FINDING OF EMERGENCY

The Secretary of the California Department of Food and Agriculture (Department) determined that an emergency exists: detection of Queensland fruit fly (QFF), (*Bactrocera tryoni*) in California. The foregoing adoption to Title 3 of the California Code of Regulations (CCR) Section 3445 Queensland fruit fly Interior Quarantine and Section 3591.30 Queensland fruit fly Eradication Area is necessary to avoid serious harm to the public peace, health and safety, or general welfare. On August 23, 2023, an adult QFF was taken from a trap in the Thousand Oaks area of Ventura County. QFF is a major agricultural pest within Australia and areas of artificial introduction, and many of its host plants are grown in California. To begin effective eradication activities and to prevent QFF from spreading throughout California, the Department must begin eradication and interior quarantine activities in Ventura County. Therefore, the Department proposes to adopt these emergency regulations to address this issue immediately and allow for eradication and interior quarantine of this pest to target the correct host plants.

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 QFF 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 enact quarantines against California products. The pest could also find hosts in natural and urban environments. Therefore, it is necessary to adopt the eradication regulation Title 3 CCR Section 3591.30 and 3445.

The specific purpose of Title 3 CCR Section 3591.30 is to create an eradication area where QFF has been found, currently Ventura County.

The specific purpose of Title 3 CCR Section 3445is to create an interior quarantine where QFF has been found, currently Ventura County.

The survey, fruit removal, quarantine, 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

QFF is an insect pest which attacks the fruit of various plants that are part of California's economic and agricultural landscape, including citrus, stone fruits, and tomato. 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. Adults also damage fruit, feeding primarily upon juices of host plants, nectar, and honeydew from insects. The California Agriculture Statistics Review 2021-2022 lists the value of tomatoes at 1.2 billion dollars and California as the largest citrus-producing state in America.

If the fly were allowed to spread and become established in host fruit production areas, California's agricultural industry would suffer losses due to increased pesticide use, decreased production of marketable fruit, and loss of markets if the United States Department of Agriculture (USDA) or other states or countries enact a quarantine against California products which can host and carry the fly. An outbreak of *B. tryoni* in New South Wales during 1940-41 resulted in the rejection of 5–25% of citrus at harvest (Weems, Jr., Florida Department of Agriculture and Consumer Services, Division of Plant Industry; and T.R. Fasulo (retired), University of Florida).

QFF 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 adopt Title 3 CCR Sections 3445 and 3591.30, QFF 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 adopt Title 3 CCR Sections 3445 and 3591.30 on an emergency basis.

Project Description

Section 3591.30

Section 3591.30 (a) outlines that areas that QFF is known to exist will be an eradication area, and the area of the state that recently had QFF find is named: Ventura County. This section lets the public know where the eradication area will be and can be updated if additional QFF are found.

In Section 3591.30 (b)(1), the host list has been created using the USDA National Exotic Fruit Fly Detection Trapping Guidelines. Having a host list with the most accurate information allows the Department to carry out eradication activities effectively. All named fruit, vegetables, pericarp of nuts, seeds, or berries are considered host material that could become infested. The following species are listed:

Scientific Name	Common Name
Acca sellowiana (O. Berg) Burret	pineapple guava
Actinidia deliciosa (A. Chev.) C.F. Liang & A.R. Ferguson	kiwifruit
Anacardium occidentale L.	cashew
Annona cherimola Mill.	cherimoya
Annona muricata L.	soursop
Annona reticulata L.	bullock's heart
Annona sp.	
Annona squamosa L.	Custard-apple
Artocarpus altilis (Parkinson) Fosberg	breadfruit
Artocarpus heterophyllus Lam.	jackfruit
Asimina triloba (L.) Dunal	pawpaw
Averrhoa carambola L.	carambola
Barringtonia asiatica (L.) Kurz	fish killer tree
Barringtonia edulis	pau nut
Calophyllum inophyllum L.	Alexandrian laurel
Cananga odorata (Lam.) Hook. f .& Thomson	ylang ylang tree
Canarium vulgare Leenh.	Chinese olive
Capsicum annuum L.	chile/sweet pepper
Carica papaya L.	papaya
Casimiroa edulis LaLlave & Lex.	white sapote
Chrysophyllum cainito L.	star apple
Citrus aurantiifolia (Christm.) Swingle	keys lime
Citrus latifolia (Yu. Tanaka) Tanaka	Persian lime
Citrus limon (L.) Burm. F	lemon
Citrus maxima (Burm.) Merr	pomelo
Citrus medica L.	citron

Citrus xparadisi Macfad.	grapefruit
Citrus reticulata Blanco	mandarin
Citrus sinensis (L.) Osbeck	orange
Citrus xtangelo J.W. Ingram & H.E. Moore	tangelo
Coffea sp.	coffee
Cucurbita pepo L.	acorn squash
Cydonia oblonga Mill.	quince
Dimocarpus longan Lour.	longan
Diospyros bicolor (=*D. mespiliformis*)	jackalberry
Diospyros digyna Jacq.	black sapote
Diospyros kaki Thunb.	Japanese persimmon
Diospyros mespiliformis Hochst. Ex A. DC.	jackalberry
Diospyros sp.	persimmon
Durio zibethinus L.	Durian
Eriobotrya japonica (Thunb. Lindl.)	Loquat
Eugenia brasiliensis Lam	Brazil-cherry
Eugenia uniflora L.	Surinam-cherry
Ficus carica L.	common fig
Ficus pancheriana Bureau	Pancher's fig
Ficus sp.	fig
Fortunella japonica (Thunb.) Swingle	round kumquat
Fragaria xananassa Duchesne ex Rozier	garden strawberry
Fragaria vesca L.	European strawberry
Garcinia mangostana L.	mangosteen
Hernandia cordigera Vieill.	Bois bleu
Hylocereus undatus (Haw.) Britton & Rose	dragon fruit
Inocarpus fagiferus (Parkinson) Fosberg	Tahiti chestnut
Litchi chinensis Sonn.	litchi
Malpighia glabra L.	acerola
Malus domestica Borkh.	apple
Mangifera indica L.	mango
Manilkara zapota (L.) P. Royen	sapodilla
Mimusops elengi L.	medlar
Morinda citrifolia L.	canary wood
Morus alba L.	Russian mulberry
Musa xparadisiaca L.	edible banana
Musa sp.	banana
Musa troglodytarum L.	fe'i banana
Nephelium lappaceum L.	rambutan
Opuntia ficus-indica (L.) Mill.	mission prickly-pear
Passiflora edulis Sims	passionfruit
Passiflora laurifolia L.	yellow granadilla
Passiflora quadrangularis L.	giant granadilla
Persea americana Mill.	avocado

Phoenix dactylifera L.	date palm
Phyllanthus acidus (L.) Skeels	gooseberry tree
Physalis peruviana L.	cape gooseberry
Planchonella sphaerocarpa (Baill.) Dubard	
Plinia cauliflora (Mart.) Kausel	Brazilian grapetree
Pometia pinnata J.R. Forst. & G. Forst.	Pacific lychee
Pouteria caimito (Ruiz & Pav.) Radlk.	caimito
Prunus americana Marshall	American plum
Prunus armeniaca L.	Apricot
Prunus avium (L.) L.	sweet cherry
Prunus xdomestica L.	European plum
Prunus persica (L.) Batsch	peach
Prunus persica (L.) Batsch var. nucipersica (Suckow) C.K. Schneid.	nectarine
Prunus simonii Carriere	apricot plum
Psidium acutangulum DC.	
Psidium cattleyanum Sabine	cattley guava
Psidium cattleyanum Sabine var. *littorale* (Raddi) Fosberg	strawberry guava
Psidium friedrichsthalianum (O. Berg) Nied.	Costa Rican guava
Psidium guajava L.	guava
Punica granatum L.	pomegranate
Pyriluma sphaerocarpum (Baill.) Aubrev	
Pyrus communis L.	pear
Pyrus pyrifolia (Burm. F.) Nakai var. *culta* (Makino) Nakai	Asian pear
Rubus fruticosus auct. Aggr.	European blackberry
Rubus idaeus L.	raspberry
Rubus xloganobaccus L.H. Bailey	loganberry
Sandoricum koetjape (Burm.f.) Merr.	santol
Solanum betaceum Cav.	tree tomato
Solanum lycopersicum L. var. *lycopersicum*	tomato
Solanum mauritianum Scop.	bugtree
Solanum melongena L.	eggplant
Solanum muricatum Aiton	pepino
Spondias dulcis Sol. Ex Parkinson	Juneplum
Spondias mombin L.	hog plum
Synsepalum dulcificum (Schumach.) Daniell	miracle fruit
Syzygium cumini (L.) Skeels	jambolan
Syzygium jambos (L.) Alston	Rose-apple
Syzygium malaccense (L.) Merr. & L.M. Perry	Malay-apple
Syzygium samarangense (Blume) Merr. & L.M. Perry	Java-apple
Terminalia catappa L.	tropical almond

Thevetia peruviana (Pers.) K. Schum	yellow oleander
Vaccinium corymbosum L.	blueberry
Vasconcellea xheilbornii (V.M. Badillo) V.M. Badillo	babaco
Vitis vinifera L.	European grape
Ximenia americana L.	false sandalwood
Ziziphus jujuba Mill.	Chinese jujube
Ziziphus mauritiana Lam.	Chinese-apple

In Section 3591.30 (b)(2), soil or planting media within the drip area of plants producing, or which have produced, host fruit is also included. If not treated as a host, soil and planting media can host larva and OFF.

In Section 3591.30 (c) the means and methods that can be used to eradicate and control QFF are listed. These include:

(1) The use of insecticides, chemicals, or other materials as spray, dust, bait or in any other form as often as necessary to effect control or eradication.
(2) The removal and destruction of hosts if such action is the only practical way of eliminating the infestation.
(3) The searching for all stages of QFF by visual inspection, the use of traps, or any other means.
(4) The removal and destruction of abandoned or unwanted hosts in any stage of development.
(5) The importation, rearing, liberation, and fostering of parasites and predators which attack QFF.
(6) The importation, rearing, or liberation of sterile forms of QFF.

It is necessary to immediately perform these activities and eradication treatments to prevent spread of the QFF 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. Though eradication does not include aerial treatments,

residents are notified in writing at least 48 hours in advance of any treatment in accordance with the Food and Agricultural Code (FAC) Section 5771 – 5780.

Section 3445

Title 3 CCR Section 3445(a) identifies that the pest subject to the quarantine is Queensland fruit fly, (*Bactrocera tryoni*), which is necessary for the quarantine requirements to be properly applied.

Title 3 CCR Section 3445(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 3445(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 3445(b)(1)(A) establishes when an infestation is present. Title 3 CCR Section 3445(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 3445(b)(2) establishes a minimum radius of 4.5 miles surrounding qualifying detection sites as the epicenter used under Title 3 CCR Section 3445(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 3445(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 3445(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 3445(b)(5) establishes the life cycle of QFF. 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 QFF that is currently recognized by the USDA and is also internationally accepted.

Title 3 CCR Section 3445(c) establishes the articles and commodities covered by the regulation. Title 3 CCR Section 3445(c)(1) establishes that soil within the dripline of plants producing, or which have produced host fruit, vegetables, or berries is regulated. QFF 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, 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 3445(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 QFF; they may be regulated when the relevant parties have been so notified. The methods of notification are listed in the regulatory text. QFF is an exotic pest and has not been tested against all possible hosts. California could support a new host that QFF attacks that is not a currently recognized host, as happened when QFF was introduced into New Caledonia. A trailer could have contained host fruit and the QFF 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 QFF. 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 QFF life stages from a quarantined area. Human assisted movement is the primary way new infestations are begun over long distances.

Title 3 CCR Section 3445(d) establishes the quarantine restrictions for the articles and commodities covered in regulation. Title 3 CCR Section subsection 3445(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 QFF. Title 3 CCR Section subsection 3445(d)(1)(A) establishes that the article or commodity covered can

move if treated in a manner to eliminate QFF, it is transported in a manner to preclude exposure to QFF, 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 3445(d)(1)(B) establishes that a regulated article or commodity can move if it is moving for treatment for QFF or processing in a manner to eliminate to QFF 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 3445(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 QFF life stages. Title 3 CCR Section subsection 3445(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 3445(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 QFF. The danger from adult female QFF laying eggs only exists after the morning warms and ends after sunset when the flies are at rest. Title 3 CCR Section 3445(d)(2)(C) establishes compliance with the regulation when the article or commodity is destined for a commercial processing facility. Commercial processing eliminates any QFF pest risk, and no additional safeguarding is needed.

Title 3 CCR Section 3445(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 3445(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 QFF. 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 3445(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 3445(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 QFF. 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 QFF 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 QFF 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, as it has done after introduction to New Caledonia. 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 QFF 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 either no environmental impact or, when a quarantine is triggered, a potential positive environmental impact.

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

National Exotic Fruit Fly Detection Trapping Guidelines, United States Department of Agriculture, Queensland fruit fly (*Bactrocera tryoni*) pages A-46 thru A-51, June 2015

California Department of Food and Agriculture, California Agriculture Statistics Review 2021-2022, page 57,

California Department of Food and Agriculture, Queensland Fruit Fly Incident Update Ventura County Meeting, August 25, 2023

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

H.V. Weems, Jr., Florida Department of Agriculture and Consumer Services, Divisionof Plant Industry; and T.R. Fasulo (retired), University of Florida. Originally published as "DPI Entomology Circular 34." January 2002. Latest revision: July 2014. Reviewed: December 2017.

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 obligate 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 3445 Queensland Fruit Fly Interior Quarantine and Section 3591.30, Queensland Fruit Fly Eradication Area.

This adoption of Title 3 CCR Section 3591.30 and of Title 3 CCR Section 3445 will allow the Department to create an interior quarantine and eradication area for Queensland fruit fly.

Anticipated Benefits from This Regulatory Action

This regulatory action will allow the Department to create an interior quarantine and eradication area for QFF. Making these changes will help prevent the spread of QFF, 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 adoption of Title 3 CCR Section 3591.30 and Section 3445 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 adoption of Title 3 CCR Sections 3591.30 or of Section 3445.