantine to prevent artificial spread of the fly to noninfested areas.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3406 does not impose a mandate on local agencies or school districts, except that agricultural commissioners of counties under quarantine have a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because the San Diego County Agricultural Commissioner requested that a quarantine be implemented for a portion of San Diego County. Therefore, there are no mandated costs associated with establishing the regulated area surrounding a portion of the Imperial Beach area.

Cost Estimate

The Department also has determined that no costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable costs or savings to local agencies or school districts under Section 17561 of the Government Code, and no costs or savings in federal funding to the State will result from the proposed action.