FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists due to the detection of Oriental Fruit Fly, *Bactrocera dorsalis*, in California. On June 21, 2010 (California Pest and Damage Record #1496346), an adult mated female Oriental fruit fly was trapped in the North Highlands area of Sacramento County. The detection of a mated female Oriental fruit fly is indicative of an incipient infestation of Oriental fruit fly in the North Highlands area of Sacramento County. Oriental fruit fly is a destructive insect pest of innumerable commercial agricultural crops. This is an unexpected occurrence and is the first time a mated female Oriental fruit fly which triggers a quarantine response has been detected in Sacramento County. Fruits (including nuts, dates, and berries), many kinds of vegetables, and the fruiting bodies of many wild and ornamental plants are known to be hosts or possible hosts of the Oriental fruit fly. 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 cost of not eradicating Oriental fruit fly in California would range from $44 to $176 million in crop losses, additional pesticide use, and quarantine requirements. Thus, this presents a clear, imminent danger to the agricultural industry in California.

Like all quarantine actions, the intended effect of the emergency amendment of Section 3423, Oriental 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 Oriental 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, whereas the natural spread of the pest would be gradual.
To prevent artificial spread of the fly to noninfested areas to protect California’s agricultural industry, it is necessary immediately to regulate movement of hosts that can carry the fly from, into and within the infested area and a surrounding buffer 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).

Since the Department does not have a record of any person requesting a notice of regulatory actions under Government Code Section 11346.4(a)(1), the provisions of Government Code Section 11346.4(a)(2) do not appear to be applicable to this emergency action.
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 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.

Project Description
This proposed amendment of Section 3423(b) will add approximately 79 square miles surrounding the infestation in the North Highlands area of Sacramento County as the area under quarantine for Oriental fruit fly. To prevent artificial spread of the fly to noninfested areas to protect California’s agricultural industry, it is necessary immediately to regulate movement of hosts that can carry the fly from, into and within the infested area and a surrounding buffer area.

The goal of quarantine activities is the prevention of human-assisted dispersal of the Oriental fruit fly from infested to uninfested areas. In the case of Oriental fruit fly, the buffer area, which is 4.5 miles, is three times the distance of any anticipated natural spread. The real threat of long distance spread is from human-assisted movement of infested host material.

The proposed quarantine area is considered the minimum area surrounding the initial detection site which should be regulated to prevent artificial spread of Oriental fruit fly to uninfested areas. The effect of the amendment of this regulation will be to implement the State’s authority to perform quarantine activities against the Oriental fruit fly in this area of Placer and Sacramento counties. Any quarantine actions undertaken by the Department will be in cooperation and coordination with the USDA and the affected county agricultural commissioners.
Quarantine activities include the establishment of the boundary, notification of affected residences and businesses, monitoring and regulation of susceptible commodities and articles covered. This may include soil, raw cannery waste, fruits, host nursery stock, etc., which have been exposed to infestation by the Oriental fruit fly. Sellers and transporters of host commodities and articles are required to implement measures to protect their commodities and articles from infestation. Protective measures include but are not limited to, refrigeration of host commodities, enclosure in fly proof packaging or containers, the use of air screens, automatic doors or screening to exclude Oriental fruit fly from areas where hosts are present and are intended to be subsequently moved either within or from the quarantine area. Growing season protective or post-harvest treatments of exposed host commodities may be required prior to movement from or within the quarantine area and be monitored by regulatory officials.

Emergency Defined
“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.

Evidence of Emergency
The Oriental fruit fly has the capability of causing significant irreparable harm to California’s agricultural industry and some possible adverse environmental impacts. Should the Department not take these actions; the Oriental 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.
If the fly were allowed to spread and become 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 or other states or countries enact quarantines against California products which can host and carry the fly.

Under international trade agreements, the USDA is obligated to notify any trading partner which has concerns regarding the quarantine status of Oriental fruit fly in the United States. Examples of countries which have specific concerns pertaining to Oriental 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 Oriental 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. The introduction of exotic fruit flies such as Oriental 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 Oriental 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 amend this regulation to establish a quarantine area in the North Highlands area of Sacramento County as an emergency action.

**Background**

Oriental fruit fly has been established in Hawaii, since 1946, where it is a major pest of agriculture and is particularly attracted to mangoes, avocados and papayas. Maggots have been found in over 125 kinds of fruits and vegetables in Hawaii alone. The introduction of this pest threatens numerous crops in California, including apples, apricots, avocados, cherries, citrus, figs, nectarines, peaches, pears, plums and tomatoes. It has been estimated that the cost of not eradicating Oriental fruit fly in California would range from $44 to $176 million in crop losses, additional pesticide use, and quarantine requirements. Oriental fruit fly has been introduced into California a number of times, through the movement of prohibited host fruits and vegetables into the State, and has been eradicated.

Females lay eggs in groups of three to 30 under the skin of host fruits and vegetables; the female can lay more than 1,000 eggs in her lifetime. Time taken for development depends on the ambient temperature. Larvae tunnel through the fruit feeding on the pulp, shed their skins twice, and emerge through exit holes in approximately 10 days. The larvae drop from the fruit and burrow two to three cm. into the soil to pupate. In 10 to 12 days, adults emerge from these puparia. The newly emerged adult females need eight to 12 days to mature sexually prior to egg laying. Breeding is continuous, with several annual generations. Adults live 90 days on the average and feed on honeydew, decaying fruit, plant nectar, bird dung, and other substances. The adult is a strong flyer recorded to travel up to 30 miles in search of food and sites to lay eggs. Transport of
fruit infested with eggs or larvae also allows the fly to spread artificially and infest new areas very quickly.

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


    “Action Plan for Methyl Eugenol Attracted Fruit Flies, including Oriental Fruit Fly, Bactrocera dorsalis (Hendel),” revised April 2000, California Department of Food and Agriculture.


Authority and Reference Citations
Section 3423(b):
Authority:  Sections 407, 5301, 5302, and 5322, Food and Agricultural Code.
Reference:  Sections 5301, 5302, and 5322, Food and Agricultural Code.

Informative Digest
Existing law provides that the Secretary may establish, maintain, and enforce such regulations as he deems necessary to protect the agricultural industry of California from the spread of pests. The Secretary may make and enforce such regulations as he deems necessary to prevent any plant or thing which is, or is liable to be, infested by or which might act as a carrier of any pest, from passing over any quarantine boundary which is established.
Section 3423. Oriental Fruit Fly Interior Quarantine.
This amendment will add approximately 79 square miles surrounding the North Highlnds area of Sacramento County to the regulation as the area under quarantine for Oriental fruit fly. The effect of the change is to provide authority for the State to regulate movement of hosts of Oriental fruit fly from, into and within this area to prevent the artificial spread of the fly to noninfested areas to protect the public and California’s agricultural industry.

Mandate on Local Agencies or School Districts
The Department of Food and Agriculture has determined that Section 3423 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 agricultural commissioners of Placer and Sacramento counties requested the change in regulations.

Cost Estimate
The Department has also 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 proposed action.