

## FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists due to the detection of Melon fruit fly, *Bactrocera cucurbitae*, in California. On June 20, 2011, an adult male Melon fruit fly was trapped in the Fresno area of Fresno County. Melon fruit fly a destructive insect pest which attacks the fruit of many plants, including apple, avocado, beans, cantaloupe, chayote, citrus, cucurbits (cucumber, melons pumpkin, squash and gourds), eggplant, fig, guava, mango, peach, pear, peppers, tomato, and watermelon. This unexpected occurrence of melon fruit fly in the Fresno area meets the national and international standards that mandate immediate intensive delimitation activities in the Fresno area of Fresno County to determine if an incipient infestation of the fly exists. Therefore, the Department is proposing to amend Section 3591.15, Melon Fruit Fly Eradication Area by adding Fresno County. If a state agency makes a finding that the adoption (or amendment) of a regulation is necessary to address an emergency, the regulation may be adopted (amended) as an emergency regulation. Government Code Section 11346.1(b)(1). “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.

### Emergency Rulemaking Procedures

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. 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. 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 notification provisions of Government Code Section 11346.1(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 by the Office of Administrative Law providing five working days advance notice to allow public comment would also be inconsistent with the public interest, within the meaning of Government Code Section 1349.6(b).

#### California Environmental Quality Act

A Final Programmatic Environmental Impact Report (PEIR), "The Exotic Fruit Fly Eradication Program Utilizing Male Annihilation and Allied Methods," was prepared by the Department as the lead agency under the California Environmental Quality Act (CEQA). The PEIR was assigned State Clearinghouse Number 90021212. The PEIR addresses the potential environmental impacts that would result from implementation of alternatives for the eradication of the melon fruit fly. The PEIR is available upon request from the Department.

#### Evidence of An Emergency

The core half-mile radius surrounding this detection site consists of small farmers and there are over a hundred growers in the immediate vicinity which are threatened by this melon fruit fly detection. The Department knows host crops are being grown in this area but does not yet know the actual quantities. The melon fruit fly has the capability of causing significant irreparable harm to California's agricultural industry and some possible adverse environmental impacts. Larval feeding reduces the interior of fruit and plants to a rotten mass. Egg punctures admit decay organisms that cause tissue breakdown. Damaged fruit is generally unfit for human consumption. Once a single melon fruit fly has been generally detected, specific intensive delimitation activities must

be implemented immediately in order to avoid the affected area from being subject to quarantine regulation. Should the Department not take these actions; the melon 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 melon fruit fly in the United States. Examples of countries which have specific concerns pertaining to melon fruit fly include Argentina, Australia, Brazil, Chile, Costa Rica, 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 Mexico and South Korea will not accept any melon 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 melon 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. Therefore, it is necessary to amend Section 3591.15(a) on an emergency basis.

### Project Description

The melon fruit fly is a cuelure attracted fruit fly. This amendment will provide authority for the State to perform specific detection, control and eradication activities against the melon fruit fly in Fresno County. This authority includes, “The searching for all stages of the fly by visual inspection, the use of traps, or any other means.” It is immediately necessary to perform these activities within the Fresno area of Fresno County. To protect California's agricultural industry and urban environment, if necessary, treatment activities against the fly would have to begin upon the detection of a second life stage of the fly within three miles and within one life cycle. The United States Department of Agriculture's Animal and Plant Health Inspection Service also accepts this standard as the trigger for an eradication response. The Food and Agriculture Organization of the United Nations has a similar international standard established. After the eradication trigger is met, treatments are to begin within 24-72 hours. However, “The searching for all stages of the fly by visual inspection, the use of traps, or any other means” must begin immediately to determine if there is an incipient infestation in Fresno County.

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

California Pest and Damage Record # 1579460.

“Exotic Fruit Fly Strategic Plan” June 19, 2006, United States Department of Agriculture.

“Action Plan for CUELURE ATTRACTED FRUIT FLIES, Including the Melon Fly, *Bactrocera cucurbitae* (Coquillett),” Revised April 2000, California Department of Food and Agriculture, Plant Health and Pest Prevention Services (ten pages).

“Action Plan, Melon Fly, *Dacus cucurbitae* (Coquillett),” September 1984, United States Department of Agriculture.

#### Authority and Reference Citations

Section 3591.15(a):

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

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

#### Informative Digest

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.

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.”

Section 3591.15(a). Melon Fruit Fly Eradication Area.

This amendment will add the entire County of Fresno to the regulation as an additional area under the eradication area for melon fruit fly. The effect of the change is to provide authority for the State to conduct eradication activities against melon fruit fly in Fresno County.

### Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 39591.15(a) does not impose a mandate on local agencies or school districts. All eradication activities shall be conducted by the Department.

### 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.