

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.

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*, within or from the regulated areas.

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

The Department uses Geographic Information Systems (GIS) mapping programs to plot locations of all the detections of LBAM. As a result, based upon the criteria contained in the USDA regulatory protocol, the Department determined that the infestation of LBAM in the Arroyo Grande area of San Luis Obispo County will be declared eradicated on January 13, 2011. The Department anticipates the USDA to jointly approve declaring eradication in the Arroyo Grande area of San Luis Obispo County on January 13, 2011. On January 13, 2011, it will no longer be necessary to prevent the spread of the LBAM from this area in order to protect California's agricultural industry and environment. It will be necessary to discontinue quarantine activities against the LBAM as soon as

possible in this area. This will alleviate unnecessary State regulatory burdens on the affected businesses and representative entities within these areas. Additionally, this will also ensure interstate market access without any federal restrictions and should open up some international markets.

This proposal will remove approximately 13 square miles of the Arroyo Grande area of San Luis Obispo County from the regulation. The effect of this proposed change to the regulation will be to remove authority for the State to perform quarantine activities against LBAM (*Epiphyas postvittana*) in this area. This will result in a total of approximately 5,345 square miles under regulation within the State.

The existing text under subsection 3434(b)(6)(B) was deleted and the existing text under subsection 3434(b)(6)(A) was renumbered as subsection 3434(b)(6).

As there are commercial nurseries located within the proposed regulated area, this emergency amendment to Section 3434 was necessary to ensure the State's regulation continues to be substantially the same as the federal order issued April 28, 2008, which includes the USDA's October 2007 regulatory protocol.

To prevent the spread of the LBAM to non-infested areas in order to protect California's agricultural industry and environment, it was necessary to begin quarantine activities against the LBAM immediately. Just as importantly, it was necessary to remove the unnecessary intrastate restrictions, which will in turn lead to the unnecessary and interstate restrictions by the USDA, on any affected businesses. Therefore, it was necessary to amend this regulation by both adding and removing areas as an emergency action.

#### 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://www.cdfa.ca.gov/phpps/PDEP/lbam/envimpactrpt.html>

### Background

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; June 1, 15, 22 and 30; July 24, August 5 and 13, and September 3 and 24; November 10 and December 31, 2009; January 25, March 10, May 26, July 16 and August 26, 2010.

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.

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](http://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.

#### 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 Section 3434(b) does not impose a mandate on local agencies or school districts and no reimbursement is required under Section 17561 of the Government Code. Each county commissioner in a regulated county requested the State to implement the regulated

areas in their county and there are no costs associated with removing areas from the regulation.

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 adoption and subsequent amendments of Section 3434.

The cost impact of the changes in the regulations on private persons and businesses are expected to be insignificant.

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: There are no costs associated with removing an area from the regulation.

#### Assessment

The Department has made an assessment that the repeal 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.

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 January 3, 2011 from Duane Schnabel to Stephen Brown.