

## FINDING OF EMERGENCY

The Secretary of the California Department of Food and Agriculture (Department) determined that an emergency exists and that the foregoing amendment to Title 3 of the California Code of Regulations (CCR) Section 3591.6, Spongy Moth (SM) Eradication Area is necessary to avoid serious harm to the public peace, health and safety, or general welfare. On August 15, 2024, an adult male SM was confirmed in the Berkeley area of Alameda County. This is the first time SM has been detected in Alameda County. A single SM find triggers intensive trapping to determine whether an infestation exists and to delimit any infestation.

Spongy moth is a destructive insect pest which feeds on the leaves of trees and shrubs, threatening forests, urban settings, and agricultural tree crops. Between the flighted and unflighted species they feed on over 600 plant species. If not eradicated high populations are capable of defoliating millions of acres of both forest and urban trees. This not only kills and weakens trees, but the scale of devastation can also alter forest composition and destroys habitat for native fauna. Infestations can affect recreational use of forests, parks, and backyards. In urban areas this destruction would have an economic impact that would include the cost of clean-up, tree replacement, and loss of property values.

### Emergency Defined

“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. 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 public interest, an agency is not required to provide notice pursuant to Government Code Section 11346.1(a)(2) (See Evidence of Emergency).

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) would be inconsistent with the public interest, within the meaning of the 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.

The Secretary is proposing to implement 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 she 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.”

### Evidence of an Emergency

The SM feeds on the leaves of trees and shrubs, threatening forests, urban settings, and agricultural tree and if not eradicated high populations of this pest are capable of defoliating millions of acres of both forest and urban trees. The scale of devastation can also alter forest composition and destroys habitat for native fauna. Infestations can affect recreational use of forests, parks, and backyards. In urban areas this destruction would have an economic impact that would include the cost of clean-up, tree replacement, and loss of property values.

The entire County of Alameda is being proposed as eradication area because the utilization of these political boundaries will avoid frequent amendments to the regulation if the SM is detected elsewhere within this county. There are no associated impacts with the regulation if no moths are found. The detection of one SM is the trigger for intensive trapping activities.

If the moth were allowed to spread and become further established California’s trees and shrubs would be at risk, threatening agriculture and the natural environment. This regulation will avoid harm to the public’s general welfare by providing authority for the State to perform detection, control, and eradication activities against SM in Alameda County.

### Background

Under Section 14.5 of the State of California Emergency Plan, dated July 1, 2009, the Department is responsible for coordinating integrated federal, state and local preparedness for response to, recovery from, and mitigation of plant diseases and pests, and overseeing the control and eradication of outbreaks of harmful or economically significant plant pests and diseases. The Department is also charged with leading the administration of programs to detect, control, and eradicate pests affecting plants.

SM has the capability of causing significant irreparable harm to California's agricultural industry and adverse environmental impacts. Should the Department not take action, SM could cause direct catastrophic losses to California's affected agricultural industries and significant harm to the State's environment through cost impacts or prohibitions to interstate commerce and exports of host commodities.

If the moth is allowed to spread and become established, California's agricultural industry would suffer losses due to increased pesticide use and decreased production as their trees and shrubs would be affected. In addition, there could be loss of markets if the United States Department of Agriculture (USDA) or other states or countries enact quarantines against California products that are hosts for the moth.

Under international trade agreements, the USDA is obligated to notify any trading partner that has concerns regarding the quarantine status of SM in the United States. Trade impacts may not be limited to host commodities produced within the regulated area or even in California. The introduction of exotic pests, such as SM, is always the subject of the regional and specific bilateral trade discussions that occur between the USDA and our trading partners. The expeditious implementation of exotic pest quarantines is a key to ensure qualifying host commodities produced or packed anywhere in California can continue to move freely in international trade. California's 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 3591.6 on an emergency basis.

### Project Description

This amendment will provide authority for the State to perform specific detection, control, and eradication activities against SM in Alameda County. It is necessary to immediately perform these activities and eradication treatments within Alameda to prevent spread of the pest to non-infested areas and to protect California's agricultural industry and urban environment. Treatment activities against the pest will begin upon the notification of affected parties.

The proposed amendment of this eradication regulation will proclaim Alameda County as an eradication area. The entire county of Alameda is proposed as an eradication area because it is the political division that provides the most workable eradication area boundary for determining if an infestation exists and exterminating an established SM infestation. Host material 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 of Alameda should be established as an eradication area. To prevent spread of the pest to non-infested areas and to protect California's agricultural and forest industry, it is necessary to immediately begin treatment activities against SM. Therefore, it is necessary to implement this regulation as an emergency action.

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

Email from AnaMaria Nistor on Tuesday, September 4th, 2024 "Pest Detection Advisory"

CalOES, 2017. State of California Emergency Plan. Governor's Office of Emergency Services. October 1, 2017.

"Action Plan for Gypsy Moth," California Department of Food and Agriculture Plant Health and Pest Prevention Services. Revised May 2000  
(Note: this document uses the spongy moth's former name)

### Authority and Reference Citations

Authority: Sections 407 and 5322 Food and Agricultural Code

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

### Informative Digest

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 that the Secretary is directed or authorized to administer or enforce.

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 that is described in FAC Section 5321.

Existing law, FAC Section 5761, provides that the Secretary may proclaim any portion of the state to be an eradication area with respect to the pest, prescribe the boundaries of such area, and name the pest and the hosts of the pest which are known to exist within the area, together with the means or methods which are to be used in the eradication or control of such pest.

Existing law, FAC Section 5762, provides that the Secretary may proclaim any pest with respect to which an eradication area has been proclaimed, and any stages of the pest,

its hosts and carriers, and any premises, plants, and things infested or infected or exposed to infestation or infection with such pest or its hosts or carriers, within such area, are public nuisances, which are subject to all laws and remedies which relate to the prevention and abatement of public nuisances.

Existing law, FAC Section 5763, provides that the Secretary, or the commissioner acting under the supervision and direction of the director, in a summary manner, may disinfect or take such other action, including removal or destruction, with reference to any such public nuisance, which he thinks is necessary.

Existing law, FAC Section 5764, provides that if an eradication area has been proclaimed with respect to a species of pests and the removal of host plants of such species is involved, the director may enter into an agreement with the owner of such host plants to remove and replace them with suitable nursery stock in lieu of treatment.

Expenditures, if any, allocated for the replacement nursery stock shall not exceed an amount which is budgeted for the purpose or approved by the Director of Finance.

The existing laws obligates the Secretary to 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 amendment provides the necessary regulatory authority to prevent the artificial spread of a serious insect pest which is a mandated statutory goal.

#### Spongy Moth Eradication Area.

This amendment will establish Alameda County as an eradication area for SM. The effect of the regulation is to provide authority for the State to perform control and eradication activities against SM in Alameda County to prevent spread of the pest to non-infested areas and to protect California's agricultural industry and environment.

### Anticipated Benefits from This Regulatory Action

Adding Alameda County to the eradication area will help prevent the spread of SM, which will benefit.

- the general public
- homeowners and community gardens
- agricultural industry
- California's natural environment
- the State's general fund.

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.

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

The Department has determined that the amendment of Section 3591.6 does not impose a mandate on local agencies or school districts and no reimbursement is required under Section 17561 of the Government Code.

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 Section 3591.6.