

## FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture (Department) finds that an emergency exists due to the detection of Mediterranean fruit fly in the Half Moon Bay area of San Mateo County in California. On November 14, 2017, an adult male Mediterranean fruit fly, sexually mature, was taken from a trap in the Half Moon Bay area of San Mateo County. The detection of this Mediterranean fruit fly is indicative of an incipient infestation of Mediterranean fruit fly in the Half Moon Bay area of San Mateo County. Mediterranean fruit fly is a destructive insect pest which attacks the fruit of various plants including over 260 crops such as citrus, tomatoes, grapes, avocados, peaches, and cherries. 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.

Until now, Mediterranean fruit fly has never been detected in San Mateo County. This unexpected occurrence of Mediterranean fruit fly meets the national and international trigger for an eradication response in San Mateo County. 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, the Department is proposing to amend Section 3591.5, Mediterranean Fruit Fly Eradication Area to include San Mateo 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 days 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.

Mediterranean 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, Mediterranean 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 (USDA) or other states or countries enact quarantines against California products which are hosts for the fly and carry the fly out of the area.

Under international trade agreements, the USDA is obligated to notify any trading partner which has concerns regarding the quarantine status of Mediterranean fruit fly in the United States. Trade impacts may not be just limited to host commodities produced within the regulated area or even in California. The introduction of exotic fruit flies, such as Mediterranean 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. Therefore, it is necessary to amend Section 3591.5 on an emergency basis.

#### Project Description

This amendment will provide authority for the State to perform specific detection, control and eradication activities against Mediterranean fruit fly in San Mateo County. This authority includes, "The searching for all stages of Mediterranean fruit fly by visual inspection, the use of taps, or any other means.". It is immediately necessary to perform these activities and eradication treatments within San Mateo County. To prevent spread of the fly to noninfested areas, to protect California's agricultural industry and urban environment, treatment activities against the fly will begin upon the notification of

affected parties. The USDA's Animal and Plant Health Inspection Service also accepts the standard for one fly as the trigger for an eradication response. The Food and Agriculture Organization of the United Nations has a similar international standard established.

The proposed amendment of this eradication regulation will proclaim San Mateo County as an eradication area. The entire county of San Mateo is proposed as an eradication area because it is the political division which provides the most workable eradication area boundary for determining if an infestation exists and exterminating an established Mediterranean fruit fly infestation. Fruit 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 San Mateo should be established as an eradication area. To prevent spread of the fly to noninfested areas and to protect California's agricultural industry, it is necessary to immediately begin treatment activities against Mediterranean fruit fly. Therefore, it is necessary to implement this regulation as an emergency action.

#### 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 Mediterranean 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 # 410P06096313

“Mediterranean Fruit Fly Action Plan,” United States Department of Agriculture, Marketing and Regulatory Programs, Animal and Plant Health Inspection Service, Plant Protection and Quarantine.

#### Authority and Reference Citations

Section 3591.5:

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 which may be used in the eradication of said pest.

#### 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.

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 with regard to the establishment and maintenance of regulations to achieve this goal. The adoption of this regulation benefits industries and other host materials (nursery, fruit for domestic use and exports, packing facilities) and the environment (urban landscapes) by having a quarantine to prevent the artificial spread of Mediterranean fruit fly over 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 adoption of this regulation is preventing the artificial spread of Mediterranean fruit fly to uninfested areas of the State. The overall California economy benefits by the adoption of this regulation which is intended to prevent Mediterranean fruit fly from becoming generally distributed in California.

The California, national and international consumers of California Mediterranean 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 will ultimately be passed on to the consumer.

The amendment of this regulation benefits homeowners who grow fruit, nuts, vegetable, and seeds for consumption and host material which 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 Mediterranean fruit fly.

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.

#### Mediterranean Fruit Fly Eradication Area.

This will establish San Mateo County as an eradication area for the pest Mediterranean fruit fly. The effect of the regulation is to provide authority for the State to perform control and eradication activities against Mediterranean fruit fly in San Mateo County to prevent spread of the fly to noninfested 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 3591.5 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.