

FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture (Department) finds that an emergency exists due to the detection of Oriental fruit fly (*Bactrocera dorsalis*) in California. On July 11th, 2018, an adult male Oriental fruit fly was identified from a trap in the El Dorado Hills area of El Dorado County. On July 16th, 2018, an adult male Oriental fruit fly was identified from a trap in the Redding area of Shasta County. The detection of Oriental fruit flies is indicative of an incipient infestation of Oriental fruit fly in these areas. Oriental fruit fly is a destructive insect pest of a large number of commercial agricultural crops. Fruits (including nuts, dates, and berries), many kinds of vegetables, and the fruiting bodies of many wild and ornamental plants are known to be hosts or possible hosts of the Oriental fruit fly. 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. It has been estimated that the cost of not eradicating Oriental fruit fly in California would be at least \$44 million in crop losses, additional pesticide use, and quarantine requirements (California Department of Food and Agriculture, Pest profile: Oriental fruit fly). Thus, this incipient infestation presents a clear, imminent danger to the agricultural industry in California.

Until now, the Oriental fruit fly has never been detected in El Dorado or Shasta counties. 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 Section 3591.2, Oriental Fruit Fly Eradication Area, to include El Dorado and Shasta counties. 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)).

Any new Oriental fruit fly eradication activity must target hosts on the revised host list in order to meet United States Department of Agriculture (USDA) requirements. This minimizes the chance of an Oriental fruit fly being moved beyond the quarantine zone. Because the State recently detected Oriental fruit flies in El Dorado and Shasta counties, it is necessary to immediately adopt the USDA revised Oriental fruit fly host list. This will allow the Department to successfully adjust delimitation protocols to incorporate the new information and to prepare for a possible quarantine if more flies are located in the area. This adoption is necessary to avoid the USDA declaring the whole state of California a quarantine zone for Oriental fruit fly; the consequences of which would place an unnecessary burden on shippers of host material.

The detection of the two adult male Oriental fruit flies meets the State, national and international standards that mandate intensive delimitation efforts to determine if an incipient infestation of the fly exists in the El Dorado Hills area of El Dorado County and in the Redding area of Shasta County. This amendment will provide authority for the State to perform specific detection, control and eradication activities against the Oriental fruit fly in El Dorado and Shasta 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 these activities within the El Dorado Hills area of El Dorado County and in the Redding area of Shasta County because of the risk to California's agricultural industry. To successfully adjust delimitation protocols to incorporate the new information and to prepare for a possible quarantine if more flies are located in the area, the host list must meet USDA requirements. 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.

Oriental 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, Oriental 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.

To enable rapid treatment of new infestations of Oriental fruit fly, the revised host list must be incorporated into the delimitation authority and eradication regulation to ensure the correct host plants are included in management actions and to increase the rapidity of effective management responses. The timing of effective management actions can determine the success of pest eradication.

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 Oriental 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 Oriental 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 3591.2 on an emergency basis.

Project Description

This amendment will provide authority for the State to perform specific detection, control, and eradication activities against Oriental fruit fly in El Dorado and Shasta 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 necessary to immediately perform these activities and eradication treatments within El Dorado and Shasta counties to prevent spread of the fly to non-infested areas and to protect California's agricultural industry and urban environment. Treatment activities against the fly will begin upon the notification of affected parties.

The proposed amendment of the eradication regulation will standardize the known host list for Oriental fruit fly in California regulation to coincide with the official Oriental fruit fly host list promulgated recently by the USDA. This will allow more targeted actions for eradication of Oriental fruit fly and reduce the chance of distribution of infested fruit and the subsequent spread of the pest in California.

The proposed amendment of this eradication regulation will proclaim El Dorado and Shasta counties part of the Oriental Fruit fly eradication area. The entire counties of El Dorado and Shasta are proposed as additions to the eradication area because they are the political divisions that provide the most workable eradication area boundary for determining if an infestation exists and eradicating an established Oriental fruit fly infestation. Fruit may have already been moved from an infested area to a previously non-infested area of the counties. To enable rapid treatment of these small infestations without frequent amendment of the regulation, the counties of El Dorado and Shasta 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 Oriental 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 searching for all stages of Oriental 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 that attack Oriental fruit fly.

(6) The importation, rearing, or liberation of sterile forms of the Oriental fruit fly.
(Title 3, CCR Section 3591.2(c))

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

California Pest and Damage Record # 090P06087498

California Pest and Damage Record # 450P06002151

California Department of Food and Agriculture. Pest profile: Oriental fruit fly. Accessed July 11, 2018:

https://www.cdffa.ca.gov/plant/PDEP/target_pest_disease_profiles/oriental_ff_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.

“Oriental Fruit fly, *Bactrocera dorsalis*, Host List”, August 2016, United States Department of Agriculture. Access July 12, 2018:

https://www.aphis.usda.gov/plant_health/plant_pest_info/fruit_flies/downloads/host-lists/off-hostlist.pdf

Authority and Reference Citations

Section 3591.2

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

Reference: Sections 5761, 5762, 5763, and 5764, Food and Agricultural Code.

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 Oriental fruit fly.

The EIR may be accessed at the following website:

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

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, Title 3 CCR Section 3591.2, lists the counties within the Oriental fruit fly eradication area, generally describes the host plants within this area that are consider 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 Oriental 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 Oriental 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 Oriental 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 Oriental 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.

Oriental Fruit Fly Eradication Area.

This will establish El Dorado and Shasta counties as part of the eradication area for the pest Oriental fruit fly and establish a host list in state regulation. The effect of this amendment will be to provide authority for the State to perform delimitation and

eradication activities against Oriental fruit fly to prevent spread of the fly to non-infested areas to protect California's agricultural industry.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3591.2 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.