

FINDING OF EMERGENCY

The Secretary of the California Department of Food and Agriculture (Department) determined that an emergency exists and that the foregoing amendment to Title 3 of the California Code of Regulations (CCR) Section 3591.5, Mediterranean Fruit Fly (MFF) Eradication Area is necessary to avoid serious harm to the public peace, health and safety, or general welfare. On August 28, 2024, an adult mated female MFF was confirmed in the Fremont area of Alameda County. This is the first time MFF has been detected in Alameda County.

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. Due to the risk this pest poses to agricultural crops, eradication authority must be established quickly to allow early intervention and eradication.

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 MFF 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 citrus, tomatoes, grapes, avocados, peaches, and cherries, 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 affected by an MFF infestation are peaches which had a \$149 million exports for the same time period.

The entire County of Alameda is being proposed as eradication area because the utilization of these political boundaries will avoid frequent amendments to the regulation if the MFF is detected elsewhere within this county. There are no associated impacts with the regulation if no flies are found. The detection of one mated female MFF is the trigger for treatment activities.

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 MFF in Alameda County.

Background

Under Section 14.5 of the State of California Emergency Plan, dated July 1, 2009, 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.

MFF has the capability of causing significant irreparable harm to California's agricultural industry and adverse environmental impacts. Should the Department not take action, MFF 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.

If the fly is allowed to spread and become established in host fruit production areas, California's agricultural industry would suffer losses due to increased pesticide use and decreased production of marketable fruit. In addition, there could be loss of markets if the United States Department of Agriculture (USDA) or other states or countries enact quarantines against California products that are hosts for the fly.

Under international trade agreements, the USDA is obligated to notify any trading partner that has concerns regarding the quarantine status of MFF in the United States. Trade impacts may not be limited to host commodities produced within the regulated

area or even in California. The introduction of exotic fruit flies, such as MFF, is always the subject of the regional and specific bilateral trade discussions that occur between the USDA and our trading partners. The expeditious implementation of exotic fruit fly quarantines is a key to ensure qualifying host commodities produced or packed anywhere in California can continue to move freely in international trade. California's trading partners are astute and have used the Internet in the past to review our state regulations and compare them to the information they receive from the USDA. Therefore, it is necessary to amend Section 3591.5 on an emergency basis.

Project Description

This amendment will provide authority for the State to perform specific detection, control, and eradication activities against MFF in Alameda County. It is necessary to immediately perform these activities and eradication treatments within Alameda to prevent spread of the fly to non-infested areas and to protect California's agricultural industry and urban environment. Treatment activities against the fly will begin upon the notification of affected parties.

The proposed amendment of this eradication regulation will proclaim Alameda County as an eradication area. The entire county of Alameda is proposed as an eradication area because it is the political division that provides the most workable eradication area boundary for determining if an infestation exists and exterminating an established MFF infestation. Fruit may have already been moved from an infested area to another portion of the county. To enable rapid treatment of these small infestations without frequent amendment of the regulation, the entire county of Alameda should be established as an eradication area. To prevent spread of the fly to non-infested areas and to protect California's agricultural industry, it is necessary to immediately begin treatment activities against MFF. Therefore, it is necessary to implement this regulation as an emergency action.

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

Email from Kyle on Thursday, August 29, 2024 “Alameda Med FLY”

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

“Mediterranean Fruit Fly Action Plan,” United States Department of Agriculture, Marketing and Regulatory Programs, Animal and Plant Health Inspection Service, Plant Protection and Quarantine.

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

Authority and Reference Citations

Authority: Sections 407 and 5322 Food and Agricultural Code

Reference: Sections 5761, 5762, 5763, and 5764 Food and Agricultural Code

Informative Digest

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 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 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.

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

Mediterranean Fruit Fly Eradication Area.

This amendment will establish Alameda County as an eradication area for MFF. The effect of the regulation is to provide authority for the State to perform control and eradication activities against MFF in Alameda County to prevent spread of the fly to non-infested areas and to protect California's agricultural industry.

Anticipated Benefits from This Regulatory Action

Adding Alameda County to the eradication area will help prevent the spread of MFF, which will benefit.

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

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.

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

The Department has determined that the amendment of Section 3591.5 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 Section 3591.5.