

DEPARTMENT OF FOOD AND AGRICULTURE
Title 3 of the California Code of Regulations

Notice of Proposed Rulemaking

The Department of Food and Agriculture (Department) intends to adopt subsection 3441 of the regulations in Title 3 of the California Code of Regulations pertaining to the *Bactrocera latifrons* Interior Quarantine.

This notice is being provided in compliance with Government Code (GC) Section 11346.4.

PUBLIC HEARING

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed adoption to the Department. Comments may be submitted by mail, facsimile (FAX) at 916.654.1018 or by email to Sara.Khalid@cdfa.ca.gov. The written comment period closes at 5:00 p.m. on June 6, 2016. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Sara Khalid
Department of Food and Agriculture
Plant Health and Pest Prevention Services
1220 N Street
Sacramento, CA 95814
Sara.Khalid@cdfa.ca.gov
916.654.1017
916.654.1018 (FAX)

Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this state and determine the probability of its spread and the feasibility of its control or eradication (Food and Agricultural Code (FAC) Section 5321).

Existing law also provides that the Secretary may establish, maintain and enforce quarantine, eradication and other such regulations as he deems necessary to protect the

agricultural industry from the introduction and spread of pests (FAC Sections 401, 403, 407 and 5322).

ANTICIPATED BENEFITS FROM THIS REGULATORY ACTION

The Department's broad statutory objectives are to prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds (FAC Section 403) and that it may adopt regulations as are reasonably necessary to achieve this (FAC Section 407). The Department is obligated to investigate the existence of any pest that is not generally distributed within this state and determine the probability of its spread, and the feasibility of its control or eradication (FAC Section 5321) and may establish and maintain quarantine regulations (FAC Section 5322).

The existing law 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. The adoption of this regulation benefits the pepper, tomato, and guava industry (nursery, fruit for domestic use and exports, packing facilities) and the environment (urban landscapes) by having a quarantine program to prevent the spread of Malaysian fruit fly should it be introduced as an incipient population.

The Department is also obligated to protect the general welfare and economy of the state and to seek to maintain the economic well-being of agriculturally dependent rural communities in the state (FAC Section 401.5). The activities authorized by the adoption of this regulation will prevent the establishment and potential spread of the Malaysian fruit fly to uninfested areas of the state; including agriculturally dependent rural communities. Historically, most Malaysian fruit fly introductions in California have been associated with introductions into the urban environment.

Should it be necessary to establish a quarantine for Malaysian fruit fly, the California, national and international consumers of California host fruit benefit by having high quality fruit available at lower costs. It is assumed that any increases in production costs would ultimately be passed on to the consumer.

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

This regulation will benefit the public's general welfare by providing authority for the state to perform quarantine activities against Malaysian fruit fly in California.

The implementation of this regulation will prevent:

- Direct damage to the agricultural industry growing host fruits outside the quarantine area.
- Indirect damage to the agricultural industry growing host fruits due to the implementation of quarantines by other countries and loss of export markets.
- Increased production costs to the affected agricultural industries.

- Increased pesticide use by the affected agricultural industries.
- Increased costs to the consumers of host fruits.
- Increased pesticide use by homeowners and others.
- The need to implement an unnecessary federal regulation for the entire state.

There is no existing, comparable federal regulation or statute.

The Department considered any other possible related regulations in this area, and we find that these are the only regulations dealing in this subject area, and the only state agency which can implement these eradication areas for plant pests. As required by GC 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.

ADOPTED TEXT

The adoption of this regulation will establish the Westchester area of Los Angeles County as a quarantine area, the targeted pest, and the process for adding and removing quarantine areas; establishes the initial size of the area, how the area may be expanded if there are additional detections of Malaysian fruit fly within the quarantine area; it establishes an appeal process, a list serve option, specifies the life cycle for Malaysian fruit fly, the host list, the articles and commodities covered and the quarantine restrictions.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None and no nondiscretionary costs or savings to local agencies or school districts.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or business: There are 308 businesses that will be impacted. Within the affected area there are 93 Certified Farmers' Market Fruit Sellers, four Food Banks, 175 Fruit Sellers, 14 Nurseries, three Fruit Haulers, 13 Fruit Freight Forwarders, three Growers, and three Harvesters.

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Small Business Determination: The Department has determined that the proposed regulations may affect small business.
Significant effect on housing costs: None.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The adoption of these regulations will not:

- (1) Create or eliminate jobs within California;
- (2) Create new businesses or eliminate existing businesses within California; or
- (3) Affect the expansion of businesses currently doing business within California

The Department has determined the adoption of this regulation benefits:

- The general public
- Homeowners and Community Gardens
- Agricultural industry
- The state's general fund

There are no known specific benefits to worker safety or the health of California residents. The Department is not aware of any specific benefits the adoption of this regulation will have to the protection of public safety of California residents or worker safety. Based upon the economic analysis, the Department believes the adoption of this regulation benefits the general welfare of California residents [GC Section 11346.3(b)].

The Department has evaluated and determined that the adoption of this regulation is not inconsistent with existing state regulations. There are no other comparable existing state regulations [GC Section 11346.5(a)(3)(D)].

ALTERNATIVES CONSIDERED

The Department determined that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Notice.

AUTHORITY

The Department proposes to adopt Section 3442 pursuant to the authority vested by Sections 407, 5301, 5302 and 5322 of the FAC.

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 5301, 5302 and 5322 of the FAC.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed to is: Sara Khalid, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room 210, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: Sara.Khalid@cdfa.ca.gov. In her absence, you may contact Laura Petro at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Sara Khalid.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet Website (www.cdfa.ca.gov/plant/Regulations.html).

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed actions, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, when completed, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations adopted by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.