

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations
Light Brown Apple Moth Interior Quarantine
Section 3434

INITIAL STATEMENT OF REASONS/
POLICY STATEMENT OVERVIEW

The California Department of Food and Agriculture (Department) proposes to repeal Section 3434 which provides authority to the Department to specify and implement interior quarantines against the pest known as light brown apple moth (LBAM) within the state of California.

Description of Public Problem, Administration Requirement, or Other Condition or Circumstance the Regulation is Intended to Address

This repeal of this regulation is intended to address the obligation of the Department to remove the burden placed upon the agricultural industry to adhere to regulatory requirements for an introduced invasive pest that has been determined to cause little to no damage to agricultural crops and commodities.

Purpose and Factual Basis

The specific purpose of Section 3434 is to specify and implement interior quarantines against the pest light brown apple moth (LBAM) within the state of California.

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

LBAM is a light brown, yellowish moth originally from Australia. Its larva can damage fruit during feeding, rendering it unsuitable for human consumption. Hosts originally identified included: apple, pear, peach, apricot, nectarine, citrus, persimmon, cherry, almond, avocado, oak, willow, walnut, poplar, cottonwood, Monterey pine and eucalyptus. Some common shrub and herbaceous hosts are grape, kiwifruit, strawberry, berries (blackberry, blueberry, boysenberry, and raspberry), corn,

pepper, tomato, pumpkin, beans, cabbage, carrot, alfalfa, rose, camellia, pittosporum, jasmine, chrysanthemum, clover, lupine and plantain.

The interior quarantine regulation of LBAM established a quarantine against LBAM, its hosts, and possible carriers. The regulation defines what a quarantine area is, an area with an infestation of LBAM, and defined how an infestation is determined. Section 3434 defined what articles and commodities were covered and declared hosts and possible carriers of LBAM, as well as exemptions from that list. Regulated articles and commodities were prohibited movement within or from quarantine areas except as provided within the regulation.

Title 3 California Code of Regulations (CCR) Section 3162 requires pests in California to be rated using a metric to determine risk of introduction into California, reduction of future harm by government action, and what regulatory action needs are required. The research established that LBAM could be a serious pest evaluated the wide number of host plants it infests as well as the climates it was spreading in, both of which were present in California, in 2007.

In March 2007, Animal and Plant Health Inspections Services (APHIS) of the United States Department of Agriculture confirmed LBAM detections in Alameda and Contra Costa Counties within California. In May 2007, APHIS issued Federal Order DA-2007-18 which made effective the requirements of regulatory actions and quarantine boundaries. The program has been refined since that time as more research has been done and the effects of LBAM have been observed. Over time it has become clear that despite the extensive host list this pest has, the impact is not as significant as APHIS predicted in 2007. Based on the program's findings, APHIS has removing the LBAM quarantine in California and Hawaii effective December 17, 2021. Because APHIS has reclassifying LBAM as a non-quarantine pest and based on the best available evidence that has over the years indicated minimal impact from the pest under California conditions, the Department is following suit and repealing it's LBAM interior quarantine.

Project Description

The effect of the repeal of this regulation is to remove the Department's interior quarantines that regulate the interstate movement of LBAM host material and other regulated articles.

Anticipated Benefits from This Regulatory Action

The repeal of this regulation benefits interstate shippers of California of host commodities and regulated articles which would otherwise face unfair interstate commerce restrictions. Nurseries shipping regulated material in California from within the quarantines areas will benefit by not having to hold their material for proper certification. Additionally, counties currently receiving regulated material will benefit by not being required to enforce the quarantines. They can direct staff time toward more effective activities.

Economic Impact Analysis (Government Code 11346.3(b))

As APHIS has removed the LBAM quarantine in California and Hawaii effective December 17, 2021 this regulation is not currently enforced and there will be no economic impact.

Economic losses due to LBAM will not be affected, as the pest has not caused economic damage within California.

The Creation or Elimination of Jobs within the State

There are no costs for compliance, as the repeal of this regulation removes all regulatory requirements. Therefore, the Department has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs in the State of California.

The Creation or Elimination of Businesses in California

There are no costs for compliance as the repeal of this regulation removes all regulatory requirements. Therefore, the Department has determined that this regulatory proposal will not have a significant impact on the creation of new businesses in the State of California.

The Expansion of Businesses in California

There are no costs for compliance as the repeal of this regulation removes all regulatory requirements. Therefore, the Department has determined that this regulatory proposal will not have a significant impact on the expansion of businesses currently doing business in the State of California.

Worker Safety

The repeal of this regulation is not expected to have an effect on worker safety.

Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that the repeal of Section 3434 does not impose a mandate on local agencies or school districts. The LBAM Program was 100% federally funded. The State Legislature prohibited the use of any state funds for LBAM.

Therefore, no reimbursement is required under Section 17561 of the Government Code.

The Department also has determined that 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 and no nondiscretionary costs or savings to local agencies or school districts, will result from the repeal of Section 3434.

There are 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 and no nondiscretionary costs or savings to local agencies or school districts anticipated from the adoption of this amendment.

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.

Potential Impact to Homeowners and Community Gardens

The repeal of this regulation will not have any impact to homeowners or community gardens, as LBAM was found to not have a significant impact on host plants.

Potential Impacts to General Fund and Welfare

The proposed repeal does not have immediate or definitive impact to the general fund or general welfare. The impact of LBAM is not significant and the LBAM Program was 100% federally funded.

Assessment

Based upon the Economic Impact Analysis, the Department has made an assessment that the repeal of these regulations would not (1) create or eliminate jobs within California, (2) create new

business or eliminate existing businesses within California,(3) affect the expansion of businesses currently doing business within California, (4) is not expected to benefit the health and welfare of California residents, (5) is not expected to benefit the state's environment, and (6) is not expected to benefit workers' safety.

The Department is the only agency that can repeal 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.

Alternatives Considered

The Department of Food and Agriculture must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, 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. Alternative approaches would not be in line with the National Plant Board's Principles of Plant Quarantine. It is the Department's responsibility to remove a quarantine for a pest when it is deemed outdated, unnecessary, or ineffective.

Information Relied Upon

The Department relied upon the following studies, reports, and documents in the proposed repeal of CCR Section 3434:

California Department of Food and Agriculture, "Light Brown Apple Moth Pest Profile"
https://www.cdfa.ca.gov/plant/pdep/target_pest_disease_profiles/LBAM_PestProfile.html,
Accessed 12/15/2021

United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS) "APHIS Removes the Federal Domestic Quarantine for Light Brown Apple Moth (*Epiphyas postvittana*) and Interstate Movement Restrictions, DA-2021-29" December 3, 2021.