

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 (Department) proposes to repeal Section 3434 of Title 3 of the California Code of Regulations (CCR) pertaining to the Light Brown Apple Moth (LBAM) interior quarantine.

PUBLIC HEARING

A public hearing is not scheduled. However, 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 regulations to the Department. Comments may be submitted by USPS or email. The written comment period closes on November 11, 2022. The Department will consider only comments received at the Department offices by that time or postmarked no later than November 11, 2022. Submit comments to:

Erin Lovig, Senior Environmental Scientist Supervisor
California Department of Food and Agriculture Plant Health and
Pest Prevention Services
1220 N St,
Sacramento, CA 95814
Erin.Lovig@cdfa.ca.gov
916.403.6650

Questions regarding the substance of the proposed regulation should be directed to Erin Lovig. In her absence, you may contact Rachel Avila at (916) 698-2947 or rachel.avila@cdfa.ca.gov.

Unless there are substantial changes to the proposed regulations prior to adoption, the Department may adopt the proposal as set forth in this notice without further notice to the public. Following the public hearing, if one is requested, or following the written comment period if none is requested, the Department, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

AUTHORITY

The Department proposes to repeal CCR Section 3434 pursuant to the authority vested by Sections 401 and 407 of the Food and Agricultural Code (FAC).

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 407, 5301, and 5302 of the FAC.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The effect of the repeal of this regulation is to remove the State's interior quarantines that regulates 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 unnecessary 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 will be able to direct resources toward more effective activities.

It is the Department's responsibility to repeal regulations that the Department no longer has authority to enforce, and due to LBAM is no longer being considered a threat to California agriculture or the environment, CDFA lacks authority to enforce an LBAM quarantine..

EVALUATION OF INCONSISTENCY / INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

The Department considered other possible related regulations in this area and found that these are the only regulations dealing in this subject area, and the only State agency that can implement plant quarantines is the Department. As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of these regulations and has determined that it is not inconsistent or incompatible with existing state regulations.

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.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative private person or business: None.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.

The Department 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 should not affect small businesses because the repeal of these regulations removes all regulatory requirements and there are no costs associated with compliance.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Amendment of these regulations:

(1) will have no significant impact on the creation or elimination of jobs in the State of California, (2) will have no impact on the creation or elimination of businesses within the State of California, (3) will have no impact on the expansion of businesses within the State of 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 proposed repeal of these regulations ensures the responsibility to repeal regulations that the Department no longer has authority to enforce.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative it considered to the regulations or that has otherwise been identified and brought to its attention would either 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 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. Alternative approaches would not be authorized under the Food and Agricultural Code. It is the Department's responsibility to repeal regulations that the Department no longer has authority to enforce. LBAM is no longer considered a threat to California agriculture or the environment so CDFA cannot enforce a quarantine.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department has prepared an initial statement of reasons for the proposed actions, has made available all the information upon which its proposal is based, and has available the express terms of the proposed action. The Department has posted the information regarding this proposed regulatory action on its Internet website

(www.cdfa.ca.gov/plant/Regulations.html). A copy of the initial statement of reasons and the proposed repeal of regulations in strikeout form may be obtained upon request.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the comment period and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer named herein. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the agency officer named herein.