

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 August 22, 2011 (California Pest and Damage Record (PDR) #1322853), an adult wild sexually mature male Oriental fruit fly was unexpectedly trapped in the Simi Valley area of Ventura County. Oriental fruit fly is a destructive insect pest of innumerable commercial agricultural crops. 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 which cause tissue breakdown. Damaged fruit is generally unfit for human consumption. This unexpected occurrence of Oriental fruit fly in the Simi Valley area meets the national and international standards that mandate immediate intensive delimitation activities in the Simi Valley area of Ventura County to determine if an incipient infestation of the fly exists. Therefore, the Department is proposing to amend Section 3591.2, Oriental Fruit Fly Eradication Area by adding Ventura 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.

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 Oriental fruit fly. The PEIR is available upon request from the Department.

Evidence of An Emergency

Ventura County's 2009 gross value of avocados was approximately 44 million dollars; bell peppers were 46 million dollars; lemons were 129 million dollars and tomatoes were 127 million dollars. All of these crops are known hosts of Oriental fruit fly. The Oriental fruit fly has the capability of causing significant irreparable harm to California's agricultural industry and some possible adverse environmental impacts. Once a single Oriental 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 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, 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 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 eradication activities 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 3591.2(a) on an emergency basis.

Project Description

The Oriental fruit fly is a methyl eugenol attracted fruit fly. This amendment will provide authority for the State to perform specific detection, control and eradication activities

against the Oriental fruit fly in Ventura 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 Simi Valley area of Ventura County. To prevent spread of the fly to noninfested areas 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 Ventura County.

The proposed amendment of this eradication regulation will proclaim Ventura County as an eradication area. The entire County of Ventura is proposed as an eradication area because it is the political division which provides the most workable eradication area boundary for determining if an infestation exists and exterminating an established Oriental fruit fly 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 should be established as an eradication area.

The Department also relied upon the following information:

PDR #1322853, dated August 22, 2011.

“Action Plan for Methyl Eugenol Attracted Fruit flies, including the Oriental Fruit Fly, *Bactrocera dorsalis* (Hendel),” April 2000, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Action Plan, Oriental Fruit fly, Bactrocera dorsalis,” October 1989, United States Department of Agriculture, Animal and Plant Health Inspection Service, Cooperating State Departments of Agriculture.

Authority and Reference Citations

Section 3591.2(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 3591.2(a), Oriental Fruit Fly Eradication Area.

This amendment of Section 3591.2(a) will establish Ventura County as an eradication area for the pest *Bactrocera dorsalis* (Oriental fruit fly). The effect of this amendment will be to provide authority for the State to perform control and eradication activities against Oriental fruit fly in Ventura County to prevent spread of the fly to noninfested areas to protect California's agricultural industry.

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.