

## FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists, and that the amendment of the foregoing regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare. On June 3 and June 9, 2014, two guava fruit flies (*Bactrocera correcta*), were unexpectedly trapped for the first time in Riverside County and on July 9 and July 10, 2014, two flies were unexpectedly trapped in Contra Costa County. These occurrences of guava fruit flies in Contra Costa and Riverside counties meet the state and the federal trigger for eradication responses in these counties. Additionally, one find site in Riverside County is close to the border of San Bernardino County, necessitating eradication activities to also be conducted in San Bernardino County.

### 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, per 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.

#### California Environmental Quality Act

“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.

#### Statutory Exemption

Title 14, California Code of Regulations Section 15269, subdivision (c) “Specific actions necessary to prevent or mitigate an emergency.

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.”

### Evidence of an Emergency

Guava fruit fly (*Bactrocera correcta*) is an insect pest which attacks the fruit of various plants including citrus, *Eugenia* spp., guava, mango, *Prunus* spp. and jujube. The female punctures host fruit to lay eggs which develop into larvae. The punctures admit decay organisms that may cause tissue breakdown. Larval feeding causes breakdown of fruit tissue. Fruits with egg punctures and larval feeding are generally unfit for human consumption. Pupae may be found in fruit, but normally are found in soil.

An adult male guava fruit fly was trapped in the Corona area on June 3 (California Pest and Damage Record (CPDR) #SA0P06168025) and in the Eastvale area (CPDR #RS0P062274570) June 9, 2014, of Riverside County. The Department’s eradication response extends in a one and one half mile radius surrounding the find sites. The Eastvale find site is close to the border with San Bernardino County, necessitating eradication activities to also be conducted in San Bernardino County. The detection of these adult guava fruit flies mandates both an intensive delimitation effort to determine the extent of an incipient infestation and prophylactic eradication treatments in these areas of Riverside and San Bernardino counties.

An adult male guava fruit fly was trapped in the Bay Point area on July 9 (CPDR #070P06223539) and on July 10, 2014 (CPDR 070P06223538) of Contra Costa County. The detection of these adult guava fruit flies mandates both an intensive delimitation effort to determine the extent of an incipient infestation and prophylactic eradication treatments in these areas of Contra Costa County.

California is the number one economic citrus state in the nation, with the United States Department of Agriculture putting the value of California citrus at \$1,131,851,000 (Federal Register Vol. 71 No.83; published May 1, 2006; pg 25487). A 2002 report by the Arizona State University School of Business indicates that there is at least \$825.6 million of direct economic output and another \$1.6 billion when all upstream suppliers and downstream

retailers are included. This represents over 25,000 direct and indirect employees. To protect this source of revenue, California must do everything possible to prevent the establishment of guava fruit fly in the state. Additionally, the sooner eradication responses can be implemented the odds increase that the quarantine trigger will not be reached. Once the quarantine trigger is reached, it will be necessary to have a state interior quarantine, federal quarantine and other countries would also implement quarantine restrictions against the state.

The guava 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 guava fruit fly in Contra Costa, Riverside and San Bernardino counties.

The entire counties of Contra Costa, Riverside and San Bernardino are being proposed as an eradication area because they are the political divisions which provide the most workable eradication area boundary for exterminating an incipient infestation of guava fruit fly. Fruit which may have already been moved from the infested area to other portions of the counties and flies which may have already spread naturally from the infested area may have already resulted in small infestations outside the known possibly infested area. To enable detection activities and any necessary rapid treatment of additional 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. Therefore, it is necessary to amend Section 3591.13(a) on an emergency basis.

## Project Description

### **DETECTION**

#### **1. Detection Trapping**

The Department maintains a cooperative state/county trapping program for the various fruit flies to provide early detection of any infestation in the state. Traps are serviced by either county or state personnel and funded by the Department. The program uses two types of traps: the cardboard Jackson sticky trap baited with the attractant methyl eugenol mixed with the pesticide naled (Dibrom® 8 Emulsive), and the McPhail trap, an invaginated glass flask baited with Torula yeast and borax in water. The Jackson trap is strongly attractive to sexually maturing males, while the McPhail trap is attractive to both sexes of the fly. Traps are hung from branches of host trees at specified densities in susceptible areas of California. County or state employees inspect these traps weekly or bi-weekly throughout the year in southern California and from April or May through October or November in northern California.

#### **2. Intensive Trapping**

Intensive trapping is triggered after a single fly is caught. Following confirmation of the specimen, trap densities will be increased over an 81-square mile area centered on the detection. Within the next 24 hours, 25 Jackson and McPhail traps are placed in the square mile core around each find. Five Jackson traps are placed in each mile of the remaining delimitation area. Traps in the core will be checked daily during the first week. Traps in the first buffer zone will be serviced every two days; those in the remainder of the delimitation area are checked at least once during the first week. All traps in the delimitation zone will be checked weekly following a week of negative trap catches. Intensive trapping ends after the third complete life cycle following the last fly find. This time period is determined by a temperature-dependent developmental model run by the Pest Detection/Emergency Projects Branch in Sacramento.

### 3. **Post-Treatment Monitoring**

The success of the eradication program is monitored by intensive trapping levels for three life cycles of the fly after the last fly has been detected. If no flies are caught during that time, trap densities return to detection levels.

### 4. **Larval Survey**

Fruit on a property where a fly has been trapped may be inspected for possible larval infestation. Small circular oviposition scars are occasionally visible indicating an infested fruit. Fruit on properties adjacent to a trap catch may also be inspected.

If two or more flies are trapped close to each other, fruit cutting may be extended to all properties within a 200-meter radius of the finds, concentrating on preferred hosts.

## **TREATMENT**

### 1. **Male Attractant Technique**

The male attractant technique (MAT) makes use of small amounts of the attractant methyl eugenol mixed with the pesticide naled (Dibrom® Concentrate), and incorporated into a clay matrix (Min-U-Gel® 400) to lure the male flies to bait stations. Flies are killed by the pesticide when they feed at the stations. MAT is applied as five milliliters dollops to utility poles, street trees, and other unpainted surfaces using pressurized tree marking guns. The bait stations are placed six to eight feet above the ground and out of the reach of the public. The project boundaries will be nine-square miles around each site where flies were detected. Application is made to a targeted density of 600 evenly distributed sites in each square mile. Applications are repeated every two weeks for one life cycle if no quarantine is triggered (typically two to three months), and for two life cycles if a quarantine is triggered (typically four to six months). Life cycle durations are dependent on temperature.

## 2. **Foliar Sprays**

If evidence that a breeding population exists on a property (i.e., immature stages, mated female, or multiple adults are detected), the foliage of host trees and shrubs within 200 meters of each detection site will be treated with an organic formulation of spinosad bait spray (GF-120 NF Naturalyte® Fruit Fly Bait) using hand spray or hydraulic spray equipment. Affected properties will be notified in writing at least 48 hours prior to treatment. Following treatment, completion notices are left with the homeowners detailing precautions to take and post-harvest intervals applicable to any fruit on the property. Treatments are repeated at seven to 14 day intervals for one life cycle of the fly (typically two to three months, dependent on temperature).

## 3. **Host Fruit Removal**

If evidence that a breeding population exists on a property (i.e., immature stages, mated female, or multiple adults are detected), host removal (fruit stripping) may be used in conjunction with the other treatment options. All host fruit will be removed from all properties within a minimum of a 100-meter radius around the detection sites. The fruit is taken to a landfill for burial using regulatory compliance protocols. Fruit removal will occur once at the beginning of the project, but may be repeated if additional flies are detected. Affected properties will be notified in writing at least 48 hours prior to removal of the fruit.

## **SENSITIVE AREAS**

The treatment area will be reviewed through consultation with the California Department of Fish and Wildlife's California Natural Diversity Database for threatened or endangered species. The Department also consults with the California Department of Fish and Wildlife, the U.S. Fish and Wildlife Service and the National Marine Fisheries Services when rare and endangered species are located within the treatment area. Mitigation measures will be implemented as needed. The Department will not apply pesticides to bodies of water or undeveloped areas of native vegetation. All treatment will be applied to residential properties, common areas within residential development, non-agricultural commercial properties, and right-of-ways.

## **PUBLIC INFORMATION**

Any resident whose property will be treated via foliar bait sprays or host fruit removal will be notified in writing at least 48 hours in advance of any treatment, in accordance with Food and Agricultural Code Sections 5779 and 5401-5404. Following the treatment, completion notices are left with homeowners detailing precautions to take and post-harvest intervals applicable to any fruit on the property. For MAT applications in public areas, notification is given to the general public via mass media outlets such as newspapers or press releases, and information is posted on the Department website at <http://www.cdfa.ca.gov/plant/pdep/treatment/>. Information concerning the project will be conveyed directly to concerned local and state political representatives and authorities via letters, emails, and/or faxes. Press releases, if issued, are prepared by the Department information officer and the county agricultural commissioner, in close coordination with the project leader responsible for treatment. Either the county agricultural commissioner or the public information officer serves as the primary contact to the media.

This regulation will provide specific authority for the state to perform control and eradication activities against *Bactrocera correcta* in Contra Costa, Riverside and San Bernardino counties. To prevent spread of the fly to noninfested areas to protect California's agricultural industry, it is necessary to immediately begin treatment activities against the fly. Therefore, it is necessary to amend this regulation as an emergency action.

The Department also relied upon the following document:

Email dated July 11, 2014 from John Hooper to Stephen Brown.

“Action Plan for Methyl Eugenol Attracted Fruit Flies, Including the Oriental Fruit Fly, *Bactrocera dorsalis* (Hendel),” Revised April 2000, California Department of Food and Agriculture, Plant Health and Pest Prevention Services (11 pages).

### 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 obligates the Department of Food and Agriculture to protect the agricultural industry of California and prevent the spread of injurious pests (Food and Agricultural Code, Sections 401 and 403). Existing law provides that the Secretary may establish, maintain, and enforce eradication regulations as he deems necessary to circumscribe and exterminate or prevent the spread of pests. The eradication regulations may proclaim any portion of the state as an eradication area and set forth the boundaries, the pest, and the means and methods which may be used in the eradication of said pest.

Section 3591.13(a), Guava Fruit Fly Eradication Area.

This amendment of Section 3591.13(a) will establish Contra Costa, Riverside and San Bernardino counties as eradication areas for *Bactrocera correcta*. The effect of the amendment is to provide specific authority for the state to perform control and eradication activities against guava fruit fly in these additional counties 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 this regulation does not impose a mandate on local agencies or school districts.

### Cost Estimate

The Department also has determined that the regulation will involve no costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable costs or savings to local agencies or school districts under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, and no costs or savings in federal funding to the state.