

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

**Notice of Proposed Rulemaking**

**45 – Day Notice**

The Department of Food and Agriculture proposes to amend subsections 3434(b) and 3434(c) of the regulations in Title 3 of the California Code of Regulations pertaining to Light Brown Apple Moth Interior Quarantine.

This notice is being provided to be in compliance with Government Code 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 amendment to the Department. Comments may be submitted by mail, facsimile (FAX) at 916.654.1018 or by email to [sbrown@cdfa.ca.gov](mailto:sbrown@cdfa.ca.gov). The written comment period closes at 5:00 p.m. on February 13, 2012. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Stephen Brown  
Department of Food and Agriculture  
Plant Health and Pest Prevention Services  
1220 N Street  
Sacramento, CA 95814  
[sbrown@cdfa.ca.gov](mailto:sbrown@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 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 (Food and Agricultural Code, Sections 401, 403, 407 and 5322). Existing law also provides that eradication regulations

may proclaim any portion of the State as an eradication area and set forth the boundaries, the pest, its hosts and the methods to be used to eradicate said pest (Food and Agricultural Code Section 5761).

There is no existing, comparable federal regulation or statute regulating the intrastate movement.

### **AMENDED TEXT**

This proposal will add approximately 13 square miles to the existing quarantine area in Long Beach and establish a new quarantine of approximately 13 square miles in the Whittier area, Los Angeles County; establish a new quarantine area of approximately 15 square miles in the Foothill Farms area, add approximately 225 square miles to existing Sacramento area of Sacramento County; establish a new quarantine area of approximately 22 square miles in the Galt area of Sacramento and San Joaquin counties; merge the approximately 35 square miles in the Tracy area of San Joaquin and Alameda counties with the regulated area; establish a new quarantine areas of approximately 13 square miles in the Acampo area, 20 square miles in the Clements area, 54 square miles in the King Island area and 25 square miles in the Lockeford area of San Joaquin County; establish a new quarantine of approximately 10 square miles in the Cayucos area and expand the existing quarantine area by approximately three square miles in the Los Osos area of San Luis Obispo County; establish new quarantines in the Carpinteria area, approximately 11 square miles and the Goleta area, approximately 19 square miles, of Santa Barbara County; expand by approximately eight square miles the Allendale area and establish a new quarantine of approximately 13 square miles in the Vacaville area of Solano County; expand by approximately 431 square miles current contiguous regulated area at various locations; and, remove approximately 10 square miles of the South Park area of San Diego County; remove approximately 37 square miles of the Manteca area of San Joaquin County; and, remove approximately 55 square miles of the Davis area of Yolo and Solano counties. The regulated area will expand by a total of approximately 431 square miles. The quarantine area will expand by a total of approximately 464 square miles. The effect of this proposed change to the regulation will be to add and remove authority for the State to perform quarantine activities against LBAM (*Epiphyas postvittana*) in these areas. This will result in a total of approximately 6,062 square miles under regulation within the State.

### **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: The cost impact of the amended regulation on a representative private person or business located within the regulated area may be significant. An average infested ornamental nursery producing plants in one-gallon containers may incur initial costs of \$140 to \$218 per acre in eliminating the light brown apple moth to be in reasonable compliance with the proposed action. Approximately 65,000 one-gallon containers may be placed upon one acre. This translates into an initial increased production cost of \$0.002 to \$0.003 per one gallon container. The actual costs may vary with the type of material used, size and production practices of the affected businesses.

However, nursery stock that is infested with the light brown apple moth does not meet the current requirements of Section 3060.2, Standards of Cleanliness, California Code of Regulations. Therefore, even without this regulation these costs would be incurred.

Amendment 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

Significant effect on housing costs: None.

#### *Small Business Determination*

The Department has determined that the proposed regulations may affect small business.

#### **ALTERNATIVES CONSIDERED**

The Department of Food and Agriculture must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed actions.

#### **AUTHORITY**

The Department proposes to amend Section 3434 pursuant to the authority vested by Sections 407, 5301, 5302 and 5322 of the Food and Agricultural Code.

#### **REFERENCE**

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

#### **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: Stephen S. Brown, 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: sbrown@cdfa.ca.gov. In his absence, you may contact Lindsay Raines at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Stephen S. Brown.

**INTERNET ACCESS**

The Department has posted the information regarding this proposed regulatory action on its Internet Web site ([www.cdfa.ca.gov/phpps/Regulations.html](http://www.cdfa.ca.gov/phpps/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.