

Request for Readoption

The Secretary of the Department of Food and Agriculture finds that an emergency exists, and that the foregoing adoption of a regulation is necessary for an immediate action to avoid serious harm to the public peace, health, safety or general welfare, within the meaning of Government Code Section 11342.545 and Public Resources Code Section 21080. The Department does not have a record of any person requesting a notice of regulatory actions under Government Code Section 11346.4(a)(1). Therefore, the provisions of Government Code Section 11346.1(a)(2) do not appear to be applicable to this emergency action as no one has requested such notice.

Description of Specific Facts Which Constitute the Emergency

The Department amended Section 3434(b) as emergency actions effective July 24, 2009 (OAL File Number 2009-0716-04 E), effective August 5, 2009 (OAL File Number 2009-0730-04 E), effective August 13, 2009 (OAL File Number 2009-0810-01 E) and effective September 3, 2009 (OAL File Number 2009-0901-04 E). The Department subsequently amended this regulation as emergency actions on numerous occasions. The Department is proposing to readopt OAL File Nos. 2009-0716-04 E, 2009-0730-04 E, 2009-0810-01 E and 2009-0901-04 E. The Department is also proposing to incorporate by reference into this emergency action: OAL File Nos. 2009-0716-04 E, 2009-0730-04 E, 2009-0810-01 E and 2009-0901-04 E.

The reason the Department is pursuing the readoption of this emergency rulemaking is due to the numerous emergency rulemakings it has undertaken. From June 2009, the date of filing the first emergency action (OAL File Number 2009-0716-04 E) the Department has subsequently had over 30 effective emergency rulemakings. The Department's Division of Plant Health and Pest Prevention Services is responsible for these emergency rulemakings and currently has one staff position fully capable of working on these rulemakings and another staff person has been in training since July 1, 2009. Additionally, the Department

has developed the "Notice" package (attached) for these emergency actions and intends to file them for publication in the California Notice Register by January 12, 2010. The closing date for public comments will be March 8, 2010. The Certificate of Compliance for the first emergency action effective July 24, 2009 (OAL File Number 2009-0716-04 E) is due no later than January 20, 2010. The Certificate of Compliance for the last emergency action effective September 3, 2009 (OAL File Number 2009-0901-04 E) is due no later than March 2, 2010. The original specific facts which constituted an emergency upon the initial filing of these emergency actions are still valid.

Effective July 24, 2009 (OAL File Number 2009-0716-04 E)

On May 27 (PDR #5011807) and June 24 (PDR #5023816), 2009, adult LBAM were trapped in the San Ramon area of Contra Costa County. On June 23, 2009 (PDR #s 1503476 and 1503475), adult male LBAM were trapped in the Antioch area of Contra Costa County. On June 29, 2009 (PDR #1503496), an adult male LBAM was trapped in the Blackhawk area of Contra Costa County. These LBAM were trapped within three miles of each other and within one life cycle. This meets the regulatory protocol for expanding the quarantine area in these areas of Contra Costa County.

On March 30, 2009 (PDR #5008390), an adult male LBAM was trapped in the Gonzales area of Monterey County. On June 23, 2009 (PDR #5023858), an adult male LBAM was trapped in the Gonzales area of Monterey County. These LBAM were trapped within three miles of each other and within one life cycle. On June 9, 2009 (PDR #1428550), an adult LBAM was trapped in the Salinas area of Monterey County. Due to its location in the Salinas area, the Department is not delimiting this single detection. This meets the regulatory protocol for expanding the quarantine area in this area of Monterey County and establishing a new quarantine in the Gonzales area of Monterey County.

On June 8 (PDR #1560054) and July 3 (PDR #1560103), 2009, adult male LBAM were

trapped in the Manteca area of San Joaquin County. These LBAM were trapped within three miles of each other and within one life cycle. This meets the regulatory protocol for establishing a new quarantine area in this area of San Joaquin County.

On June 18 (PDR #5016197) and 25 (PDR #5024029), 2009, adult male LBAM were trapped in the Hollister area of San Benito County. These LBAM were trapped within three miles of each other and within one life cycle. This meets the regulatory protocol for expanding the quarantine area in this area of San Benito County.

On June 19 (PDR #1569387) and 23 (PDR #1569390), 2009, adult male LBAM were trapped in the Fairfield area of Solano County. These LBAM were trapped within three miles of each other and within one life cycle. This meets the regulatory protocol for establishing a new quarantine area in this area of Solano County.

This change expanded the regulated area in Contra Costa County by approximately 32 square miles and the regulated area of Hollister, San Benito County by approximately 12 square miles. It established new quarantine areas in the Gonzales area of Monterey County (approximately 16 square miles), Manteca area of San Joaquin County (approximately 18 square miles) and Fairfield area of Solano County (approximately 15 square miles). These changes resulted in a total of approximately 3,473 square miles under regulation within the State. The effect of this proposed change to the regulation will be to establish authority for the State to perform quarantine activities against LBAM (*Epiphyas postvittana*) in these additional areas.

The existing text under subsection 3434(b)(1) was modified.

A new subsection 3434(b)(2)(C) was established.

The existing text under subsection 3434(b)(3) was modified.

A new subsection 3434(b)(5) was established.

A new subsection 3434(b)(6) was established.

The existing subsections 3434(b)(5) and (6) were renumbered subsections 3434(b)(6) and (7).

Effective August 5, 2009 (OAL File Number 2009-0730-04 E)

On July 14, 2009, the LBAM Project determined that over three temperature driven life cycles had been completed without any additional detections of LBAM in the Parkfield area of Monterey County (Email dated July 14, 2009 from Bob Dowell to Stephen Brown). This meets the federal and State regulatory protocol for declaring LBAM as eradicated from the Parkfield area of Monterey County. As a result, the current regulated area should be deleted from the regulation.

On May 15 (PDR #1427338), June 12 (PDR #1569348) and July 8 (PDR #1569470), 2009, adult male LBAM were trapped in the Sonoma area of Sonoma County. On June 4 (PDR #1569312) and July 7 (PDR #1537918), 2009, adult male LBAM were trapped in the Cotati area of Sonoma County. These LBAM were trapped within three miles of each other and within one life cycle. This meets the regulatory protocol for expanding the quarantine area in these areas of Sonoma County.

On June 10 (PDR #5015875) and 18 (PDR #5016196), 2009, adult male LBAM were trapped in the Gilroy area of Santa Clara County. These LBAM were trapped within three miles of each other and within one life cycle. This meets the regulatory protocol for expanding the quarantine area in this area of Santa Clara County.

On June 16 (PDR #1569360), 17 (PDR #1375575) and 22 (PDR #1519971), 2009, adult

male LBAM were trapped in the Vallejo area of Solano County. On June 23, 2009 (PDR # 1414356) an adult male LBAM was trapped in the Benicia area of Solano County. These LBAM were trapped within three miles of each other and within one life cycle. This meets the regulatory protocol for expanding the quarantine area in these areas of Solano County.

This change would expanded the regulated area in Santa Clara County by approximately six square miles, the regulated area of Solano County by approximately four square miles and the regulated area in Sonoma County by approximately four square miles. It eliminated the regulated area (approximately 14 square miles) in the Parkfield area of Monterey County. This resulted in a total of approximately 3,473 square miles under regulation within the State. The effect of this change to the regulation was to establish authority for the State to perform quarantine activities against LBAM (*Epiphyas postvittana*) in these additional areas added and remove the State's authority to perform quarantine activities in the Parkfield area of Monterey County.

This change also exempted many commodities from the restrictions of this regulation. The effect of this change to the regulation was to remove authority for the State to regulate these qualifying commodities for LBAM (*Epiphyas postvittana*).

The existing text under subsection 3434(b)(1) was modified.

The existing text under subsection 3434(b)(2)(A) was deleted.

The existing subsections 3434(b)(2)(B) and 3434(b)(2)(C) were renumbered as subsections 3434(b)(2)(A) and 3434(b)(2)(B).

The existing text under subsection 3434(b)(4) was modified.

The existing text under subsection 3434(b)(7)(B) was modified.

The existing text under subsection 3434(c)(4) was modified.

Effective August 13, 2009 (OAL File Number 2009-0810-01 E)

On July 16 (PDR #1308768), 21 (PDR #1308769), 23 (PDR #1308770) and 29 (PDR #1308779), 2009, adult male LBAM were trapped in the Long Beach area of Los Angeles County. These LBAM were trapped within three miles of each other and within one life cycle. This meets the regulatory protocol for establishing a quarantine area in this area of Los Angeles County.

On July 9 (PDR #1458233) and 23 (PDR #1270114), 2009, adult male LBAM were trapped in the Los Osos area of San Luis Obispo County. These LBAM were trapped within three miles of each other and within one life cycle. This meets the regulatory protocol for establishing a quarantine area in this area of San Luis Obispo County.

This change established a new regulated area in the Long Beach area of Los Angeles County of approximately nine square miles. It also established a new regulated area in the Los Osos area of San Luis Obispo County of approximately 11 square miles. This resulted in a total of approximately 3,493 square miles under regulation within the State. The effect of this proposed change to the regulation was to establish authority for the State to perform quarantine activities against LBAM (*Epiphyas postvittana*) in these additional areas.

A new subsection 3434(b)(2) was established.

The existing subsections 3434(b)(2), 3434(b)(3), 3434(b)(4) and 3434(b)(5) were renumbered as subsections 3434(b)(3), 3434(b)(4), 3434(b)(5) and 3434(b)(6).

A new subsection 3434(b)(7) was established.

The existing subsections 3434(b)(6), 3434(b)(7) and 3434(b)(8) were renumbered as

subsections 3434(b)(8), 3434(b)(9) and 3434(b)(10).

Effective September 3, 2009 (OAL File Number 2009-0901-04 E)

On June 18, 2009 (PDR #1503502), an adult male LBAM was trapped in the Concord area of Contra Costa County. On July 13, 2009 (PDR #s 1503393 and 1503276), adult male LBAM were trapped in the Diablo area of Contra Costa County. On July 14, 2009 (PDR # 1503275), an adult male LBAM was trapped in the Clyde area of Contra Costa County. On July 21, 2009 (PDR #1649974), an adult male LBAM was trapped in the Blackhawk area of Contra Costa County. On July 27, 2009 (PDR #5028481), an adult male LBAM was trapped in the Brentwood area of Contra Costa County. On July 29, 2009 (PDR #5028482), an adult male LBAM was trapped in the Pleasanton area of Contra Costa County. These LBAM were trapped within three miles of each other and within one life cycle. This meets the regulatory protocol for expanding the quarantine area in these areas of Contra Costa County.

On July 9 (PDR #5025653) and 27 (PDR #5037399), 2009, adult male LBAM were trapped in the Gonzales area of Monterey County. On July 16, 2009 (PDR #5029994), an adult male LBAM was trapped in the Prunedale area of Monterey County. On July 16, 2009 (PDR #5029997), an adult male LBAM was trapped in the Salinas area of Monterey County. These LBAM were trapped within three miles of each other and within one life cycle. This meets the regulatory protocol for expanding the quarantine area in this area of Monterey County.

On July 9, 2009 (PDR #s 1575161 and 1575163), adult male LBAM were trapped in the Fremont area of Alameda County. On July 15 (PDR # 1569025), 29 (PDR #1577426) and 30 (PDR #5028483), 2009, adult male LBAM were trapped in the Pleasanton area of Alameda County. On August 4, 2009 (PDR #5028484), an adult male LBAM was trapped in the Livermore area of Alameda County. These LBAM were trapped within three miles of

each other and within one life cycle. This meets the regulatory protocol for expanding the quarantine area in these areas of Alameda County.

On July 16, 2009 (PDR #5029998), an adult male LBAM was trapped in the Aromas area of San Benito County. On July 23, 2009 (PDR #5037469), an adult male LBAM was trapped in the San Juan Bautista area of San Benito County. On August 6, 2009 (PDR #1549441), an adult male LBAM was trapped in the San Juan Bautista area of San Benito County. These LBAM were trapped within three miles of each other and within one life cycle. This meets the regulatory protocol for expanding the quarantine area in these areas of San Benito County.

On July 17 (PDR #1536195) and 21 (PDR #1536197), 2009, adult male LBAM were trapped in the Napa area of Napa County. On July 17 (PDR #5036859) and 22 (PDR #1512748), 2009, adult male LBAM were trapped in the American Canyon area of Napa County. These LBAM were trapped within three miles of each other and within one life cycle. This meets the regulatory protocol for expanding the quarantine area in this area of Napa County.

On June 23 (PDR #1414356) and July 21 (PDR #1414375), 2009, adult male LBAM were trapped in the Benicia area of Solano County. On July 17 (PDR #5036852) and 24 (PDR #5036933), 2009, adult male LBAM were trapped in the Fairfield area of Solano County. On August 5, 2009 (PDR #5037032), an adult male LBAM was trapped in the Fairfield area of Solano County. These LBAM were trapped within three miles of each other and within one life cycle. This meets the regulatory protocol for expanding the quarantine area in these areas of Solano County.

This change expanded the existing regulated areas in the counties of Alameda, Contra Costa, Monterey, Napa, San Benito and Solano by approximately 161 square miles. This resulted in a total of approximately 3,654 square miles under regulation within the State.

The effect of this proposed change to the regulation was to establish authority for the State to perform quarantine activities against LBAM (*Epiphyas postvittana*) in these additional areas.

The existing text under subsection 3434(b)(1) was modified.

The existing text under subsection 3434(b)(3)(B) was modified.

The existing text under subsection 3434(b)(5) was modified.

The existing text under subsection 3434(b)(8) was modified.

The light brown apple moth (*Epiphyas postvittana*) was first detected in California on February 27, 2007 in Alameda County and on March 7, 2007, the light brown apple moth (LBAM) was first detected in Contra Costa County. Through the deployment of delimiting detection traps, numerous additional adult male moths were trapped in both counties. As a result, the Department adopted an emergency regulation, Section 3591.20, which became effective on March 21, 2007. The Department continued to deploy detection traps in additional counties. As a result of multiple detections of LBAM, the Department amended Section 3591.20 to add the counties of Marin and San Francisco (effective April 3, 2007); Santa Clara County (effective April 20, 2007); Monterey, San Mateo and Santa Cruz counties (effective April 23, 2007); and, Napa County (effective June 5, 2007). The Department also proposed the emergency adoption of Section 3434, Light Brown Apple Moth Interior Quarantine (effective April 20, 2007). Emergency amendments to Section 3434 were subsequently made adding portions of Alameda, Contra Costa, Marin, Monterey, San Benito, San Mateo and Santa Cruz counties (effective June 6, 2007) and Napa County (effective June 7, 2007).

On May 2, 2007, the United States Department of Agriculture (USDA) issued a federal

order regulating the interstate movement of host material from the infested areas of California and all of Hawaii. Another federal order issued was on April 28, 2008 and included Sonoma and Santa Barbara counties.

On June 21, 2007, emergency amendments to the State regulation were effective adding portions of Alameda, Monterey and Santa Cruz counties; and, including all harvested fruits and vegetables as regulated commodities. On July 18, 2007, emergency amendments were effective adding portions of Alameda, Contra Costa, Los Angeles, Marin, Monterey, San Francisco, San Mateo, Santa Clara, Santa Cruz and Solano counties. On August 21, 2007, emergency amendments were effective adding additional portions of the counties of Alameda, Monterey, San Francisco, San Mateo, Santa Clara, Santa Cruz and Solano. On September 28, 2007, emergency amendments were made, primarily to merge some of the regulated areas of Alameda, Contra Costa, Marin, San Francisco, San Mateo and Santa Clara counties into one regulated area. On November 8, 2007, an emergency amendment became effective which increased the regulated areas of Half Moon Bay and Pescadero, San Mateo County; and, the jointly regulated areas of Monterey and Santa Clara counties. Emergency amendments were made adding (San Mateo and Santa Clara counties) and removing areas (Los Angeles, Marin, Monterey, Napa and Santa Clara counties - effective November 29, 2007); removing an area (Oakley, Contra Costa County - effective December 3, 2007); and, on December 21, 2007, several expansions became effective for areas in Contra Costa, San Mateo and Santa Clara counties. Subsequent emergency amendments were made expanding or removing existing regulated areas which were effective on February 4 and 8, March 12, 17, and 21, April 8 and 18, May 2 and 7, 2008 and establishing the Sonoma area of Sonoma County (effective May 2, 2008).

On May 15, 2008, a new regulated area was established in the Martinez area of Contra Costa County; and, areas were expanded in the Vallejo area of Solano County, the Mountain View, Palo Alto and San Jose areas of Santa Clara County and the Belmont, Redwood City and San Carlos areas of San Mateo County. Subsequent emergency

amendments were made effective May 23, June 11 and 16, July 11 and 28, August 13, 18 and 26, September 10 and 23, October 14 and 20, November 12, December 12, 2008; January 14, February 27; March 5, 10 and 30, April 27, May 20 and 26, 2009.

In late October 2007, the USDA established a new regulatory protocol which was distributed to county agricultural commissioners as “Phytosanitary Advisory No. 31-2007.” This regulatory protocol was adopted based upon the recommendations of the LBAM Technical Working Group (TWG). The purpose of the protocol is to determine when it is appropriate to initiate or remove interstate regulatory restrictions pertaining to LBAM in response to new detections or the elimination of incipient LBAM populations. A key component of this regulatory protocol is the revision of the triggers for initiating a regulated area. Under the recommendations of the TWG, a single detection (trapping) of a male LBAM more than three miles from another male LBAM, no longer warrants a quarantine response. This is contingent upon the deployment of LBAM traps at the appropriate delimitation levels in buffer areas surrounding the single detection. Prior to this regulatory protocol, the detection of a single LBAM was the agreed upon trigger for initiating a quarantine area. The Department reviewed and concurs with this new protocol and is applying the same criteria contained in it to initiate or remove LBAM regulatory restrictions pertaining to the intrastate movement of regulated articles and commodities.

The Department uses Geographic Information Systems (GIS) mapping programs to plot the locations of all the detections of LBAM. As a result, based upon the criteria contained in the USDA regulatory protocol, the Department determined that there are new infestations of LBAM requiring the expansion of regulated areas.

LBAM is a highly polyphagous pest that attacks a wide number of fruits and other plants. Hosts occurring in California that are of significant agricultural or environmental concern include, but are not limited to: alder, alfalfa, apple, apricot, avocado, blueberry, blackberry, broccoli, cabbage, camellia, cauliflower, ceanothus, chrysanthemum, citrus, clematis,

clover, columbine, cottonwood, currant, cypress, dahlia, ferns, fir, geranium, grape, hawthorn, honeysuckle, kiwi, lupine, madrone, mint, oak, peach, pear, peppers, persimmon, poplar, potato, raspberry, rhododendron, rose, sage, spruce, strawberry, walnut and willow. It is an insect species that feeds upon over 250 species of native and ornamental plants. The general area of infestation contains numerous sensitive plant species and habitats. There is a threat for adverse consequences to some of these sensitive species if LBAM becomes permanently established in California.

Prior to the infestations here, this species had a relatively restricted geographic distribution, being found only in portions of Europe, Oceania and Hawaii. The pest is native to Australia but has successfully invaded other countries. The likelihood and consequences of establishment by LBAM have been evaluated in pathway initiated risk assessments. LBAM was considered highly likely of becoming established in the United States and the consequences of its establishment for United States agricultural and natural ecosystems were judged to be severe. The United States Department of Agriculture, Animal Plant and Health Inspection Service (USDA, APHIS) estimated that approximately 80 percent of the continental United States may be climatically suitable for LBAM.

In its native habitat of Australia, LBAM generally completes three generations annually. More than three generations can be completed if temperatures and host plants are favorable. In southeastern Australia where it is warmer, four generations can be completed. In contrast, two generations occur in Tasmania, New Zealand and in Great Britain. In Australia, generations do not overlap, but they do in Great Britain. As the population builds, LBAM is more abundant during the second generation. Therefore, the second generation causes the most economic damage as larvae move from foliage to fruit. The size of the third generation is typically smaller than the previous two due to leaf fall (including attached larvae) as temperatures decline in autumn. LBAM does not diapause and its continued development is slowed under cold winter temperatures. In cold climates, the pest overwinters as larvae. Because LBAM causes damage in a wide range of climate

types in Australia, pest status is not dictated by climate.

LBAM causes economic damage from feeding by caterpillars, which may:

- destroy, stunt or deform young seedlings;
- spoil the appearance of ornamental and native plants; and
- injure deciduous fruit-tree crops, citrus and grapes.

Based upon losses in Australia, annual losses in California are expected to be much higher as the agricultural sector is larger and more variable. Additionally, LBAM, if not eradicated, will cause economic damage to California's export markets due to the implementation of quarantines by foreign and state governments.

Where it occurs, LBAM is difficult to control with sprays because of its leaf-rolling ability, and because there is evidence of resistance due to overuse of the same insecticides. Conifers are damaged by needle-tying and chewing. Larvae have been found feeding near apices of Bishop Pine seedlings where they spin needles down against the stem and bore into the main stem from the terminal bud. LBAM constructs typical leaf rolls (nests) by webbing together leaves, a bud and one or more leaves, leaves to a fruit, or by folding and webbing individual mature leaves. During the fruiting season, they also make nests among clusters of fruits, such as grapes, damaging the surface and sometimes tunneling into the fruits. During severe outbreaks, damage to fruit may be as high as 85 percent.

Egg masses are most likely to be found on leaves. The larvae are most likely to be found near the calyx or in the endocarp; larvae may also create "irregular brown areas, round pits, or scars" on the surface of a fruit. Larvae may also be found inside furled leaves, and adults may occasionally be found on the lower leaf surface.

LBAM is an actionable pest for the USDA, APHIS and requires the Australian Quarantine

and Inspection Service to take corrective actions to prevent this pest from being associated with apples, citrus, pear fruits and other host commodities being exported to the United States. Host fruit exported from New Zealand faces similar restrictions by USDA, APHIS and the New Zealand Ministry of Forestry and Fisheries is responsible for any corrective actions at origin. Any host commodity arriving in the United States that is infested with or contaminated by LBAM is issued a Federal Emergency Action Notice and must be either destroyed, reexported or undergo an appropriate quarantine treatment prior to its release into the United States commerce. Canada and Japan also treat LBAM as a quarantine action pest. The People's Republic of China requires all host fruit imported to originate from orchards that are free from LBAM.

Wherever LBAM occurs in association with vineyards, it is considered to be a very important agricultural pest. Unless properly managed, LBAM causes substantial risks to crop yield and quality by causing both direct and indirect damage. Emerging larvae in the spring may feed upon both the flowers and newly set fruitlets causing a direct loss in yield. Later in the year, LBAM larvae feeding on maturing fruit can cause indirect loss by introducing botrytis infections into the grape bunches. As an example, in 1992 in Australia, 70,000 larvae per hectare were documented and caused a loss of 4.7 tons of Chardonnay fruit. Damage in the 1992-93 Chardonnay season at Coonawarra, southern Australia, cost \$2,000 per hectare.

In South Australia, LBAM is also a significant pest of apricots and can attack other stone fruit. Peaches are also damaged by feeding that occurs on the shoots and fruit.

The first generation (in spring) causes the most damage to apples while the second generation damages fruit harvested later in the season. Some varieties of apples such as 'Sturmer Pippin' (an early variety), 'Granny Smith' and 'Fuji' (late varieties) can have up to 20 percent damage while severe attacks can damage up to 75 percent of a crop.

In Australia, when insecticides are not applied, typically between five to 20 percent of fruit is

damaged, but this can exceed 30 percent. In New Zealand, damage to unsprayed crops commonly reaches 50 percent (Wearing et al., 1991). More information regarding potential economic impact in California may be found in the environmental assessment prepared by USDA at www.aphis.usda.gov/plant_health/ea/downloads/lbam_ea_sc.pdf. In 10 of California's affected counties, it is estimated that LBAM could cause \$160 to \$640 million in losses. These estimates were derived from the agricultural impacts in Australia and New Zealand. This estimate does not include economic costs to the nursery industry nor to other significant host crops in California such as apricots, avocados, kiwifruit, peaches, etc., grown in other counties.

Exact economic impacts on international and domestic exports are uncertain at this time. California is the nation's leader in agricultural exports and in 2003 shipped more than \$7.2 billion in both food and agricultural commodities around the world. Some countries have specific regulations against this pest, and many others consider it a regulated pest that would not be knowingly allowed to enter. Additional measures, such as preharvest treatments and postharvest disinfestation, would likely have to be taken to ensure that shipments to these countries are free from LBAM. In addition, LBAM is an exotic pest, i.e., it is not established in the continental United States, and therefore other states within the United States would likely impose restrictions on the movement of potentially infested fruits, vegetables and nursery stock. These restrictions could severely impact the domestic marketing of California agricultural products.

The majority of California does have a climate which would favor the LBAM. Additionally, LBAM may have seven or more generations under some California climatic conditions. If unchecked, this would enable LBAM to build higher population levels in California. Given the known economic damages occurring in LBAM's present range, its potential damage to California's environment and agricultural industry could be devastating, especially without adequate control measures.

Unless the State's LBAM regulation is substantially the same as the LBAM federal regulation and orders, the USDA cannot regulate less than the entire State. As an example, on January 11, 2008, the USDA issued a Federal Order that expanded its citrus greening (CG) quarantine to encompass the entire State of Florida. This action was a result of the USDA confirming detections of CG in two new Florida counties: Lake and Hernando. Following discussions with the State of Florida, the USDA determined that parallel quarantine actions proposed by the State of Florida were not adequate and, therefore, it was necessary to impose statewide restrictions on the movement of all live host plants and host plant parts from Florida.

Therefore, it was necessary to amend this regulation as emergency actions.

The Department also relied upon the following documents for this proposed rulemaking action:

The information contained in OAL File Nos. 2009-0716-04 E, 2009-0730-04 E, 2009-0810-01 E and 2009-0901-04 E which are incorporated by reference into this proposed emergency action.

Authority and Reference Citations:

Authority: Sections 407 and 5322, Food and Agricultural Code.

Reference: Sections 407 and 5322, Food and Agricultural Code.

Informative Digest

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 (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 (Food and Agricultural Code, Sections 401, 403, 407 and 5322).

Section 3434. Light Brown Apple Moth Interior Quarantine.

Effective July 24, 2009 (OAL File Number 2009-0716-04 E)

This change expanded the regulated area in Contra Costa County by approximately 32 square miles and the regulated area of Hollister, San Benito County by approximately 12 square miles. It established new quarantine areas in the Gonzales area of Monterey County (approximately 16 square miles), Manteca area of San Joaquin County (approximately 18 square miles) and Fairfield area of Solano County (approximately 15 square miles). These changes resulted in a total of approximately 3,473 square miles under regulation within the State. The effect of this proposed change to the regulation will be to establish authority for the State to perform quarantine activities against LBAM (*Epiphyas postvittana*) in these additional areas.

Effective August 5, 2009 (OAL File Number 2009-0730-04 E)

This change would expanded the regulated area in Santa Clara County by approximately six square miles, the regulated area of Solano County by approximately four square miles and the regulated area in Sonoma County by approximately four square miles. It eliminated the regulated area (approximately 14 square miles) in the Parkfield area of Monterey County. This resulted in a total of approximately 3,473 square miles under regulation within the State. The effect of this change to the regulation was to establish authority for the State to perform quarantine activities against LBAM (*Epiphyas postvittana*) in these additional areas added and remove the State's authority to perform quarantine activities in the Parkfield area of Monterey County.

This change also exempted many commodities from the restrictions of this regulation. The

effect of this change to the regulation was to remove authority for the State to regulate these qualifying commodities for LBAM (*Epiphyas postvittana*).

Effective August 13, 2009 (OAL File Number 2009-0810-01 E)

This change established a new regulated area in the Long Beach area of Los Angeles County of approximately nine square miles. It also established a new regulated area in the Los Osos area of San Luis Obispo County of approximately 11 square miles. This resulted in a total of approximately 3,493 square miles under regulation within the State. The effect of this proposed change to the regulation was to establish authority for the State to perform quarantine activities against LBAM (*Epiphyas postvittana*) in these additional areas.

Effective September 3, 2009 (OAL File Number 2009-0901-04 E)

This change expanded the existing regulated areas in the counties of Alameda, Contra Costa, Monterey, Napa, San Benito and Solano by approximately 161 square miles. This resulted in a total of approximately 3,654 square miles under regulation within the State. The effect of this proposed change to the regulation was to establish authority for the State to perform quarantine activities against LBAM (*Epiphyas postvittana*) in these additional areas.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3434 does not impose a mandate on local agencies or school districts, except that an agricultural commissioner of a county under quarantine has a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because the affected county agricultural commissioners requested that these changes to the regulation be made.

Cost Estimate

The Department has also determined that the regulation will involve no additional costs or

savings to any state agency because initial funds for state costs are already appropriated, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable savings to local agencies or costs or savings to school districts under Section 17561 of the Government Code and no costs or savings in federal funding to the State.