

FINDING OF EMERGENCY

The Secretary of the California Department of Food and Agriculture (Department) determined that an emergency exists: detection of *Zeugodacus tau* (Tau fly) in California and the foregoing amendment to Title 3 of the California Code of Regulations (CCR) Section 3591.27 *Zeugodacus tau* Eradication Area and adopt Title 3 CCR Section 3444 *Zeugodacus tau* Interior Quarantine is necessary to avoid serious harm to the public peace, health and safety, or general welfare. On June 6, 2023, an adult Tau fly was taken from a trap in the Stevenson Ranch area of Los Angeles County, within 10 miles of Ventura County. Over the next month, 8 more Tau flies were found in the same area, most recently 6 adult flies collected on July 5th. To begin effective eradication activities and to prevent this pest from spreading throughout California, the Department needs to add Ventura County to the list of eradication areas, create an interior quarantine, and update the host list for Tau fly to match the current United States Department of Agriculture (USDA) list which adds several hosts. Therefore, the Department proposes to adopt this emergency amendment to address this issue immediately and allow for eradication activities of this pest to target the correct host plants.

There is also a non-substantive change to update the name of the pest from *Bactrocera tau* to *Zeugodacus tau* in Title 3 CCR Section 3591.27.

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 an Emergency

Under Section 14.9 of the State of California Emergency Plan, dated October 1, 2017, 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 State’s administration of programs to detect, control, and eradicate pests affecting plants.

If Tau flies were allowed to spread and become established in host fruit and vegetable 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. The pest could also find hosts in natural and urban environments. Therefore, it is necessary to amend the eradication regulation Title 3 CCR Section 3591.27, and adopt the interior quarantine Title 3 CCR Section 3444.

The specific purpose of Title 3 CCR Section 3591.27 is to add Ventura County to the eradication area and update the known host list for Tau fly in California regulations to coincide with the official Tau fly host list promulgated by the USDA.

There is also a nonsubstantive change to update the name of the pest from *Bactrocera tau* to *Zeugodacus tau* in Title 3 CCR Section 3591.27.

The specific purpose of Title 3 CCR Section 3444 is to allow the Department to create an interior quarantine where Tau fly is found to prevent its further spread throughout the state of California.

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.

Background

Tau fly is an insect pest which attacks the fruit of various plants that are part of California's economic and agricultural landscape, including pepper, tomato, and guava. 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. The California Agriculture Statistics Review 2021-2022 lists the value of tomatoes at 1.2 billion dollars and California pepper production increased 13% from the previous year.

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 USDA or other states or countries enact a quarantine against California products which can host and carry the fly. A study in the eastern Himalayas of India during May 2014 and 2015 found Tau fly to be an abundant pest, found on 71.4–96.4% of tomatoes, and populations of Tau fly at these levels is associated with high economic losses to tomato production.

Tau fly has the capability of causing significant irreparable harm to California’s agricultural industry and some possible adverse environmental impacts since this species could possibly find native hosts. Should the Department fail to amend Title 3 CCR Sections 3591.27 and adopt 3444, Tau 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. Therefore, it is necessary to amend Title 3 CCR Section 3591.27 and adopt the interior quarantine Title 3 CCR 3444 on an emergency basis.

Project Description

Section 3591.27

In Title 3 CCR Section 3591.27 (a), the county of Ventura will be added to the list of counties that comprise the Tau fly eradication area. The recent Tau fly trapped were found within 10 miles of the Ventura County line. Ventura County has host material that could be at risk from Tau fly. Due to Ventura’s proximity to these recent finds, the Department needs to add this county to the eradication area.

In Title 3 CCR Section 3591.27 (b)(1), the host list will be updated using the current USDA list, adding species, and correcting spelling of species currently on the list. Having a host list with the most accurate information allows the Department to more effectively carry out eradication activities. The following species are being added:

<i>Scientific Name</i>	<i>Host Name</i>
<u><i>Abelmoschus esculentus</i> (L.) Moench</u>	<u>Okra</u>
<u><i>Adenia hondala</i> (Gaertn.) W. J. de Wilde</u>	<u>Hondala</u>
<u><i>Annona muricata</i> L.</u>	<u>Soursop</u>
<u><i>Annona squamosa</i> L.</u>	<u>Custard apple</u>
<u><i>Bambusa pallida</i> Munro</u>	<u>Bakhal</u>
<u><i>Benincasa</i> spp.</u>	<u>Gourd, melon</u>

<u><i>Bidens biternata</i> (Lour.) Merr. & Sherff</u>	<u>Sendangusa</u>
<u><i>Brassica oleracea</i> L.</u>	<u>Cabbage</u>
<u><i>Capsicum annuum</i> L.</u>	<u>Chili pepper</u>
<u><i>Capsicum frutescens</i> L.</u>	<u>Bird pepper</u>
<u><i>Capsicum</i> spp.</u>	<u>Pepper</u>
<u><i>Citrus maxima</i> (Burm.) Merr.</u>	<u>Pummelo</u>
<u><i>Citrus paradisi</i> Macfad.</u>	<u>Grapefruit</u>
<u><i>Citrus reticulata</i> Blanco</u>	<u>Mandarin orange</u>
<u><i>Citrus sinensis</i> (L.) Osbeck</u>	<u>Sweet orange</u>
<u><i>Citrus tangelo</i> J. W. Ingram & H. E. Moore</u>	<u>Tangelo</u>
<u><i>Citrus unshiu</i> Marcow.</u>	<u>Satsuma mandarin</u>
<u><i>Cucumis</i> spp.</u>	<u>Melon, cucumber</u>
<u><i>Cucurbita argyrosperma</i> C. Huber</u>	<u>N/A</u>
<u><i>Cucurbita</i> spp.</u>	<u>Pumpkin, squash, gourd</u>
<u><i>Dimocarpus longan</i> Lour.</u>	<u>Longan</u>
<u><i>Diplocyclos palmatus</i> (L.) C. Jeffrey</u>	<u>Lollipop climber</u>
<u><i>Eugenia</i> spp.</u>	<u>Eugenia</u>
<u><i>Hydnocarpus</i> spp.</u>	<u>Chaulmoogra</u>
<u><i>Hylocereus undatus</i> (Haw.) Britton & Rose</u>	<u>Dragon fruit, red pitaya</u>
<u><i>Lagenaria</i> spp.</u>	<u>Gourd, calabash</u>
<u><i>Momordica dioica</i> Roxb. Ex Willd.</u>	<u>Spine gourd</u>
<u><i>Momordica</i> spp.</u>	<u>Balsam apple, balsam pear</u>
<u><i>Morus</i> spp.</u>	<u>Mulberry</u>
<u><i>Musa paradisiaca</i> L.</u>	<u>Banana</u>
<u><i>Persea americana</i> Mill.</u>	<u>Avocado</u>
<u><i>Pometia pinnata</i> J. R. Forst. & G. Forst</u>	<u>Fijian longan</u>
<u><i>Pouteria lucuma</i> (Ruiz & Pav.) Kuntze</u>	<u>Lucuma</u>
<u><i>Prunus pseudocerasus</i> Lindl.</u>	<u>Chinese sour cherry</u>
<u><i>Prunus</i> spp.</u>	<u>Peach, nectarine, cherry, almond</u>
<u><i>Pyrus communis</i> L.</u>	<u>Pear</u>
<u><i>Pyrus pyrifolia</i> (Burm. f.) Nakai</u>	<u>Sand pear, Chinese pear</u>
<u><i>Pyrus</i> spp.</u>	<u>Pear</u>
<u><i>Sechium edule</i> (Jacq.) Sw.</u>	<u>Chayote</u>
<u><i>Siphonodon celastrineus</i> Griff.</u>	<u>N/A</u>
<u><i>Siphonodon</i> spp.</u>	<u>N/A</u>
<u><i>Siraitia grosvenorii</i> (Swingle) A. M. Lu & Zhi Y. Zhang</u>	<u>Monkfruit</u>
<u><i>Solanum lycopersicum</i> L.</u>	<u>Tomato</u>
<u><i>Solanum melongena</i> L.</u>	<u>Eggplant</u>

<u><i>Strychnos ignatii</i> P. J. Bergius</u>	<u>Ignatius bean</u>
<u><i>Strychnos</i> spp.</u>	<u>N/A</u>
<u><i>Syzygium aqueum</i> (Burm. f.) Alston</u>	<u>Watery rose apple</u>
<u><i>Trichosanthes costata</i> Blume</u>	<u>N/A</u>
<u><i>Trichosanthes dioica</i> Roxb.</u>	<u>Pointed gourd</u>
<u><i>Vigna unguiculata</i> (L.) Walp.</u>	<u>Cowpea</u>

The amendment is correcting the spelling of the following host species:

Scientific Name	Host Name
<i>Borassus flabellifer</i> L.	<u>Palmyra palm, Doub palm</u>
<i>Cucumis anguria</i> L.	Pepin cimarron <u>Bur cucumber</u>
<i>Cucurbita maxima</i> Duchesne	Wintersquash <u>Pumpkin</u>
<i>Cucurbita pepo</i> L.	<u>Pumpkin Bitter bottle gourd</u>
<i>Ficus tinctoria</i> G. Forst.	Liang-liao-rong <u>Dye fig</u>
<i>Gymnopetalum scabrum</i> (Lour.) W. J. de Wilde & Duyfjes	<u>N/A Feng gua</u>
<i>Hodgsonia macrocarpa</i> var. <i>capniocarpa</i> (Ridl.) Tsai (<i>Blume</i>) <i>Cogn.</i>	<u>Chinese lardfruit</u>
<i>Luffa aegyptiaca</i> Mill.	<u>Smooth Loofah</u>
<i>Luffa</i> spp.	<u>Loofah</u>
<i>Momordica charantia</i> L.	Balsam apple <u>Bitter melon</u>
<i>Morinda citrifolia</i> L.	<u>Noni Indian mulberry</u>
<i>Myxopyrum smilacifolium</i> (Wall.) Blume	<u>N/A Kuo ye jiao he mu</u>
<i>Prunus salicina</i> Lindl.	<u>Asian Japanese plum</u>
<i>Strychnos nux-vomica</i> L.	<u>Nux-vomica tree</u>
<i>Strychnos rupicola</i> Pierre ex Dop	<u>N/A</u>
<i>Trichosanthes cucumerina</i> L.	<u>Snake Annual gourd</u>
<i>Trichosanthes</i> spp.	<u>Gourds Annual gourd, Snake gourd</u>

Section 3444

Title 3 CCR Section 3444(a) identifies that the pest subject to the quarantine is *Zeugodacus tau* (formerly *Bactrocera tau*), which is necessary for the quarantine requirements to be properly applied.

Title 3 CCR Section 3444(b) establishes that an area shall be designated as a quarantine area when an infestation is present, the local California county agricultural commissioner (CAC) has been notified and requests the quarantine, the area description is posted to the Department's website and that any interested party may receive notification, including through a list serve option. To establish a quarantine there is a need to communicate with the local affected CAC(s) and other interested parties and provide a boundary description. This subsection meets those needs.

Title 3 CCR Section 3444(b)(1) establishes when an infestation or satellite infestation is present, including whether the area is undergoing sterile insect release to eradicate an infestation. There is a need for the CAC(s) and other interested parties to understand what constitutes an incipient infestation and what may trigger an expansion. Title 3 CCR Section 3444(b)(1)(A) establishes when an infestation is present. Title 3 CCR Section 3444(b)(1)(B) establishes when a satellite infestation is present and may expand the quarantine area. These subsections reflect the current national standard established by the USDA which is internationally accepted by our trading partners.

Title 3 CCR Section 3444(b)(2) establishes a minimum radius of 4.5 miles surrounding qualifying detection sites as the epicenter used under Title 3 CCR Section 3444(b)(1)(A) for qualifying detections, the number of pest detections needed to trigger a quarantine area designation, that known mapping features be used when possible and that imaginary lines may be used with or without latitude and longitude points. There is a need for the CAC(s) and other interested parties to understand how the size and boundary line of a quarantine area is determined. This subsection reflects the current national standard established by the USDA and it is also an internationally accepted standard.

Title 3 CCR Section 3444 (b)(3) establishes that any interested party may appeal the quarantine area designation and the process to do so. There is a need to have continued opportunity for both local and public input on the Department's regulatory

measures. This subsection provides that opportunity and the contact information to do so.

“ ‘Emergency’ means a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare” per GC 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 per GC Section 11346.1(b)(1). It is necessary to continue to recognize the emergency nature in this proposed quarantine regulation. Therefore, it is necessary that any appeal of an area designation be held to a high standard, and this is achieved through requiring the appeal to contain clear and convincing evidence. The Office of Administrative Law has up to 10 days to render its decision regarding a proposed emergency action. This subsection provides the same timeframe.

Title 3 CCR Section 3444(b)(4) establishes the duration of the quarantine. There is a need for the CAC(s) and other interested parties to understand the justification for the length of the quarantine. Three life cycles without detections of a fruit fly life stage is the current national standard for a quarantine’s length established by the USDA; it is also an internationally accepted standard.

Title 3 CCR Section 3444(b)(5) establishes the life cycle of Tau fly. It is necessary to understand the biology of the fly in order to determine when life cycles have been completed. This subsection establishes the scientifically known life cycle of Tau fly that is currently recognized by the USDA and is also internationally accepted.

Title 3 CCR Section 3444 (c) establishes the articles and commodities covered by the regulation. Title 3 CCR Section 3444(c)(1) establishes that soil within the dripline of plants producing, or which have produced host fruit, vegetables, or berries is regulated. Tau fly attacks the host fruit, vegetables, or berries by laying eggs, these mature into larvae, and the larvae tunnel out of the host and drop into the soil to pupate and then

emerge from the soil as adults. Moving soil contaminated with larvae or pupae to an uninfested area could lead to a new infestation. Title 3 CCR Section 3444(c)(2) establishes that other products, articles or means of conveyance may be regulated when it is determined by the Secretary or CAC that they may pose a danger of spreading live life stages of Tau fly; they may be regulated when the relevant parties have been so notified. The methods of notification are listed in the regulatory text. Tau fly is an exotic pest and has not been tested against all possible hosts. California could support a new host that Tau fly attacks that is not a currently recognized host. A trailer could have contained host fruit and the Tau fly larvae could have dropped out and pupated on the trailer floor. In both these cases there would be a threat of moving live life stages of Tau fly. There are many other possible permutations of different scenarios that necessitate a potential broad restriction. All of the above subsections are necessary to prevent the movement of live Tau fly life stages from a quarantined area. Human assisted movement is the primary way new infestations are begun over long distances.

Title 3 CCR Section 3444(d) establishes the quarantine restrictions for the articles and commodities covered in regulation. Title 3 CCR Section subsection 3444(d)(1) establishes that, at the wholesale level, articles and commodities covered in subsection (c) are prohibited movement within or from the area under quarantine and the exceptions. This is necessary to prevent the further spread of the Tau fly. Title 3 CCR Section subsection 3444(d)(1)(A) establishes that the article or commodity covered can move if treated in a manner to eliminate *Zeugodacus tau*, it is transported in a manner to preclude exposure to *Zeugodacus tau*, and it is accompanied by a written certificate issued by an authorized State or county agricultural official affirming compliance with this subsection. Title 3 CCR Section 3444(d)(1)(B) establishes that a regulated article or commodity can move if it is moving for treatment for *Zeugodacus tau* or processing in a manner to eliminate to *Zeugodacus tau* and, it is accompanied by a written certificate issued by an authorized State or county agricultural official affirming such movement has been authorized under this subsection. At the wholesale level, businesses dealing with a large volume of host material need to know how to obtain host commodities from

others within the regulated area. Additionally, some wholesalers may have growers under contract within the regulated area and need to know how to move the product for treatment or processing. These two subsections are necessary and provide the clarity for how this is accomplished.

Title 3 CCR Section subsection 3444(d)(2) establishes that at the wholesale level, articles and commodities covered in subsection (c) which have been commercially produced outside the area under quarantine are prohibited movement into the area under quarantine except when accompanied by a shipping document indicating the point of origin and destination and moved in compliance with certain restrictions. It is necessary to establish separate restrictions for the wholesale movement of host commodities produced outside the quarantine area. It is a standard industry practice to use shipping documents for deliveries and this subsection authorizes utilization of that practice. Host material produced outside the quarantine area does not pose a potential pest risk until it moves within the quarantine area. Therefore, it is necessary to mitigate the potential pest risk to prevent the artificial movement of *Zeugodacus tau* life stages. Title 3 CCR Section subsection 3444(d)(2)(A) establishes compliance with the regulation when the article or commodity is moving directly through the quarantine area without delay by a direct route and it is safeguarded. Title 3 CCR Section subsection 3444(d)(2)(B) establishes compliance with the regulation when the article or commodity is destined to a wholesale or retail establishment within the quarantined area and, if moving between 9 a.m. and sunset, is transported in an enclosed vehicle or container or completely enclosed by a covering to prevent exposure to the *Zeugodacus tau*. The danger from adult female *Zeugodacus tau* laying eggs only exists after the morning warms and ends at sunset when the flies are at rest. Title 3 CCR Section 3444(d)(2)(C) establishes compliance with the regulation when the article or commodity is destined for a commercial processing facility. Commercial processing eliminates any *Zeugodacus tau* pest risk, and no additional safeguarding is needed.

Title 3 CCR Section 3444(d)(3) establishes that, at the retail level for commercial articles and commodities covered, all that is needed by the person in possession is a sales receipt or comparable document to be in compliance with the regulation. This is a standard industry practice and ensures the host material originated from a certified source without being overly burdensome on interested parties.

Title 3 CCR Section 3444(d)(4) establishes that articles and commodities covered which have been noncommercially produced within the area under quarantine, including “backyard” production, are prohibited movement from the premises where grown except under written authorization of the Department or CAC. Sharing home-produced fruits and vegetables can be both a family and cultural tradition. In general, within the quarantine area, noncommercial host commodities pose the highest risk of being infested with *Zeugodacus tau*. There are regulatory options for this plant material to be certified if the person in possession chooses to pursue them. This subsection meets the need to prohibit the movement of the highest risk articles and commodities covered unless such movement is officially authorized.

Title 3 CCR Section 3444(d)(5) establishes that articles and commodities covered which have been noncommercially produced outside the area under quarantine are prohibited movement into the area under quarantine except when the person in possession has signed a statement showing the commodity, amount, origin, destination, and date of transportation. During past quarantine projects, investigations determined there were instances of people moving backyard fruit produced within the quarantine area for distribution to neighbors inside and outside the quarantine area but when initially questioned stated the fruit was moved into the quarantine area from a source outside the area. This subsection provides for the sharing of berries, fruits and vegetables which do not pose a pest risk.

Title 3 CCR Section 3444(d)(6) establishes that within the area under quarantine, no wholesale or retail establishment shall handle, sell, or offer for sale any article or

commodity covered unless such commodities at all times are maintained in a manner that precludes exposure to *Zeugodacus tau*. No commodity covered shall be held for sale or sold from a truck, trailer, or other mobile vehicle. There are many open-air businesses which may display host berries, fruits, and vegetables for sale. Adult female *Zeugodacus tau* are mobile by nature and can “sting” and lay eggs in exposed host commodities. Therefore, to prevent host commodities from becoming infested while on display, the commodities need to be safeguarded. This performance standard can be successfully accomplished including the use of “air curtains” in entry ways, keeping the host commodities cold so the female *Zeugodacus tau* will not attempt to sting it, covering the host commodities with plastic tarps or fine mesh screens, or placing transparent solid lids over the display containers, etc. In past quarantine projects, the Department has experienced significant issues with mobile vendors of host berries, fruits, and vegetables. These vendors tend to move frequently into and out of the quarantine area and within the quarantine area with the host commodities fully exposed. Encountering a mobile vendor with exposed host commodities leads to the host commodities being confiscated; this creates tension between the vendors and the regulatory staff. To prevent the unnecessary confiscation of host commodities and increase public safety for the regulatory officials, it is necessary to ban the sale of host commodities from mobile vendors within the quarantine area. Quarantine regulatory officials map the quarantine area in the different languages used in the area, and distribute the maps directly to the mobile vendors as community outreach.

All of the above subsections are necessary to ensure:

- the targeted pest is known to the public
- the processes for establishing and removing potential quarantine boundaries are easily understood, transparent, can be accomplished within a biologically timely manner, and provide an opportunity to appeal the action with cause
- the articles and commodities covered are known
- the quarantine restrictions are known

In the case of a quarantine being triggered, implementing said quarantine with localized eradication activities minimizes or eliminates the impact of this insect pest on the surrounding environment, if the quarantine effectively regulates the actual hosts of the insect. Flora and fauna within non-agricultural ecosystems, including the natural environments, will continue their existence without the quarantine as they have before this non-native pest was first detected in this county if the pest is eradicated before it spreads to native species. If the Department neglects to regulate the movement of host fruit, this insect pest could spread into the local environment via the surrounding non-agricultural ecosystems. This could adversely impact private and commercial landscape plantings, local, regional, state, and national parks, other recreational sites, open habitats, and wild lands. Affected plants could become less vigorous and may produce fewer seeds. Plants/trees with low propagule output can result in major changes to plant community structure. An established *Zeugodacus tau* population would likely result in increased insecticide usage in the areas affected, with potential negative impacts on non-target insects, along with the species that rely on them. Therefore, modifying the host list to reflect the current best evidence will have no environmental impact or (in the case of a quarantine being triggered) a potential positive environmental impact.

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

Bactrocera tau Host List 2016, United States Department of Agriculture, June 2016

T. Boopath, S. B. Singh, T. Manju, Samik Chowdhury, A. R. Singh, S. K. Dutta, V. Dayal, G. T. Behere, S. V. Ngachan, S., and S.M.A. Rahman, "First report of economic injury to tomato due to *Zeugodacus tau* (Diptera: Tephritidae): relative abundance and effects of cultivar and season on injury" Florida Entomologist Volume 100, No. 1, 2017

CABI Compendium “Bactrocera tau” from website
<https://doi.org/10.1079/cabicompendium.8741> visited 7/6/2023

California Department of Food and Agriculture, California Agriculture Statistics Review
2021-2022, page 101\

Email from Dayna Napolillo on July 7, 2023 “Z. Tau finds”

Governor’s Office of Emergency Services, State of California Emergency Plan, October
1, 2017, pages 132-133

Authority and Reference Citations

Authority: Sections 407, 5301, 5302, and 5322 Food and Agricultural Code

Reference: Sections 407, 5301, 5302, 5322, 5761, 5762, 5763, and 5764 Food
and Agricultural Code

Informative Digest

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 that the Secretary
is directed or authorized to administer or enforce.

Existing law, FAC Section 5301, provides that the Secretary may establish, maintain,
and enforce such quarantine regulations as they deem necessary to protect the
agricultural industry of this state from pests. The regulations may establish a quarantine
at the boundaries of this state or elsewhere within the state.

Existing law, FAC Section 5302, provides that the Secretary may make and enforce
such regulations as they deem necessary to prevent any plant or thing which is, or is
liable to be, infested or infected by, or which might act as a carrier of, any pest, from

passing over any quarantine line which is established and proclaimed pursuant to this division.

Existing law, FAC Section 5322, provides that the Secretary may establish, maintain, and enforce quarantine, eradication, and such other regulations as are in their 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 the Secretary 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 the Secretary may proclaim 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 Secretary, or the commissioner acting under the supervision and direction of 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.

Expenditures, if any, allocated for the replacement nursery stock shall not exceed an amount which is budgeted for the purpose or approved by the Director of Finance.

The existing laws 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.

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

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.

Section 3443 *Zeugodacus tau* Interior Quarantine and Section 3591.27, *Zeugodacus tau* Eradication Area.

This amendment of Title 3 CCR Section 3591.27 and adoption of Title 3 CCR Section 3444 will allow the Department to create an interior quarantine, add Ventura County to the eradication area, and update the *Zeugodacus tau* host list to be in harmony with the most current USDA list.

Anticipated Benefits from This Regulatory Action

This regulatory action will allow the Department to create an interior quarantine, add Ventura County to the eradication area, and update the *Zeugodacus tau* host list to be in harmony with the most current USDA list. Making these changes will help prevent the spread of *Zeugodacus tau*, which will benefit:

- the general public
- homeowners and community gardens

- agricultural industry
- the State's general fund.

Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department has determined that the amendment of Title 3 CCR Section 3591.27 and adoption of Section 3444 does not impose a mandate on local agencies or school districts and no reimbursement is required under Section 17561 of the Government Code.

The Department also has 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 amendment of Title 3 CCR Sections 3591.27 or adoption of Section 3444.