

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations
Section 3591.15, Subsections (a) and (b)
Melon Fruit Fly Eradication Area

INITIAL STATEMENT OF REASONS/
POLICY STATEMENT OVERVIEW

Description of Public Problem, Administration Requirement, or Other Condition or Circumstance
the Regulation is Intended to Address

This regulation is intended to address the obligation of the Department of Food and Agriculture to protect the agricultural industry from the movement and spread of injurious plant pests within California (Food and Agricultural Code Section 403).

Specific Purpose and Factual Basis

The specific purpose of Section 3591.15 is to provide authority to the State to eradicate infestations of the melon fruit fly, *Bactrocera cucurbitae*, from within the declared eradication area by the established means and methods.

The factual basis for the determination by the Department that the amendment of this regulation is necessary is as follows:

On August 9, 2010, a total of five adult Melon fruit flies were trapped in the Bakersfield area of Kern County. There were three sexually immature females and two males trapped. The detection of these Melon fruit flies is indicative of an incipient infestation of Melon fruit fly in the Bakersfield area of Kern County. As these flies were sexually immature, this is indicative of their recent emergence from puparia in the ground. Melon fruit fly is 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. Until now, Melon fruit fly has never been detected in Kern County. This unexpected occurrence of melon fruit flies meets the national and international trigger for an eradication response in Kern County.

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. If the fly were allowed to spread and become established in host fruit production areas, California's agricultural industry would suffer losses due to decreased production of marketable fruit, increased pesticide use, and loss of markets if other states or countries enacted quarantines against California products.

This amendment provided authority for the State to perform specific detection, control and eradication activities against the melon fruit fly in Kern County. To prevent spread of the fly to noninfested areas in order to protect California's agricultural industry and urban environment, it was necessary to begin treatment activities against the fly.

If the fly were allowed to spread and become established in host fruit production areas, California's agricultural industry would suffer losses due to decreased production of marketable fruit, increased pesticide use, and loss of markets if other states or countries enacted quarantines against California products.

This amendment of the eradication regulation proclaimed Kern County as an eradication area. The entire County of Kern was proposed as an eradication area because it is the political division which provides the most workable eradication area boundary for exterminating an established Mediterranean fruit fly infestation. Fruit may have already been moved from the infested area to another portion of the county and adult flies may have already spread naturally from the infested area. These movements may have already resulted in small infestations outside the known infested area. To enable rapid treatment of these small infestations without frequent amendment of the regulation, the entire county should be established as an eradication area.

If the fly were allowed to spread and become established in host fruit production areas, California's agricultural industry would suffer losses due to decreased production of marketable fruit, increased pesticide use, and loss of markets if other states or countries enacted quarantines against California products.

This regulation provides authority for the State to perform control and eradication activities against melon fruit fly in Kern County. To prevent spread of the fly to noninfested areas to protect California's agricultural industry, it was necessary to immediately begin treatment activities against the Mediterranean fruit fly. Therefore, it was necessary to amend this regulation as an emergency action. The Department is still performing some of the activities authorized under this regulation and needs to make this regulation permanent.

California Environmental Quality Act

The melon fruit fly has the capability of causing significant irreparable harm to California's agricultural industry and some possible adverse environmental impacts. While the Department's compliance with the California Administrative Procedure Act and the California Environmental Quality Act (CEQA) are separate actions, they can be interrelated.

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.

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

The Department of Food and Agriculture has determined that Section 3591.5(a) does not impose a mandate on local agencies or school districts and no reimbursement is required under Section 17561 of the Government Code. All activities authorized under this regulation are being performed by the Department.

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 subsections 3591.15(a) and (b).

The cost impact of the changes in the regulations on private persons and businesses are expected to be insignificant.

The Department has determined that the proposed actions will not have a significant adverse economic impact on housing costs or California business, including the ability of California businesses to compete with businesses in other states. The Department's determination that the action will not have a significant statewide adverse economic impact on business was based on the following:

The emergency amendment of subsections 3591.15(a) and (b) provides authority for the Department to conduct eradication activities against melon fruit fly within Kern County and there are no known private sector cost impacts.

Assessment

The Department has made an assessment that the repeal of the regulation would not 1) create or eliminate jobs within California; 2) create new business or eliminate existing businesses with California; or 3) affect the expansion of businesses currently doing business with California.

Alternatives Considered

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Information Relied Upon

The Department relied upon the following studies, reports, and documents in the proposed adoption and subsequent amendment of Section 3591.15:

California Pest and Damage Record # 1487003.

"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.