

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 subsection 3434(b) 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 September 1, 2014. 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.

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.

#### 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.

#### **AMENDED TEXT**

This proposed amendment will provide for the use of morphology, in addition to the use of DNA analysis, for the identification of immature LBAM. The effect of this proposed change to the regulation will be to establish greater operational flexibility in identifying immature LBAM.

#### **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 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.

Significant effect on housing costs: None.

*Small Business Determination*

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

### **Results of the Economic Analysis**

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

The specific benefits of the amendment of this regulation are to:

- Establish greater operational flexibility in identifying immature LBAM by having another technique available.
- Be able to identify some types of immature LBAM faster than using the existing DNA analysis technique. [Gov. Code sec. 11346.5(a)(3)(C)]

The Department is not aware of any specific benefits the amendments of this regulation will have to the health of California residents or worker safety. Based upon the economic analysis, the Department believes the amendment of this regulation benefits the general welfare of California residents. [Gov. Code sec. 11346.3(b)].

The Department has evaluated and determined that the amendment of this regulation is not inconsistent with existing State regulations. There are no other comparable existing State regulations [Gov. Code sec. 11346.5(a)(3)(D)].

### **ALTERNATIVES CONSIDERED**

The Department must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carry 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. To date, no other interested party has come forth with any alternative regulation.

### **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 (<http://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.