

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE  
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations  
Section 3591.27 *Zeugodacus tau* Eradication  
Section 3444 *Zeugodacus tau* Interior Quarantine

INITIAL STATEMENT OF REASONS/  
POLICY STATEMENT OVERVIEW

The California Department of Food and Agriculture (Department) proposes to make permanent the emergency adoption and amendment to Title 3, California Code of Regulations (CCR) Section 3591.27 *Zeugodacus tau* Eradication Area and adopt Title 3 CCR Section 3444 *Zeugodacus tau* Interior Quarantine which provides authority to the Department to allow effective eradication and quarantine activities to prevent this pest from spreading throughout California.

Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address

These regulations are intended to address the obligation of the Secretary of Food and Agriculture to protect the agricultural industry of California from the movement and spread within California of injurious plant pests as required by Food and Agricultural Code (FAC) Sections 401 and 403.

Purpose and Factual Basis

The specific purpose of adopting CCR Section 3444 *Zeugodacus tau* Interior Quarantine and amending Section 3591.27 *Zeugodacus tau* Eradication Area is to make permanent the expanded eradication area for the *Zeugodacus tau* in California to include Ventura, San Diego, and Orange County, 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.

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.

This will allow targeted actions for eradication of Tau fly in Ventura, San Diego, and Orange counties, as necessary, and reduce the chance of allowing natural and artificial dispersal and the subsequent spread of the pest in California. Any necessary eradication and quarantine actions taken by the Department will be in cooperation with the USDA and the affected county agricultural commissioners.

The factual basis for the determination by the Department that the adoption of Section 3444 amendment of Section 3591.27 is necessary is as follows:

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. The detection of Tau flies is indicative of an incipient infestation of Tau flies in this area. Therefore, the Department adopted an emergency amendment to address this issue immediately and allow for eradication and interior quarantine of this pest. The effect of the amendment provided authority for the State to conduct eradication and quarantine activities against Tau flies beginning on 8/11/2023 and expiring on 2/8/2024.

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 make permanent 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.

### Project Description

#### **Section 3591.27**

In Title 3 CCR Section 3591.27 (a), Ventura, San Diego, and Orange counties 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. Treatment in a county that is added to the eradication area will only begin when triggered by detections and after notice announcing the specific eradication project. Although the potential larval host plant list is large, Tau fly in its current infestation in California favors a wild plant, coyote gourd, for reproduction. Populations of this plant in California are concentrated in southern California, south of the Transverse Range. As this is the area subject to most non-native fruit fly incursions as well, the risks of future finds of Tau fly in Orange or San Diego counties is

high. Therefore, the Department needs to add these counties to the eradication area to be prepared for likely future Tau fly incursions.

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:

<b><u>Scientific Name</u></b>	<b><u>Host Name</u></b>
<u>Abelmoschus esculentus (L.) Moench</u>	<u>Okra</u>
<u>Adenia hondala (Gaertn.) W. J. de Wilde</u>	<u>Hondala</u>
<u>Annona muricata L.</u>	<u>Soursop</u>
<u>Annona squamosa L.</u>	<u>Custard apple</u>
<u>Bambusa pallida Munro</u>	<u>Bakhal</u>
<u>Benincasa spp.</u>	<u>Gourd, melon</u>
<u>Bidens biternata (Lour.) Merr. &amp; Sherff</u>	<u>Sendangusa</u>
<u>Brassica oleracea L.</u>	<u>Cabbage</u>
<u>Capsicum annuum L.</u>	<u>Chili pepper</u>
<u>Capsicum frutescens L.</u>	<u>Bird pepper</u>
<u>Capsicum spp.</u>	<u>Pepper</u>
<u>Citrus maxima (Burm.) Merr.</u>	<u>Pummelo</u>
<u>Citrus paradisi Macfad.</u>	<u>Grapefruit</u>
<u>Citrus reticulata Blanco</u>	<u>Mandarin orange</u>
<u>Citrus sinensis (L.) Osbeck</u>	<u>Sweet orange</u>
<u>Citrus tangelo J. W. Ingram &amp; H. E. Moore</u>	<u>Tangelo</u>
<u>Citrus unshiu Marcow.</u>	<u>Satsuma mandarin</u>
<u>Cucumis spp.</u>	<u>Melon, cucumber</u>
<u>Cucurbita argyrosperma C. Huber</u>	<u>N/A</u>
<u>Cucurbita foetidissima</u>	<u>Coyote gourd</u>
<u>Cucurbita spp.</u>	<u>Pumpkin, squash, gourd</u>
<u>Dimocarpus longan Lour.</u>	<u>Longan</u>
<u>Diplocyclos palmatus (L.) C. Jeffrey</u>	<u>Lollipop climber</u>
<u>Eugenia spp.</u>	<u>Eugenia</u>
<u>Hydnocarpus spp.</u>	<u>Chaulmoogra</u>
<u>Hylocereus undatus (Haw.) Britton &amp; Rose</u>	<u>Dragon fruit, red pitaya</u>

<u>Lagenaria spp.</u>	<u>Gourd, calabash</u>
<u>Momordica dioica Roxb. Ex Willd.</u>	<u>Spine gourd</u>
<u>Momordica spp.</u>	<u>Balsam apple, balsam pear</u>
<u>Morus spp.</u>	<u>Mulberry</u>
<u>Musa paradisiaca L.</u>	<u>Banana</u>
<u>Persea americana Mill.</u>	<u>Avocado</u>
<u>Pometia pinnata J. R. Forst. &amp; G. Forst</u>	<u>Fijian longan</u>
<u>Pouteria lucuma (Ruiz &amp; Pav.) Kuntze</u>	<u>Lucuma</u>
<u>Prunus pseudocerasus Lindl.</u>	<u>Chinese sour cherry</u>
<u>Prunus spp.</u>	<u>Peach, nectarine, cherry, almond</u>
<u>Pyrus communis L.</u>	<u>Pear</u>
<u>Pyrus pyrifolia (Burm. f.) Nakai</u>	<u>Sand pear, Chinese pear</u>
<u>Pyrus spp.</u>	<u>Pear</u>
<u>Sechium edule (Jacq.) Sw.</u>	<u>Chayote</u>
<u>Siphonodon celastrineus Griff.</u>	<u>N/A</u>
<u>Siphonodon spp.</u>	<u>N/A</u>
<u>Siraitia grosvenorii (Swingle) A. M. Lu &amp; Zhi Y. Zhang</u>	<u>Monkfruit</u>
<u>Solanum lycopersicum L.</u>	<u>Tomato</u>
<u>Solanum melongena L.</u>	<u>Eggplant</u>
<u>Strychnos ignatii P. J. Bergius</u>	<u>Ignatius bean</u>
<u>Strychnos spp.</u>	<u>N/A</u>
<u>Syzygium aqueum (Burm. f.) Alston</u>	<u>Watery rose apple</u>
<u>Trichosanthes costata Blume</u>	<u>N/A</u>
<u>Trichosanthes dioica Roxb.</u>	<u>Pointed gourd</u>
<u>Vigna unguiculata (L.) Walp.</u>	<u>Cowpea</u>

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

<b>Scientific Name</b>	<b>Host Name</b>
<i>Borassus flabellifer</i> L.	<u>Palmyra palm, Doub palm</u>
<i>Cucumis anguria</i> L.	<u>Pepin cimarron Bur cucumber</u>
<i>Cucurbita maxima</i> Duchesne	<u>Wintersquash Pumpkin</u>
<i>Cucurbita pepo</i> L.	<u>Pumpkin Bitter bottle gourd</u>
<i>Ficus tinctoria</i> G. Forst.	<u>Liang-liao-rong Dye fig</u>
<i>Gymnopetalum scabrum</i> (Lour.) W. J. de Wilde & Duyfjes	<u>N/A Feng qua</u>
<i>Hodgsonia macrocarpa</i> var. <i>capniocarpa</i> (Ridl.) Tsai ( <u>Blume</u> ) <u>Cogn.</u>	<u>Chinese lardfruit</u>

<i>Luffa aegyptiaca</i> Mill.	<del>Smooth</del> Loofah
<i>Luffa</i> spp.	Loofah
<i>Momordica charantia</i> L.	<del>Balsam-apple</del> <u>Bitter melon</u>
<i>Morinda citrifolia</i> L.	Noni <u>Indian mulberry</u>
<i>Myxopyrum smilacifolium</i> (Wall.) Blume	N/A <u>Kuo ye jiao he mu</u>
<i>Prunus salicina</i> Lindl.	Asian <u>Japanese plum</u>
<i>Strychnos nux-vomica</i> L.	Nux-vomica tree
<i>Strychnos rupicola</i> Pierre ex Deap	N/A
<i>Trichosanthes cucumerina</i> L.	<del>Snake</del> <u>Annual gourd</u>
<i>Trichosanthes</i> spp.	Gourds <u>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 eradication and 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.

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 *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 *Zeugodacus tau* and any associated pest risk; therefore, 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.

### Current Laws & Regulations

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.

#### Anticipated Benefits from This Regulatory Action

The adoption of this regulation provides the necessary regulatory authority to eradicate a serious insect pest; this is a mandated, statutory goal.

This regulation is necessary to prevent the spread of Tau fly to un-infested areas of the State. The regulation benefits industries (nursery, fruit for domestic use and exports, packing facilities), the environment (urban landscapes), and the overall California economy by preventing the spread of Tau fly.

The amendment of this regulation benefits the pepper, tomato, and guava (nursery, fruit for domestic use and exports, packing facilities) and the environment (urban landscapes) by providing the Department an eradication and quarantine program to prevent the artificial spread of the Tau fly over short and long distances.

The California, national and international consumers of California pepper, tomato, and guava benefit by having high quality produce available at lower cost. It is assumed that any increases in production costs will ultimately be passed on the consumer.

The amendment of this regulation benefits homeowners who grow their own host fruits for consumption and host material which is planted as ornamentals in various rural and urban landscapes.

The adoption of this regulation may benefit homeowners who grow host material for consumption and/or ornamentals in various rural and urban landscapes. By providing a basis to prevent infestation with Tau fly and thereby preventing damage to hosts, the regulation eliminates any future need for hosts to be treated to mitigate infestations of Tau fly.

#### California Environmental Quality Act

Prior to conducting any action authorized by this regulation, the Department shall comply with the California Environmental Quality Act of 1970 (Public Resources Code Section 21000 et. seq. as amended) and the State CEQA Guidelines (Title 14 California Code of

Regulations Section 15000 et. seq.).

Mandate on Local Agencies or School Districts

The Department has determined that this regulation does not impose a mandate on local agencies or school districts.

Economic Impact Analysis (Government Code 11346.3(b))

The eradication and prevention of the spread of Tau fly in California through the amendment and implementation of this regulation economically benefits:

- the general public
- homeowners and community gardens
- the agricultural industry
- the State's general fund

*The Creation or Elimination of Jobs within the State*

The Department has been conducting eradication and quarantine actions throughout the State for over 30 years without causing significant creation or elimination of jobs. Therefore, the Department has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs in the State of California.

*The Creation or Elimination of Businesses in California*

The Department has been conducting eradication and quarantine actions throughout the State for over 30 years without causing significant creation of new businesses. Therefore, the Department has determined that this regulatory proposal will not have a significant impact on the creation of new businesses in the State of California.

*The Expansion of Businesses in California*

The Department has been conducting eradication and quarantine actions throughout the State for over 30 years without causing significant impact on businesses. Therefore, the

Department has determined that this regulatory proposal will not have a significant impact on the expansion of businesses currently doing business in the State of California.

*Worker Safety*

This regulation is not expected to have an effect on worker safety.

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

The Department of Food and Agriculture has determined that Sections 3444 and 3591.27 does not impose a mandate on local agencies or school districts. All eradication activities shall be conducted by the Department and quarantines by county agricultural commissioners. Therefore, no reimbursement is required under Section 17561 of the Government Code.

The Department also has determined that 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 and no nondiscretionary costs or savings to local agencies or school districts, will result from the amendment of Sections 3444 and 3591.27.

There are 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 and no nondiscretionary costs or savings to local agencies or school districts anticipated from the adoption of this amendment.

The Department has determined that the proposed actions will not have a significant adverse economic impact on housing costs or California business, including the ability of California businesses to compete with businesses in other states.

*Potential Impact to Homeowners and Community Gardens*

The implementation of this regulation will aid in preventing increased costs to the consumers of host materials and increased pesticide usage by homeowners and others. If an infestation



of Tau fly is not eradicated or prevented from spreading due to a delay in eradication and quarantine efforts, then homeowners and community gardeners would be negatively impacted.

#### *Potential Impacts to General Fund and Welfare*

The proposed amendment does not have immediate or definitive impact to the general fund or general welfare. Rather, it would facilitate a fast and effective response if Tau fly is detected in the new designated eradication and quarantine area. Speed of response is key to eradicating an incipient pest infestation. Programmatic delays potentially can lead to pest quarantines, as well as increased production costs and potential job loss. The agricultural industry is one of the economic engines in the State. Negative impacts to agriculture impact the State's economic recovery and the general welfare of the State. Additionally, any further job losses in this area would likely be felt by low-skilled workers whose employment options are already limited. The loss of any additional agricultural jobs would likely result in an increase in the State's public assistance obligations which would also negatively impact the State's economic recovery.

The Department is the only agency which can implement eradication and quarantine areas. 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.

#### Assessment

The amendment is designed to prevent or minimize the spread of Tau fly by adopting Section 3444 and amending Section 3591.27. The Department has made an assessment that the amendment to this regulation would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, (3) affect the expansion of businesses currently doing business within California, (4) is expected to benefit the health and welfare of California residents, (5) is expected to benefit the state's environment, and (6) is not expected to benefit workers' safety.

The health and welfare of California residents: The proposed action will benefit the health and welfare of California residents by preventing increased costs to the consumers of host materials and increased pesticide usage.

The state's environment: The amendment of this regulation benefits the environment (urban landscapes) by providing the Department an eradication program to prevent the artificial spread of the Tau fly over short and long distances.

### Alternatives Considered

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

The Department considered taking no action. If no action is taken, the Department would not have eradication authority in Ventura, San Diego, and Orange counties, have an inaccurate host list, and have no interior quarantine for Tau fly. Without eradication authority to treat Tau fly infestations in Ventura County, San Diego, and Orange counties, the Animal and Plant Health Inspection Service (USDA APHIS) could potentially designate the entire state as infested with Tau fly, rather than just infested counties. If USDA APHIS were to consider the entire state infested, there would likely be additional detrimental quarantine requirements directed against California host commodities by the USDA APHIS and our international trade partners. Therefore, this alternative was rejected.

### Information Relied Upon

The Department is relying upon the following studies, reports, and documents in the adoption and amendment of Sections 3444 and 3591.27:

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

Calflora: Information on California plants for education, research and conservation. [web application]. 2023. Berkeley, California: The Calflora Database [a non-profit organization]. Available: <https://www.calflora.org/> (Accessed: Aug 18, 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