

## FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture (Department) finds that an emergency exists due to the detection of a guava fruit fly (*Bactrocera correcta*) in the Camarillo area of Ventura County in California. On August 8, 2018, an adult male guava fruit fly was taken from a trap in the city of Camarillo within Ventura County. The detection of a guava fruit fly is indicative of an incipient infestation of guava fruit fly in this area. Guava fruit fly is a destructive insect pest of a large number of commercial agricultural crops. Guava fruit fly attacks the fruit of various plants including guava, peach, cherry, mandarins, and melons. Damage occurs when the female lays eggs in the fruit. These eggs hatch into larvae, or maggots, which tunnel through the flesh of the fruit, making it unfit for consumption. The first California detection of guava fruit fly occurred in Orange County in 1986, and since that time, several re-introductions have been delimited and successfully eradicated.

Until now, the guava fruit fly has never been detected in Ventura County. If the fly is 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 enact quarantines against California products. Therefore, the Department is proposing to amend 3591.13, Guava Fruit Fly Eradication Area, to include 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)).

The survey, fruit removal, and treatment activities authorized under this regulation must begin immediately to ensure that the fly is contained and this infestation does not grow and cause additional significant damage to the growers in the immediate and adjacent areas. Therefore, the Secretary believes that the five-calendar-day public comment period should be waived.

### 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 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.

Guava 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, guava 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 is allowed to spread and become established in host fruit production areas, California’s agricultural industry would suffer losses due to increased pesticide use and

decreased production of marketable fruit. 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 fly.

Under international trade agreements, the USDA is obligated to notify any trading partner that has concerns regarding the quarantine status of guava fruit fly 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 fruit flies, such as guava fruit fly, 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 fruit fly quarantines is a key to ensure qualifying host commodities produced or packed anywhere in California can also continue to move freely 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 3591.13 on an emergency basis.

#### Project Description

This amendment will provide authority for the State to perform specific detection, control, and eradication activities against guava fruit fly in Ventura County. This authority includes “The search for all stages of guava fruit fly by visual inspection, the use of traps, or any other means.” (California Code of Regulations Section 3591.13(c)(3)). It is necessary to immediately perform these activities within Ventura County. To prevent spread of the fly to noninfested areas and to protect California's agricultural industry and urban environment, treatment activities against the fly would have to begin upon the detection of a second life stage of the fly within three miles of each find and within one life cycle of the most recent find. 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 begin within 24 to 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

Tulare County. Therefore, it is necessary to amend Section 3591.13 on an emergency basis.

The proposed amendment of this eradication regulation will proclaim Ventura County as a part of the guava fruit fly eradication area. The entire county of Ventura is proposed as an addition to the eradication area because it is the political division that provides the most workable eradication area boundary for determining if an infestation exists and eradicating an established guava fruit fly infestation. Fruit may have already been moved from an infested area to a previously non-infested area of the county. To enable rapid treatment of these small infestations without frequent amendment of the regulation, the entire county of Ventura should be established as part of the eradication area. To prevent spread of the fly to non-infested areas and to protect California's agricultural industry, it is necessary to immediately begin treatment activities against guava fruit fly. Therefore, it is necessary to implement this regulation as an emergency action.

Eradication means and methods may include:

- (1) The use of insecticides, chemicals, or other materials as spray, dust, bait, or in any other manner as often as necessary to effect eradication.
- (2) The removal and destruction of all plant parts known or suspected to harbor any stage of said pest.
- (3) The search of all stages of guava fruit fly by visual inspection, the use of traps, or any other means.
- (4) The removal and destruction of abandoned or unwanted plants bearing or capable of bearing hosts.
- (5) The importation, rearing, liberation, and fostering of parasites and predators which attack guava fruit fly.

(6) The importation, rearing, or liberation of sterile forms of guava fruit fly. (Title 3, CCR Section 3591.13(c))

#### California Environmental Quality Act

A Statewide Plant Pest Prevention and Management Program Environmental Impact Report (EIR) was prepared by the Department as the lead agency under the California Environmental Quality Act. The EIR addresses the potential impacts and mitigations when implementing the Statewide Plant Pest Prevention and Management Program activities related to guava fruit fly.

The EIR may be accessed at the following website:

<http://www.cdfa.ca.gov/plant/peir/>.

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

California Pest and Damage Record # CR0P06225960

California Department of Food and Agriculture. Pest profile: Guava fruit fly. Accessed August 10, 2018: [https://www.cdfa.ca.gov/plant/pdep/target\\_pest\\_disease\\_profiles/guava\\_fruit\\_fly\\_profile.html](https://www.cdfa.ca.gov/plant/pdep/target_pest_disease_profiles/guava_fruit_fly_profile.html)

“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.

#### Authority and Reference Citations

Section 3591.13

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 CDFA to protect the agricultural industry of California and prevent the spread of injurious pests (FAC sections 401 and 403). Existing law provides that the Secretary may establish, maintain, and enforce eradication regulations as she 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 that may be used in the eradication of said pest.

### Anticipated Benefits from This Regulatory Action

Existing law, 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.”

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 that is described in FAC section 5321.

Existing law, FAC Section 5761, provides that regulations adopted pursuant to FAC Section 5322 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 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 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 fruit flies 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. Any expenditures for the replacement nursery stock shall not exceed an amount which is budgeted for the purpose or approved by the Director of Finance.

Existing Law, Title 3 CCR Section 3591.13, lists the counties within the guava fruit fly eradication area, the plants within this area that are considered public nuisances if infested or exposed to infestation, and the means and methods by which the Department is authorized to carry out eradication.

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



The existing law obligates the Secretary to investigate and determine the feasibility of controlling or eradicating pests of limited distribution, but establishes discretion regarding the establishment and maintenance of regulations to achieve this goal. The adoption of this regulation benefits industries and other host material services (nursery, fruit for domestic use and exports, packing facilities) and the environment (urban landscapes) by eradicating and preventing the artificial spread of guava fruit fly over long distances.

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

The overall California economy benefits by the adoption of this regulation, which is intended to prevent guava fruit fly from becoming generally distributed in California and negatively impacting agriculture, a major state economic sector.

The state, national, and international consumers of California guava fruit fly host materials benefit by having high quality fruit, nuts, vegetables, and seeds available at lower cost. It is assumed that any increases in production costs resulting from damage inflicted by this pest would ultimately be passed on to the consumer.

The amendment of this regulation benefits homeowners who grow fruit, nuts, vegetables, and seeds for consumption and host material that is planted as ornamentals in various rural and urban landscapes by preventing damage to these hosts and the need for them to be treated to mitigate infestations of guava fruit fly.

The Department is the only agency that 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.

### Guava Fruit Fly Eradication Area.

This amendment will establish Ventura County as part of the eradication area for the pest guava fruit fly. The effect of the amended regulation is to provide authority for the State to perform delimitation and eradication activities against guava fruit fly in Ventura County to prevent spread of the fly to non-infested areas and to protect California's agricultural industry.

### Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3591.13 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.