FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists due to the unexpected occurrence of multiple wild Mediterranean fruit flies, *Ceratitis capitata*, being trapped in the Rancho Cucamonga area of San Bernardino County. On August 16, 2012, two wild males and one unmated female Mediterranean fruit flies were trapped in one trap (California Pest and Damage Record (PDR) SA0P06104038) and one wild male Mediterranean fruit fly was trapped about one and one-half miles away (SA0P06104039). The detection of a multiple Mediterranean fruit flies is indicative of a new incipient infestation of Mediterranean fruit fly in the Rancho Cucamonga area of San Bernardino County. This unexpected occurrence of Mediterranean fruit flies in San Bernardino County meets the national and international trigger for both eradication and quarantine responses in Los Angeles and San Bernardino counties. A portion of eastern Los Angeles county is being included as to the required four and one-half buffer area surrounding each find sites overlaps with this area.

The Secretary is proposing to amend 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 he 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.

Emergency Rulemaking Procedures

“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 and Public Resources Code Section 21080(b)(4). 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 the public interest, an agency is not required to provide notice pursuant to Government Code Section 11346.1(a)(2) (See Evidence of Emergency).

After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

Further, 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) or allow five calendar days to allow public comment pursuant to Government Code Section 11349.6 would be inconsistent with the public interest, within the meaning of 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.
California Environmental Quality Act

“Specific actions necessary to prevent or mitigate an emergency” are exempt from the California Environmental Quality Act [CEQA]. Public Resources Code Section 21080(b)(4). “Emergency means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.” Public Resources Code Section 21060.3.

Categorical Exemption

Title 14, California Code of Regulations, Section 15308. “Class 8 consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment.”

For the reasons set forth in this document, this constitutes a specific act necessary to prevent or mitigate an emergency and is also an action required for the preservation of the environment.

Evidence of Emergency

The Mediterranean fruit fly has the capability of causing significant irreparable harm to California’s agricultural industry and some likely adverse environmental impacts. Should the Department not take these actions; the Mediterranean fruit fly 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. Mediterranean fruit fly attacks many fruits, including over 300 crops such as apple, apricot, avocado, bell pepper, cherry, citrus, grape, nectarine, pear, persimmon, plum, pomegranate and tomato. Larval feeding reduces the interior of fruit to a rotten mass. Egg punctures admit decay organisms that cause tissue breakdown. Damaged fruit is generally unfit for human consumption. Movement of hosts infested with the larvae of the fly can artificially spread the fly. It has been estimated that the yearly cost of not eradicating Mediterranean fruit fly in California would range from $1.3 to $1.8 billion.
in crop losses, additional pesticide use, and quarantine requirements. Thus, this presents a clear, imminent danger to the agricultural industry and economy of California.

Like all quarantine actions, the intended effect of the emergency amendment of California Code of Regulations, Title 3, Section 3406, Mediterranean Fruit Fly Interior Quarantine is to provide the necessary regulatory authority to prevent the human-assisted artificial spread of this exotic pest. Artificial spread, such as Mediterranean fruit flies being moved in infested host commodities from infested areas to uninfested areas has the potential to spread the pest rapidly throughout the State or to other states, whereas the natural spread of the pest would be gradual.

There is some commercial agriculture in this area. Additionally, there are likely to be Farmers Markets and swap meets, community and backyard gardens and other sources of host commodities located within the proposed quarantine area. The movement of once piece of infested fruit can result in a new incipient infestation miles away from the source of the infested fruit.

Each day that the Department cannot conduct the necessary quarantine project activities significantly increases the immediate threat that the infestation will grow through artificial spread by human assisted movement of infested commodities. While the continued unabated natural spread from this incipient infestation may be confined to the Rancho Cucamonga area for a period of time, human assisted artificial spread could occur to anywhere in California or to other states. If the fly were allowed to spread and become established in other 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 or other states or countries enact quarantines against California products which can host and carry the fly.

In addition to the economic impacts on the agricultural industry, this would result in consumers suffering by facing higher prices for the affected host commodities. The spread to other urban areas would also have negative impacts on homeowners and community
gardens. The natural reaction of the general public to finding larvae damaging their crops would also be to increase the use of pesticides. Pesticides used in compliance with all label requirements do not have a significant impact on the environment or waterways. However, there would likely be an element of the general public which may misuse the pesticides. The widespread misuse of pesticides in our urban areas, including properly disposing containers, could cause damage to the environment and our waterways.

To prevent artificial spread of the fly to noninfested areas to protect California’s agricultural industry, it is necessary immediately to regulate the human assisted movement of hosts that can carry the fly from, into and within the infested area and a surrounding buffer area.

Under international trade agreements, the USDA is obligated to notify any trading partner which has concerns regarding the quarantine status of Mediterranean fruit fly in the United States. This report has to go out to those trading partners within 96 hours of the confirmation of the pest finds. Examples of countries which have specific concerns pertaining to Mediterranean fruit fly include Argentina, Australia, Brazil, Chile, Costa Rica, Japan, Mexico, New Zealand, South Africa and South Korea. Some of these countries are major trading partners involving California produced host commodities. Trade impacts may not be just limited to host commodities produced within the regulated area or even in California. For instance, Japan, Mexico and South Korea will not accept any Mediterranean fruit fly host material produced in, packed or repacked within a regulated area even if it originated in another state. Additionally, any host commodities transiting a regulated cannot unnecessarily stop and must be sealed and enclosed in a manner to exclude the possible entry of the fly into the host shipment. In order not to interrupt trade, our trading partners want assurances that these quarantine requirements are immediately implemented.

The introduction of exotic fruit flies such as Mediterranean fruit fly is always the subject of the regional and specific bilateral trade discussions which 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 in or packed anywhere in California can
also continue to move in international trade. Our 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.

The immediate implementation of this proposed regulatory action is also necessary to prevent the USDA from considering the entire State as infested with Mediterranean fruit fly. The USDA is in the process of revising a federal domestic regulation and cannot regulate less than the entire State unless it has a parallel State regulation. If the USDA were to regulate the entire State, there would be additional detrimental quarantine requirements directed against California host commodities by the USDA and our concerned international trade partners.

Therefore, it is necessary to immediately amend this regulation to establish a quarantine area in the Rancho Cucamonga area of Los Angeles and San Bernardino counties.

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


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

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 (FAC), 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.

Anticipated Benefits of the Regulation

Existing law, FAC section 24.5, states “Inasmuch as plants growing in native stands or planted for ornamental purposes contribute to the environmental and public health and welfare needs of the people of the State, the Legislature hereby finds and declares that such plants shall be considered as a part of the agricultural industry for the purpose of any law that provides for the protection of the agricultural industry from pests.”

Existing law, 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.”

Existing law, FAC Section 403 states, “the department shall prevent the spread of injurious insect pests.”

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 prevent the spread of pests, 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 regulation benefits the goal of preventing the spread of injurious pests. This regulation will protect the vast majority of the agriculturally dependent rural communities of this State. The amendment of this regulation benefits the environment by not having Mediterranean fruit flies artificially spread to new areas which may be more environmentally sensitive. This eliminates any potential unnecessary environmental impacts in these areas. It benefits the goal of eradication by confining the infestation to the smallest area feasible and increases the chance of success. The amendment of this regulation also benefits those businesses which would otherwise be regulated in new infested areas; relieving them of any costs for compliance and giving them freer market access.

The United states Department of Agriculture (USDA) maintains a federal domestic quarantine regulating the interstate movement of host material. If the State does not have a parallel interior quarantine which is substantially the same as the federal domestic regulation, the USDA cannot regulate less than the entire State. The amendment of this State regulation will prevent the USDA from having to unnecessarily regulate the entire State.

The Department is the only agency which 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 3406. Mediterranean Fruit Fly Interior Quarantine. This amendment will establish the quarantine area for Mediterranean fruit fly of approximately 88 square miles surrounding the Rancho Cucamonga area of San Bernardino and Los Angeles counties. 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 Bernardino and Los Angeles County Agricultural Commissioners requested that a quarantine be implemented. Therefore, there are no mandated costs associated with establishing the regulated area surrounding a portion of the Rancho Cucamonga 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.