

**State of California  
Office of Administrative Law**

**In re:**  
**Department of Food and Agriculture**

**Regulatory Action:**

**Title 03, California Code of Regulations**

**Adopt sections: 3442**

**Amend sections:**

**Repeal sections:**

**NOTICE OF APPROVAL OF EMERGENCY  
REGULATORY ACTION**

**Government Code Sections 11346.1 and  
11349.6**

**OAL Matter Number: 2016-0129-03**

**OAL Matter Type: Emergency (E)**

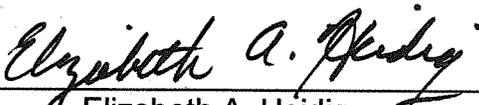
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This emergency regulatory action will establish Los Angeles County as a quarantine area with respect to the Malaysian fruit fly ("Bactrocera latifrons") and add a host list due to recent findings of the pest. The effect of the establishment of the quarantine area provides authority to the State to perform control and eradication activities against the Malaysian fruit fly in Los Angeles County to prevent spread of the fly to non-infested areas to protect California's agricultural industry.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 2/2/2016 and will expire on 8/2/2016. The Certificate of Compliance for this action is due no later than 8/1/2016.

**Date:** February 2, 2016

  
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Elizabeth A. Heidig  
Assistant Chief Counsel

**For:** DEBRA M. CORNEZ  
Director

**Original:** Karen Ross

**Copy:** Sara Khalid

NOTICE PUBLICATION REGULATIONS SUBMISSION

# EMERGENCY

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER <b>2016-0129-03E</b>
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For use by Office of Administrative Law (OAL) only

2016 JAN 29 P 2:19  
OFFICE OF ADMINISTRATIVE LAW

**ENDORSED - FILED**  
In the office of the Secretary of State  
of the State of California

FEB 2 2016

2:08 PM

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY  
Department of Food and Agriculture

AGENCY FILE NUMBER (if any)

### A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
<b>OAL USE ONLY</b> <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER		PUBLICATION DATE	

### B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Malaysian Fruit Fly Interior Quarantine	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

<b>SECTION(S) AFFECTED</b> (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 3442
	AMEND
	REPEAL
TITLE(S) 3	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))  Effective on filing with Secretary of State  \$100 Changes Without Regulatory Effect  Effective other (Specify) \_\_\_\_\_

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) (SAM §6660)  Fair Political Practices Commission  State Fire Marshal

Other (Specify) \_\_\_\_\_

7. CONTACT PERSON

Sara Khalid	TELEPHONE NUMBER 916-403-6625	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) Sara.Khalid@cdfa.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Kevin Masuhara</i>	DATE 1-28-16
TYPED NAME AND TITLE OF SIGNATORY Kevin Masuhara, Deputy Secretary of Administration and Finance	

For use by Office of Administrative Law (OAL) only

**ENDORSED APPROVED**

FEB 02 2016

Office of Administrative Law

In Title 3, Division 4, Chapter 3, adopt Section 3442 to read:

**Section 3442. Malaysian Fruit Fly Interior Quarantine.**

A quarantine is established against the following pest, its hosts and possible carriers.

(a) Pest. Malaysian fruit fly (*Bactrocera latifrons*).

(b) Area Under Quarantine.

(1) An area shall be designated as under quarantine when survey results indicate an infestation is present, the Department has defined the infested area, and the local California County Agricultural Commissioner(s) is notified and requests the quarantine area be established. The Department shall also provide electronic and/or written notification of the area designation(s) to other California County Agricultural Commissioners and other interested or affected parties and post the area description to its website. An interested party may also go to the website and elect to receive automatic notifications of any changes in quarantine areas through the list serve option.

(2) An infestation is present when:

(A) In urban areas either eggs, a larva, a pupa, a mated female or two or more adult malaysian fruit flies of either sex are detected within three miles of each other and within one life cycle and all detections shall be more than 4.5 miles from any commercial host production area; or

(B) In rural or commercial host production areas either eggs, a larva, a pupa, a mated female or two or more adult malaysian fruit flies of either sex are detected within three miles of each other and within one life cycle; or

(C) Satellite infestations: a detection of a single life stage of Malaysian fruit fly within any established quarantine area may be considered a satellite infestation and may be used as the epicenter using an additional 4.5 mile radius surrounding the detection to expand the quarantine area.

(3) The initial area under quarantine shall be a minimum of a 4.5 mile radius surrounding the qualifying detections being used as an epicenter. Commercial host

properties shall not be split by the quarantine boundary line and the boundary line shall be expanded beyond the 4.5 miles as necessary to encompass such host material in its entirety. Wherever possible, known accepted mapping features, including but not limited to roads, streets, highways, creeks, streams, rivers, canals, city, county, State, park and forest boundary lines are used first and if there are no acceptable features such as these then imaginary lines with or without latitude and longitude points may be used.

(4) Any interested party or local entity may appeal an area designation by submission to the Department of a written request for review of the designation accompanied by clear and convincing evidence justifying a change in the designation. The appeal must be submitted no later than ten (10) working days following receipt of the notice of designation. The Department must respond with a written decision no later than ten (10) working days following receipt of the appeal. During the pending of the appeal, the designation under appeal shall remain in effect.

(5) The infested area designation shall be removed if no additional life stages are detected by trapping or visual surveys for three life cycles after the last detection within the quarantine area.

(6) A life cycle is an estimate of insect phenology based on a heat degree day temperature driven model. Base developmental temperature thresholds are used in this model's calculations and it estimates the generation time period necessary for the completion of a generation of Malaysian fruit fly. Daily minimum and maximum temperatures are used to produce a sine curve over a 24-hour period. The degree days for that day are estimated by calculating the area above the threshold and below the curve, assuming that the temperature curve is symmetrical around the maximum temperature. For Malaysian fruit fly the Department uses the lifecycle model with 48.60° Fahrenheit base developmental temperature and 1101 degree days Fahrenheit per generation.

(c) Articles and Commodities Covered. The following are declared to be hosts and possible carriers of Malaysian fruit fly.

(1) All fruit, vegetables, pericarp of nuts, seeds or berries of the following:

<u>Scientific Name</u>	<u>Common Name</u>
<u>Baccaurea motleyana</u> (Mull. Arg.) Mull. Arg.	<u>Rambai</u>
<u>Benincasa hispida</u> (Thunb.) Cogn.	<u>Ash gourd</u>
<u>Capsicum annuum</u> L.	<u>Chili Pepper</u>
<u>Capsicum annuum</u> L. var <u>annuum</u>	<u>Bell Pepper</u>
<u>Capsicum baccatum</u>	<u>Barpeppar</u>
<u>Capsicum chinense</u> Jacq.	<u>Bonnet Pepper</u>
<u>Capsicum frutescens</u> L.	<u>Bird Pepper</u>
<u>Capsicum</u> spp.	<u>Pepper</u>
<u>Citrullus lanatus</u> (Thunb.) Matsum. & Nakai	<u>Watermelon</u>
<u>Coccinia grandis</u> (L.) Voigt	<u>Ivy gourd</u>
<u>Coffea arabica</u> L.	<u>Arabian coffee</u>
<u>Cucumis dipsaceus</u> Ehrenb. Ex Spach	<u>Hedgehog cucumber</u>
<u>Cucumis melo</u> L. subsp <u>agrestis</u> (Naudin) Pangalo var <u>conomon</u> (Thunb.) Makino	<u>Oriental pickling melon</u>
<u>Cucumis sativus</u> L.	<u>Cucumber</u>
<u>Diplocyclos palmatus</u> (L.) C. Jeffrey	<u>Lollipop-climber</u>
<u>Gmelina philippensis</u> Cham.	
<u>Lagenaria siceraria</u> (Molina) Standl.	<u>Bottle gourd</u>
<u>Lagerstroemia indica</u> L.	<u>Crape myrtle</u>
<u>Linociera parkinsoni</u>	
<u>Linociera xanthocarpum</u>	
<u>Lycianthes biflora</u> (Lour.) Bitter	<u>Da chi hong si xian</u>
<u>Momordica trifoliolata</u> Hook.f.	
<u>Murraya paniculata</u> (L.) Jack	<u>Chinese boxwood</u>
<u>Passiflora foetida</u> L.	<u>Wild passionfruit</u>
<u>Physalis peruviana</u> L.	<u>Cape-gooseberry</u>
<u>Psidium quajava</u> L.	<u>Guava</u>
<u>Punica granatum</u> L.	<u>Pomegranate</u>
<u>Sapindus rarak</u> DC.	
<u>Solanum aculeatissimum</u> Jacq.	<u>Dutch eggplant</u>
<u>Solanum aethiopicum</u> L.	<u>Chinese scarlet eggplant</u>
<u>Solanum americanum</u> Mill.	<u>American nightshade</u>
<u>Solanum anguivi</u> Lam.	
<u>Solanum donianum</u> Walp.	
<u>Solanum granulosoleprosum</u> Dunal	
<u>Solanum incanum</u> L.	<u>Bitter apple</u>
<u>Solanum lanceifolium</u> Jacq.	
<u>Solanum lasiocarpum</u> Dunal	<u>Indian nightshade</u>
<u>Solanum linnaeanum</u> Hepper & P.-M.L. Jaeger	<u>apple-of-Sodom</u>
<u>Solanum lycopersicum</u> L. var. <u>cerasiforme</u> (Alef.) Fosberg	<u>Cherry tomato</u>
<u>Solanum lycopersicum</u> L. var. <u>lycopersicum</u>	<u>Tomato</u>

<u>Solanum macrocarpon L.</u>	<u>African eggplant</u>
<u>Solanum mammosum L.</u>	<u>Macawbush</u>
<u>Solanum melongena L.</u>	<u>Eggplant</u>
<u>Solanum nigrescens M. Martens &amp; Galeotti</u>	<u>Divine nightshade</u>
<u>Solanum nigrum L.</u>	<u>Black nightshade</u>
<u>Solanum pimpinellifolium L.</u>	<u>Currant tomato</u>
<u>Solanum pseudocapsicum L.</u>	<u>Jerusalem-cherry</u>
<u>Solanum scabrum Mill.</u>	<u>Garden huckleberry</u>
<u>Solanum spp.</u>	
<u>Solanum sisymbriifolium Lam.</u>	<u>Sticky nightshade</u>
<u>Solanum stramonifolium Jacq.</u>	
<u>Solanum torvum Sw.</u>	
<u>Solanum trilobatum L.</u>	<u>Devil's fig</u>
<u>Solanum viarum Dunal</u>	<u>Purple-fruited pea</u>
<u>Solanum violaceum Ortega</u>	<u>eggplant</u>
<u>Terminalia catappa L.</u>	<u>Tropical soda apple</u>
<u>Ziziphus jujuba Mill.</u>	<u>Ci tian qie</u>
<u>Ziziphus nummularia (Burm.f.) Wight &amp; Arn.</u>	<u>Indian almond</u>
	<u>Common jujube</u>

(2) Soil within the drip area of plants producing, or which have produced fruit, vegetables, or berries as listed in (c)(1) above.

(3) Any other product, article, or means of conveyance when it is determined by the Secretary or County Agricultural Commissioner to present a hazard of spreading live life stages of Malaysian fruit fly and the person in possession thereof has been so notified.

(d) Restrictions.

(1) At the wholesale level, articles and commodities covered in subsection (c) are prohibited movement within or from the area under quarantine except as provided in (A) or (B) below:

(A) If the article or commodity has been treated in a manner approved by the Department to eliminate Malaysian fruit fly, is transported in a manner to preclude exposure to Malaysian fruit fly, and is accompanied by a written certificate issued by an authorized State or county agricultural official affirming compliance with this subsection; or,

(B) The article or commodity is moving for treatment for Malaysian fruit fly or processing and in a manner approved by the Department to preclude exposure to Malaysian fruit fly and is accompanied by a written certificate issued by an authorized State or county agricultural official affirming such movement has been authorized under this subsection.

(2) 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 (A), (B) or (C) below:

(A) If the article or commodity is moving directly through the area under quarantine without delay and by a direct route in an enclosed vehicle or container or completely enclosed by a covering to prevent exposure to the Malaysian fruit fly while en route through the area; or,

(B) The article or commodity is destined to a wholesale or retail establishment within the quarantined area and, if moving between 9:00 a.m. and sunset, is transported in an enclosed vehicle or container or completely enclosed by a covering to prevent exposure to the Malaysian fruit fly; or

(C) The article or commodity is destined to a commercial processing facility.

(3) At the retail level, articles and commodities covered which have been commercially produced are prohibited movement from or within the area under quarantine except when the person in possession has a sales slip or other comparable document showing the commodity was purchased from a commercial establishment.

(4) 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 county agricultural commissioner.

(5) 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.

(6) 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 approved by the Department to preclude exposure to Malaysian fruit fly. No commodity covered shall be held for sale or sold from a truck, trailer, or other mobile vehicle.

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

Reference: Sections 401.5, 407, 5301, 5302, and 5321, 5322, Food and Agricultural Code