

FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists due to the detection of Melon fruit fly, *Bactrocera cucurbitae*, in California. 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 proposed emergency amendment to Section 3591.15 Melon Fruit Fly Eradication Area, will proclaim Kern County as an additional eradication area and modify the existing host list. The entire county of Kern is proposed as an eradication area because it is the political division which provides the most workable eradication area boundary for exterminating an established melon fruit fly infestation. Fruit which 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 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.

The proposed amendment will also update the existing host list to align it more with the host list existing in Section 3425, Melon Fruit Fly Interior Quarantine, and harmonize the host list with more recent information verbally transmitted to the Department by the United States Department of Agriculture staff.

This affected Bakersfield area of Kern County is rural and primarily agricultural production land. In this area it has already been determined there are approximately 148 growers of 23 different hosts involving approximately 16,300 acres of host crops which are being immediately impacted by this incipient infestation. The survey, fruit stripping and treatment activities authorized under this regulation have to begin immediately to ensure this infestation does not grow and cause additional significant damage to the growers in the immediate and adjacent areas if the fly is not contained. Therefore, the Secretary believes that the five calendar days public comment period should be waived.

This regulation will provide authority for the State to perform control and eradication activities against *Bactrocera cucurbitae* in Kern County. 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 melon fruit fly. Therefore, it is necessary to amend this regulation as an emergency action.

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 Rulemaking Procedures

“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).

Since the Department does not have a record of any person requesting a notice of regulatory actions under Government Code Section 11346.4(a)(1), the provisions of Government Code Section 11346.1(a)(2) do not appear to be applicable to this emergency action.

Further, 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 or allow five calendar days to allow public comment pursuant to

Government Code Section 11349.6 would be inconsistent with the public interest, within the meaning of 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.

Evidence of Emergency

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.

The melon fruit fly has the capability of causing significant irreparable harm to California's agricultural industry and some possible adverse environmental impacts. Should the Department not take these actions; the melon 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 melon fruit fly in the United States. The USDA and the State will also be implementing quarantine

regulations to prevent the artificial movement of the melon fruit fly while it is under eradication. Examples of countries which have specific concerns pertaining to melon 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 melon fruit fly host material produced in, packed or repacked within a regulated area even if it originated in another state. Host commodities transiting a regulated area for melon fruit fly cannot unnecessarily stop within a regulated area 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 melon 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 quarantines 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.

California Environmental Quality Act (CEQA)

The Department prepared a “Final Programmatic Environmental Impact Report, The Exotic Fruit Fly Eradication Program Utilizing Male Annihilation and Allied Methods,” State Clearinghouse Number 90021212.

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

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.

Authority and Reference Citations

Section 3591.15:

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 3591.15. Melon Fruit Fly Eradication Area.

This amendment of Section 3591.15 will establish Kern County as an eradication area for the pest *Bactrocera cucurbitae* (melon fruit fly) and will modify the existing host list. The effect of the regulation is to provide 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.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3591.15 does not impose a mandate on local agencies or school districts. All eradication activities shall be conducted by the Department, therefore no reimbursement is required under Section 17561 of the Government Code.

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.