

**State of California
Office of Administrative Law**

In re:
Department of Food and Agriculture

Regulatory Action:

Title 03, California Code of Regulations

Adopt sections:

Amend sections:

Repeal sections: 3434

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

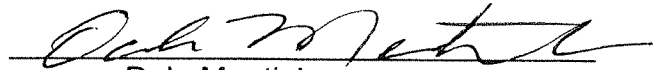
OAL Matter Number: 2022-1128-02

OAL Matter Type: Regular (S)

This action repeals the Department's Light Brown Apple Moth Interior Quarantine regulation.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 4/1/2023.

Date: January 3, 2023



Dale Mentink
Assistant Chief Counsel

For: Kenneth J. Pogue
Director

Original: Karen Ross, Secretary
Copy: Rachel Avila

NOTICE PUBLICATION/REGULATIONS SUBMISSIONS

REGULAR

For use by Secretary of State only

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2022-0901-01	REGULATORY ACTION NUMBER 2022-1128-025	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only	
NOTICE	REGULATIONS

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

JAN 03 2023

2:04 PM

OFFICE OF ADMIN. LAW
2022 NOV 28 PM 3:34

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)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn			NOTICE REGISTER NUMBER 2022, 37-2	PUBLICATION DATE 9/16/2022

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Repeal Light Brown Apple Moth 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)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND
	REPEAL 3434

3. TYPE OF FILING

<input checked="" 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 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)

CUB

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

Rachel Avila	TELEPHONE NUMBER 916-698-2947	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) rachel.avila@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

Mark A. McLoughlin

Digitally signed by Mark A. McLoughlin
Date: 2022.11.28 09:56:06 -0800

DATE

11/28/22

TYPED NAME AND TITLE OF SIGNATORY

Mark A. McLoughlin, Director Plant Health and Pest Prevention Services

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JAN 03 2023

Office of Administrative Law

Amend CCR Section 3434. Light Brown Apple Moth Interior Quarantine to read:

§ 3434. Light Brown Apple Moth Interior Quarantine. (Repealed)

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

~~(a) Pest. Light brown apple moth (*Epiphyas postvittana*);~~

~~(b) Regulated and Quarantine Area Designation and Removal Procedures:~~

~~(1) An area shall be designated as a quarantine or regulated area 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. 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 at:~~

~~<http://www.cdffa.ca.gov/plant/lbam/regulation.html>. An interested party may also go to the website and elect to receive automatic notifications of any changes in the regulated or quarantine areas through the list serve option.~~

~~(2) An infestation is present when the Department determines:~~

~~(A) A total of two or more light brown apple moth adults are trapped within three miles of each other and during the timeframe of one lifecycle as determined by the degree-day phenology model; or~~

~~(B) A mated female is trapped; or~~

~~(C) One or more immature light brown apple moths are confirmed through DNA analysis. An exception to this condition occurs in the event it can be determined that the presence of the immature light brown apple moth was the result of the larvae being transported as a hitchhiker from an infested area into an area which is not regulated or under quarantine on nursery stock.~~

~~(3) The initial quarantine/regulated area shall be a minimum of a 1.5 mile radius surrounding the qualifying detections being used as an epicenter. Commercial host properties shall not be split by the quarantine/regulated area boundary line and the boundary line shall be expanded beyond the 1.5 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 the use of latitude and longitude points with imaginary lines 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 filed 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 quarantine or regulated area designation shall be removed when:~~

~~(A) Additional life stages are not detected by trapping or visual surveys for three life cycles after the last detection within the affected area.~~

(B) 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 light brown apple moth. 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 the light brown apple moth the lifecycle model is with 45.5 ° Fahrenheit base developmental temperature and 1,117 degree days Fahrenheit per generation.

(c) Articles and Commodities Covered. The following are declared to be hosts and possible carriers of light brown apple moth:

(1) All nursery stock.

(2) All green waste residues from any plants.

(3) All fresh garlands, wreaths, cut flowers and greens produced within the quarantine/regulated area.

(4) All harvested fruits and vegetables produced within the quarantine/regulated area except the following commercially produced crops:

Arugula

Artichoke (globe)

Asparagus

Beets without tops

Bok Choy

Broccoli

Brussel sprouts

Bulb crops without tops

Carrots without tops

Celery

Cabbage

Cauliflower

Chard

Collard greens

Cucumber

Eggplant

Endive

Escarole

Frisee

Garlic without tops

Kale

Kiwi

Kohlrabi

Leeks

Lettuce (head and leaf)

Litchi tomato

Mache

Melons

Olive
Onions without tops
Parsley
Parsnips without tops
Peppers
Potato
Pumpkin
Radicchio
Radish without tops
Rapini
Rutabagas without tops
Seed crops without any plant material
Spinach
Squash
Tomato
Tuber crops without tops
Turnips without tops
Walnuts
Zucchini

(5) Any other harvested plant parts which by scientific investigation is shown to be capable of sustaining light brown apple moth in any stage of development.

(6) Possible carriers shall include all appliances used in the growing, harvesting, processing and hauling of the host plants and plant parts and any green waste residues including but not limited to tractors, trailers, trucks, planting, picking and pruning equipment and processing machinery and any other article, thing 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 the light brown apple moth.

(7) Exemptions. The following articles are exempt from the provisions of this subsection:

(A) Seed extracted from fruit;

(B) Defoliated dormant bare rooted nursery stock;

(C) Defoliated dormant nursery stock in containers where all leaf litter and any weeds have been removed;

(D) Privately owned indoor decorative houseplants; and,

(E) Dying or dead plant material (green waste) that has been processed or handled or treated in a manner approved by the Secretary to eliminate live life stages of the light brown apple moth and is moved directly to a city or county sanitary landfill or State licensed compost facility within the quarantine/regulated area.

(d) Restrictions.

(1) Articles and commodities covered in subsection (c)(1), (2), (3), (4) and (5) are prohibited movement within or from the quarantine area except as provided in (A), (B), (C), (D), (E) and (F) below:

(A) If accompanied by a certificate issued by an authorized agricultural official affirming that the articles and commodities originated from a site or facility which is apparently free from light brown apple moth.

~~(B) If accompanied by a certificate issued by an authorized agricultural official affirming that the articles and commodities have been inspected or treated in a manner approved by the Department and are apparently free from light brown apple moth.~~

~~(C) If purchased at a retail sales location and accompanied by a sales receipt.~~

~~(D) If the article or commodity was produced outside the area under quarantine and is being moved through the area under quarantine by direct route and without delay in vehicles or containers which prevent exposure to infestation of the article or commodity to light brown apple moth while en route through the area.~~

~~(E) If the article or commodity covered is moved under the terms of a special permit as authorized under Title 3, Section 3154 of the California Code of Regulations.~~

~~(F) If the article or commodity covered is moved from the quarantine area directly into the regulated area without transiting an unregulated area.~~

~~(2) Articles and commodities covered in subsection (c)(6) are prohibited movement within or from the area under quarantine except if cleaned and treated to the satisfaction of the Department or county agricultural commissioner.~~

~~(3) Articles and commodities covered in subsection (c) may move unrestricted within the regulated area. Articles and commodities covered in subsection (c) are prohibited movement from the regulated area except as provided in (A), (B), (C), (D) and (E) below:~~

~~(A) If accompanied by a certificate issued by an authorized agricultural official affirming that the articles and commodities originated from a site or facility which is apparently free from light brown apple moth.~~

~~(B) If accompanied by a certificate issued by an authorized agricultural official affirming that the articles and commodities have been inspected or treated in a manner approved by the Department and are apparently free from light brown apple moth.~~

~~(C) If purchased at a retail sales location and accompanied by a sales receipt.~~

~~(D) If the article or commodity was produced outside the area under quarantine or the regulated area and is being moved through the area under quarantine and the regulated area by direct route and without delay in vehicles or containers which prevent exposure to infestation of the article or commodity to light brown apple moth while en route through the area.~~

~~(E) If the article or commodity covered is moved under the terms of a special permit as authorized under Title 3, Section 3154 of the California Code of Regulations.~~

~~(F) Articles and commodities covered in subsection (c)(6) are prohibited movement from the regulated area except if cleaned and treated to the satisfaction of the Department or county agricultural commissioner.~~

Note: Authority cited: Sections 407, 5301, 5302 and 5322, Food and Agricultural Code.
Reference: Sections 407, 5301, 5302 and 5322, Food and Agricultural Code.