

FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists, and that the foregoing regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare. On June 14, 2013 and July 1, 2013 peach fruit fly, *Bactrocera zonata*, was unexpectedly trapped for the first time in San Bernardino County and on July 3, 2013, it was trapped in Solano County and identified on July 5, 2013.

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.”

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

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

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

Background

Peach fruit fly, *Bactrocera zonata*, is an insect pest which attacks the fruit of various plants including but not limited to apple, peach, pear, tomato and citrus. 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.

Adult peach fruit flies were recently trapped in the County of San Bernardino in the Chino and Chino Hills areas and in the County of Solano in the Fairfield area. The detection of an adult peach fruit fly meets the State's, national and international standards that mandate intensive delimitation efforts to determine if an incipient infestation of the fly exists in these areas.

The immediate implementation of this proposed regulatory action is necessary to prevent the USDA, APHIS from considering the entire state as infested with peach fruit fly, rather than just the current area of San Bernardino, Solano and Napa counties. Napa County would be included as the 4.5 miles radius required for delimitation extends into that county. If this were to occur, there would likely be additional detrimental quarantine requirements directed against California host commodities by the USDA, APHIS and our international trade partners.

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 *Bactrocera zonata* in Napa, San Bernardino and Solano counties. To prevent spread of the fly to noninfested areas to protect California's agricultural industry, it is necessary to immediately begin detection activities. Therefore, it is necessary to amend this regulation as an emergency action.

The California, national and international consumers of California apples, citrus, peaches and tomatoes benefit by having high quality fruit available at lower cost. It is assumed that any increases in production costs will ultimately be passed on the consumer.

The amendment of this regulation benefits homeowners who grow their own host fruits for consumption and host material which is planted as ornamentals in various rural and urban landscapes.

Action Plan

The peach 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 peach fruit fly in Napa and Solano counties. 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 delimitation procedures within the Fairfield area of Solano County. These delimitation procedures are nationally and internationally accepted standards for establishing if there is an incipient infestation of peach fruit fly and exactly where it is. If it is confirmed that an incipient infestation is present, then a quarantine is established using a 4.5 mile radius surrounding the epicenter of the infestation. If delimitation procedures are not implemented, then by default the national and international standards would require a quarantine on the State for peach fruit fly. Minimally, this would be the entire counties of Napa, San Bernardino and Solano because the Department would not be able to demonstrate any part of these counties were free from peach fruit fly without delimitation activities.

Through delimitation, eradication treatment procedures would occur upon the detection of a second fly within three miles and one life cycle and a quarantine would not be implemented until the accepted quarantine trigger is reached (six adult flies within three mile and one life cycle or a mated female or pupa or larva).

The protocol for peach fruit fly delimitation is as follows:

Core square mile, surrounding each detection site is 0.5 mile radius with 25 methyl eugenol Jackson traps and 25 McPhail traps.

First buffer is 8 square miles surrounding core with 5 methyl eugenol Jackson traps per square mile.

Second buffer is 16 square miles surrounding first buffer with 5 methyl eugenol Jackson traps per square mile.

Third buffer is 24 square miles surrounding second buffer with 5 methyl eugenol Jackson traps per square mile.

Fourth buffer is 32 square miles surrounding third buffer with 5 methyl eugenol Jackson traps per square mile.

The total radius is 4.5 miles from each detection site, and total area is 81 square miles centered on each site. In this case, the 4.5 mile radius extends into Napa County too. The traps are placed in priority working from the core outward through each buffer area. The methyl eugenol traps are a pheromone attractant and the McPhail traps are a food attractant for the peach fruit fly.

To prevent spread of the fly to noninfested areas in order 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. 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 Napa, San Bernardino and Solano counties. Therefore, it is necessary to amend Section 3591.12(a) on an emergency basis.

Emergency Established

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 in turn would negatively impact the State's economic recovery which in turn would impact the general welfare of the State. California's unemployment rate in March 2013 dropped to 9.6 per cent. During the preceding 12 months prior to March 2013, agricultural employment was up by 2.8 per cent. The agricultural industry is one of the economic engines which are lowering the State's unemployment rate. Additionally, any job losses in this area would likely be felt by low-skilled workers whose employment options are already limited. The loss of any agricultural jobs would likely result in an increase in the State's public assistance obligations which would also negatively impact the State's economic recovery.

California is the number one economic citrus state in the nation, with the USDA 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.

In 2009, out of the top 20 California commodities, tomatoes ranked 8th - at over \$1.5 billion and peaches ranked 20th – at over \$325 million.

The entire counties of Napa, San Bernardino and Solano are being proposed as eradication areas because the utilization of these political boundaries will avoid frequent amendments to the regulation if the peach fruit fly is detected elsewhere within these counties and there are no associated impacts with the regulation if no flies are found. The existing regulation covers the entire counties of Alameda, Fresno, Los Angeles, Riverside and Santa Clara. The program has already determined that due to the 4.5 mile radius surrounding the existing find, the necessary delimitation trapping buffer will extend from Solano into Napa County. Fruit may have already been moved from the infested area to

another portion of the county and flies which may have already spread naturally from the infested area may have already resulted in small infestations outside the current known infested area. Additionally, these fly finds have to be linked to smuggled uncertified fruit shipments which have been distributed within the State. Only through the implementation of this regulation would the Department be able rapidly treat these small infestations in the affected county.

Authority and Reference Citations

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

Reference: Sections 5761 through 5764, Food and Agricultural Code.

Informative Digest

Existing law provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this state and determine the probability of its spread, and the feasibility of its control or eradication (Food and Agricultural Code Section 5321).

Existing law also obligates the Department of Food and Agriculture to protect the agricultural industry of California and prevent the spread of injurious pests, and that the Secretary may establish, maintain, and enforce eradication regulations as he deems necessary to circumscribe and exterminate or prevent the spread of pests (Food and Agricultural Code, Sections 401, 403, 407 and 5322). 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 (Food and Agricultural Code, Section 5761).

Anticipated Benefits from This Regulatory Action

Existing law, FAC section 403, provides that the department shall prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds.

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 which she is directed or authorized to administer or enforce.

Existing law, FAC section 5321, provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this State and determine the probability of its spread, and the feasibility of its control or eradication.

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 which is described in FAC section 5321.

The existing law 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. The amendment of this regulation benefits the apple, citrus, cucumber, date, fig, guava, loquat, mango, melon, peach, pear, pomegranate and tomato industries (nursery, fruit for domestic use and exports, packing facilities) and the environment (urban landscapes) by having an eradication program to prevent the artificial spread of the peach fruit fly over short and long distances.

This amendment provides the necessary regulatory authority to prevent the artificial spread of a serious insect pest which is a mandated statutory goal.

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.” The amendment of this regulation is preventing the potential spread of the peach fruit fly to uninfested areas of the State.

The California, national and international consumers of California apples, citrus, peaches and tomatoes benefit by having high quality fruit available at lower cost. It is assumed that any increases in production costs will ultimately be passed on the consumer.

The amendment of this regulation benefits homeowners who grow their own host fruits for consumption and host material which is planted as ornamentals in various rural and urban landscapes.

The Department is the only agency which can implement plant quarantines. 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.

Information Relied Upon

Emailed dated July 8, 2013, from Dr. Kevin Hoffman to Stephen Brown.

Emailed dated July 8, 2013, from John Hooper to Stephen Brown.

“Pest and Damage Record #s 360P06176223, 360P06176225 and 480P060952051352913,” California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Action Plan, Peach Fruit Fly, *Bactrocera zonata* (Saunders),” May 2000, Food & Agricultural Organisation, International Atomic Energy Agency (50 pages).

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

Section 3591.12, Peach fruit fly Eradication Area.

This emergency amendment of Section 3591.12(a) will establish the entire counties of Napa, San Bernardino and Solano as additional eradication areas. The effect of the amendment is to provide authority for the State to perform detection, control and eradication activities against peach fruit fly in these areas of the State 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 and no reimbursement is required under Section 17561 of the Government Code. All eradication activities are performed by the Department.

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.