

DEPARTMENT OF FOOD AND AGRICULTURE  
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Section 3434, Subsection (b)

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.

The existing regulation requires the exclusive use of DNA analysis for the identification of immature LBAM and there is a scientific option for using morphology for this purpose.

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 existing regulation requires the use of DNA analysis for the identification of immature LBAM. However, the Department's Plant Pest Diagnostics Center (laboratory) staff developed an electronic key "LBAM ID" in 2009. The use of the LBAM ID relies on larval morphology rather than only DNA to identify some types of immature *Epiphyas postvittana*. It was around the time of publication that morphological identification was proven reliable by comparison of morphological identifications with the DNA from a

library that included LBAM and many other California tortricids developed in collaboration between the Department and United States Department of Agriculture (Dr. Norman Barr). However, in certain instances DNA is still relied upon. For example, when portions of the larvae are damaged to the point where key diagnostic features are missing or are they early instars, which cannot be diagnosed using LBAM ID. Furthermore, contrary to the larvae, pupae are often diagnosed using DNA unless obviously different from LBAM and its closest relatives (e.g., *Clepsis*) and eggs are diagnosed using DNA unless they are obviously not tortricid moths or are laid individually. Therefore, it is necessary to amend this regulation to include the use of morphological identification of immature LBAM in addition to DNA analysis. Being able to use morphology is also faster than DNA analysis.

## **Text Changes**

### **Subsection 3434(b)(2)(c)**

The existing subsection only referenced the use of DNA analysis for the identification of immature LBAM. However, it is now feasible to use morphology for identification too. This proposed amendment is needed as it establishes that immature LBAM may be identified through the use of morphology.

### 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) 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:

This amendment of Section 3434 provides for the use of an additional identification tool for immature LBAM in the regulation for a 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 amendment of this regulation modifies the way immature LBAM may be identified in an existing program and has no known economic impacts.

### Anticipated Benefits from This Regulatory Action

This proposed amendment to the regulation will provide for morphological identification of immature LBAM in addition to being able to use the existing DNA analysis technique for an existing regulatory program. This should help ensure the existing program will have flexibility in the identification of immature LBAM and the use of morphology where feasible is faster than DNA analysis.

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:

Email dated June 25, 014 from Marc Epstein to Stephen Brown.