

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations
Section 3434, Subsections (b), (c) and (d)
Light Brown Apple Moth Interior Quarantine

INITIAL STATEMENT OF REASONS/
POLICY STATEMENT OVERVIEW

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

This regulation is intended to address the obligation of the Department of Food and Agriculture to protect the agricultural industry from the movement and spread of injurious plant pests within California.

Specific Purpose and Factual Basis

The specific purpose of Section 3434 is to provide authority to the State to regulate the movement of hosts and possible carriers of light brown apple moth (LBAM), *Epiphyas postvittana*, from the regulated area and within or from the quarantine areas.

The factual basis for the determination by the Department that the amendment of this regulation is necessary is as follows:

The Department amended this regulation through a normal rulemaking and it was effective October 1, 2013. The administering program was recently contacted by staff from an agricultural commissioner's office that was confused by the use of the terms quarantine and regulated area in the text of the regulation. Upon review, the Department discovered it had not used the terms consistently in the last amendment. Prior to the amendments which were effective October 1, 2013, there was a subsection 3434(b), Area Under Quarantine and a subsection 3434(c), Regulated Area. The regulatory restrictions were different for each of these subsections. When the Department made the changes which were effective October 1, 2013, it was intended to

keep these restrictions the same for the quarantine and regulated areas. Therefore it is necessary to amend this regulation to ensure there is clarity in the use of the terms and that the original intent of the regulation is maintained.

Additionally, it was also noticed that when subsection 3434(c) was deleted through the prior rulemaking, other needed changes in the existing text were not made as a result of changing the flow of the existing subsections. Therefore, the Department is proposing to amend those affected subsections too.

Text Changes

When the Department previously deleted the existing text from subsection 3434(b) and subsection 3434(c); existing subsection 3434(d) became subsection 3434(c) and existing subsection 3434(e) became 3434(d).

Additionally, new text was inserted into subsection 3434(b) which established the procedures for designating and removing the regulated and quarantine areas.

Subsection 3434(b)(3)

The existing subsection only referenced the area under quarantine. However, the procedures are the same for the regulated area. This proposed amendment is needed as it establishes that a quarantine/regulated area shall be a minimum radius using 1.5 miles surrounding any qualifying epicenters but this distance may be extended farther in order to not split properties having host material, the commonly accepted methods used for describing the affected area(s) and that latitude and longitude coordinates and imaginary lines may be used when there is no other acceptable method for describing the area.

Subsection 3434(c)(3)

The existing subsection stated all fresh garlands, wreaths, cut flowers and greens produced within the area under quarantine are hosts. However, all fresh garlands, wreaths, cut flowers and greens produced within the regulated area are hosts too. This

amendment corrects this by establishing that all fresh garlands, wreaths, cut flowers and greens produced within the quarantine/regulated area are hosts.

Subsection 3434(c)(4)

The existing subsection established all fruits and vegetables produced within the area under quarantine were hosts and the exceptions. However, all fruits and vegetables produced within the regulated area are hosts with the same exceptions. This amendment corrects this and establishes that all fruits and vegetables produced within the quarantine/regulated area are hosts and the exceptions.

Subsection 3434(c)(7)(E)

The existing subsection established 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 area under quarantine is exempt from the regulation. However, the intent was also to have all 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 regulated area be exempt from the regulation. This amendment corrects this.

Subsection 3434(d)(1)

The existing subsection refers to articles and commodities covered in subsection 3434(d). The last amendment of this regulation changed this subsection to 3434(c). This amendment corrects this by establishing the restrictions on the articles and commodities covered in subsection 3434(c) for movement within and from the quarantine area. This amendment also changes the wording from under quarantine to quarantine area. This is to ensure there is clarity in the use of the terms throughout the regulation by using “quarantine area” and “regulated area.”

Subsection 3434(d)(1)(F)

The existing subsection refers to two subsections 3434(b) and 3434(c) and these subsections were changed in the last amendment and are no longer needed. This amendment corrects this by deleting references to these subsections. Additionally, this amendment ensures there is clarity in the use of the terms throughout the regulation by using “quarantine area.”

Subsection 3434(d)(2)

The existing subsection makes incorrect reference to subsection 3434(d)(6) which was changed to subsection 3434(c)(6) in the last amendment. This amendment corrects this reference to subsection 3434(c)(6).

Subsection 3434(d)(3)

The existing subsection makes incorrect reference to subsection 3434(d) which was changed to subsection 3434(c) in the last amendment and to subsection 3434(c) which was changed to 3434(b) in the last amendment. This amendment corrects these references from subsection 3434(d) to subsection 3434(c) and deletes a reference to an incorrect subsection 3434(c) which is not needed.

Subsection 3434(d)(3)(F)

The existing subsection makes incorrect reference to subsection 3434(d)(6) which was changed to subsection 3434(c)(6) in the last amendment. This amendment corrects this reference to subsection 3434(c)(6).

California Environmental Quality Act

A Programmatic Environmental Impact Report (PEIR) was prepared by the Department as the lead agency under the California Environmental Quality Act (CEQA). The PEIR addresses the potential environmental impacts that would result from implementation of alternatives for the eradication of the light brown apple moth (LBAM) (*Epiphyas postvittana*).

The PEIR may be accessed at the following website:

<http://cdfa.ca.gov/plant/lbam/envimpactrpt.html>

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

The Department of Food and Agriculture has determined that the amendment of subsections 3434(b), (c) and (d) does not impose a new 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 amendments of Section 3434.

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.

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. The Department's determination that the action will not have a significant statewide adverse economic impact on business was based on the following:

These amendments of Section 3434 provide clarity in the regulation for an existing program and do not operationally add or remove any restrictions to conduct quarantine activities against the LBAM and there are no known private sector cost impacts.

Economic Analysis

The long term economic impacts of LBAM on California's agriculture and the environment are unknown. A "Mini Risk Assessment" prepared by staff at the University

of Minnesota's Department of Entomology stated the "Potential Economic Impacting Rating" for the US was high but did not quantify it. A May 2008 USDA Factsheet stated that the LBAM causes five to twenty percent crop loss in New Zealand. Applying this crop loss to California's agriculture would result in losses from \$685 million to \$2.7 billion annually if LBAM was to "thrive and flourish." The most recent document the Department has relied upon is the USDA's "Economic Analysis: Risk to U.S. Apple, Grape, Orange and Pear Production from the Light Brown Apple Moth, *Epiphyas postittana* (Walker)," published in May 2009. This document concluded that for these crops the economic damage could be from \$86 to \$150 million with a mean of \$118 million in the at risk areas. The crop production acreages used for this document were from 2007 and they converted crop values from 1998 to 2006 into 2007 dollars. They listed each portion of the crops economic loss as: oranges 43 percent, grapes 30 percent, apples 22 percent and pears 5 percent. In 2009, compared nationally, California ranked first the production of grapes, second in oranges and pears, and fifth in apples. The LBAM also is known to attack, but not limited to [California's national production value ranking in parenthesis]: apricot (first), avocado (first), bell peppers (first), blueberry (seventh), carrots (first), chili peppers (second), flowers and foliage (first), grapefruit (fourth), lemon (first), lettuce (first), mandarin (first), nursery products (first), peach (first), plums (first), nectarine (first), persimmon, strawberry (first), tangerine(first), tangelos (first) and tangors (first). No economic analysis information was available for these crops.

The Department's operational program costs for the implementation of this program for the period January 1, 2012 to September 30, 2012 is \$1,655,007. However, this is all federal funding obtained by the Department under contract with the USDA. The Department's program costs related to staff time, laboratory supplies, etc. is derived from this source of funding. Additionally, the remaining federal funding is then dispersed by the Department to participating California County Agricultural Commissioners through cooperative agreements with each county. No State general fund money, other than staff dedicated to the promulgation of any regulation changes is used to sustain this program.

The use of this federal funding by the program creates California business opportunities within the regulate area. This source of funding enables the certification of host material which otherwise would be unable to move and which then facilitates the sales of host material for intra, inter and international movement. The sale of this host material then also serves as an important source of California tax revenue. The 2011 value of Christmas trees was approximately \$4.5 million, cut-foliage was approximately \$26 million, potted plants were approximately \$510.5 million and woody deciduous and evergreen ornamentals were approximately \$957 million. While it is impossible to determine the specific value of all of the host plants of LBAM and how much of the exact production is located outside the current regulated area; these would be additional crop areas subject to damage and statewide federal quarantine restrictions if this amendment was not made.

Canada is California's number one export market and Mexico is our number five. Lettuce and strawberries were the leading exports to Canada. Both Canada and Mexico have export restrictions pertaining to the LBAM.

If the Department cannot make changes to the regulated and quarantine areas in a timely manner the USDA may choose to regulate the entire State to ensure there are adequate interstate commerce protections to prevent the establishment of LBAM in other states. The general economic welfare of the State would be harmed if the USDA quarantined the entire State. There are still vast areas of the State which have significant agricultural production and which are not under regulation for LBAM. Unnecessary interstate quarantine restrictions would negatively impact the State's interstate trade. California's unemployment rate in March 2013 dropped to 9.6 per cent. During the preceding 12 months prior to March 2013, agricultural employment was up by 2.8 per cent. The agricultural industry is one of the economic engines which are lowering the State's unemployment rate. Additionally, any job losses in this area would likely be felt by low-skilled workers whose employment options are already limited. The

loss of any agricultural jobs would likely result in an increase in the State's public assistance obligations which would negatively impact the State's economic recovery.

If the USDA quarantined the entire State then Canada and Mexico would too. Canada is the State's number one export market and Mexico is the number five export market for our agricultural products. The 2009 value of agricultural exports to Canada was over \$2.5 billion and to Mexico was \$551 million. The following are examples of some of the LBAM hosts 2009 export values to just Canada: cut flowers and nursery stock \$83.4 million, table grapes was \$197.4 million, strawberries \$239 million, raspberries \$75.6 million, oranges \$117.6 million, peaches and nectarines \$52.7 million and cherries \$30.8 million.

Anticipated Benefits from This Regulatory Action

These proposed amendments to the regulation will provide greater clarity in the regulation and correct references to subsections in the text which are operationally needed by the program. This should ensure the existing program will have an operationally sound regulatory base which can be easily explained and enforced.

The Department is the only agency which 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.

Assessment

Based upon the preceding, the Department has made an assessment that the amendment of the regulation would not 1) create or eliminate jobs within California; 2) create new business or eliminate existing businesses with California; or 3) affect the expansion of businesses currently doing business with California.

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 and less burdensome to affected private persons than the proposed action. These proposed changes are needed to ensure clarity and no other alternatives were proposed to the Department.

Information Relied Upon

The Department relied upon the following studies, reports, and documents in the proposed adoption and subsequent amendment of Section 3434:

None.