

FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture (Department) finds that an emergency exists due to the detection of peach fruit fly (*Bactrocera zonata*) in the Dublin area of Alameda and Contra Costa Counties, California. On September 20, 2018, three adult male peach fruit flies were taken from two traps in the city of Dublin near the Alameda-Contra Costa County border. The detection of a peach fruit fly is indicative of an incipient infestation of peach fruit fly in this area. Peach fruit fly 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, and larval feeding causes further 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. The first California detection occurred in Los Angeles County in 1984, and since that time, several reintroductions have been delimited and successfully eradicated.

California is the number one economic citrus state in the nation. The USDA's Citrus Fruits 2017 Summary puts the value of citrus at \$2.26 billion (pg. 8). Per the 2016-2017 California Agricultural Statistics Review, California stone fruits (including peaches, plums, nectarines, apricots and cherries) were valued at \$830,476,000 in 2018. Additionally, tomatoes were valued at over \$1.3 billion. 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. Thus, this incipient infestation presents a clear, imminent danger to the agricultural industry in California. The current eradication authority includes Alameda County but does not include Contra Costa County. In this instance, the project area will extend from Alameda County into Contra Costa County. Therefore, the Department is proposing to amend Section 3591.12, Peach Fruit Fly Eradication Area, to include Contra Costa 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, which states, “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.

Peach 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, peach 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 peach 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 peach 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 3591.12 on an emergency basis.

Project Description

This amendment will provide authority for the State to perform specific detection, control, and eradication activities against peach fruit fly in Contra Costa County. This authority includes "the searching for all stages of the fly by visual inspection, the use of traps, or any other means." (California Code of Regulations Section 3591.12(c)(3)). It is necessary to immediately perform these activities and eradication treatments within both Alameda and Contra Costa County to prevent spread of the fly to non-infested areas and to protect California's agricultural industry and urban environment. 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 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. As the eradication trigger is met, treatments should begin within 24 to 72 hours, or as soon as establishment of eradication authority allows. 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 Alameda and Contra Costa Counties. Therefore, it is necessary to amend Section 3591.12 on an emergency basis.

The proposed amendment of this eradication regulation will proclaim Contra Costa County as a part of the peach fruit fly eradication area. The entire county of Contra Costa 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 peach 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 Contra Costa should be established as part of the 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 peach 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 (including soil spray treatments), dust, bait, or in any other manner as often as necessary to effect control or eradication.

- (2) The removal and destruction of hosts, including plants of hosts, if such is a practical way of eliminating the infestation.
- (3) The searching for all stages of the fly by visual inspection, the use of traps, or any other means.
- (4) The removal and destruction of abandoned or unwanted hosts or plants bearing or capable of bearing hosts.
- (5) The importation, rearing, liberation, and fostering of parasites and predators which attack the fly.
- (6) The importation, rearing, or liberation of sterile forms of the fly.
(Title 3, CCR Section 3591.12(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 peach 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:

Information Relied Upon

“Pest and Damage Record # 010P06220017”, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record # 010P06220018”, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

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

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

“California Agricultural Statistics Review, 2016-2017,” California Department of Food and Agriculture.

“Citrus Fruits: 2017 Summary,” August 2017, National Agriculture Statistics Service, USDA

Authority and Reference Citations

Section 3591.12

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 3591.12, lists the counties within the peach fruit fly eradication area, the 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 peach 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 peach 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 peach 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 peach 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.

Peach Fruit Fly Eradication Area.

This amendment will establish Contra Costa County as part of the eradication area for the pest peach fruit fly. The effect of the amended regulation is to provide authority for the State to perform delimitation and eradication activities against peach fruit fly in Contra Costa 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 3591.12 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.