

FINDING OF EMERGENCY

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 Secretary has also determined that this emergency clearly poses such an immediate, serious harm that its delaying action by providing five working days advance notice to allow public comment would be inconsistent with the public interest, within the meaning of Government Code Section 11346.1(a)(3). Further, the Secretary has determined that this emergency clearly poses such an immediate, serious harm that delaying action by the Office of Administrative Law providing five working days advance notice to allow public comment would also be inconsistent with the public interest, within the meaning of Government Code Section 1349.6(b).

Description of Specific Facts Which Constitute the Emergency

Adult light brown apple moths (*Epiphyas postvittana*) have been detected in Alameda and Contra Costa counties. On February 27, 2007, March 6 and March 7, 2007, suspect adult light brown apple moths were taken from traps located at three residential properties in Berkeley. On March 12, 2007, these suspect moths were identified as light brown apple moth (LBAM). On March 12, 2007, six more LBAMs were taken from traps located at six different properties in the Berkeley area of Alameda County. On March 7, 2007, two adult LBAMs were taken from two traps located at residences in Richmond, Contra Costa County. On March 8 and March 12, 2007, two adult LBAMs were taken from two traps located at residences in El Cerrito, Contra Costa County. On March 13, 2007, three more adult LBAMs were taken from three traps located at residences in Albany, Alameda County.

The number of adult LBAMs detected is indicative of incipient infestations existing in all of these areas.

As a result of these initial LBAM detections, the Department is conducting a regional survey. Currently, for a regional survey of LBAM, delta traps (sticky, flat base) with pheromone lures are being placed at various delimiting densities in concentric circles radiating out from the LBAM trap catches which are treated as epicenters. Until all of the traps are deployed and serviced at the appropriate delimitation densities, the extent of the area occupied by the current incipient infestation of LBAM will not be known.

An emergency eradication response is necessary now to ensure the LBAM does not continue to multiply and spread to other uninfested areas of the State. The adult LBAMs will continue to emerge and are not known to be a long distance flyer. These types of moths generally only fly up to 100 meters to find suitable host material during release studies. The real threat of long distance spread is through the human assisted movement of infested plants and plant parts, including greenwaste, and other possible carriers such as equipment or appliances contaminated with host material.

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. This species has a relatively restricted geographic distribution, being found only in portions of Europe and Oceania. 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 US and the consequences of its establishment for US agricultural and natural ecosystems were judged to be severe. Based upon the known infested climatic zones of infested origins and the distribution of similar climate

zones in the US, United States Department of Agriculture, Animal Plant and Health Inspection Service (USDA, APHIS) estimates that approximately 80 percent of the continental US 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 the 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.

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. The USDA, APHIS, is also contemplating the need for a federal domestic quarantine restricting the interstate movement of possible hosts and carriers.

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, 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, rounds 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 apple, citrus, pear fruits and other host commodities being exported to the US. 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 US 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 US 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.

The USDA, APHIS conducts preclearance inspections in New Zealand. During these inspections, the LBAM has been intercepted in association with nine plant taxa. The majority (57 percent) listed strawberry (*Fragaria* sp.) as the host. The international movement of LBAM has also been noted in Japan where the pest was intercepted 63 times

at one port of entry in one year. In that year, nearly 40 percent of the interceptions were of larvae on imported New Zealand peppers.

Where ever LBAM occurs in association with vineyards, it is considered to be a very important agricultural pest. Unless properly managed, LBAM causes substantial risk 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.

There is no comprehensive estimate of the total economic losses that could be caused by the LBAM to the environment and the agricultural industry in California. The impact on production costs for LBAM hosts could top \$100 million. It was estimated for Australia that LBAM causes AU\$21.1 million annually in lost production and control costs, or about 1.3% of gross fruit value, for apples, pears, oranges and grapes. Applying this percentage to the 2005 gross value of these same crops in California of \$5.4 billion (USDA 2006), the estimated annual production costs would be \$70.2 million. 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 and strawberries. If the same level of costs were incurred by these as for the previous four crops, the additional costs would be \$63.1 million, based on their 2005 gross value of \$4.8 billion. Therefore, the total lost production and control costs in California could be \$133 million for all of the crops mentioned above.

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 U.S. 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. Given the known economic damages occurring in LBAMs present range, its potential damage to California's environment and agricultural industry could be devastating; especially without adequate control measures.

The Department has also determined that to ensure it conducts the most efficient and effective eradication project with the greatest chances of success, eradication activities will need to begin as soon as possible. This includes, "The searching for all stages of light brown apple moth by visual inspection, the use of traps, or any other means anywhere within the said area." Additionally, the Department will be working with the USDA LBAM Technical Working Group to develop its comprehensive eradication strategy, including the possible need for a complementary LBAM interior quarantine.

The proposed adoption of Section 3591.20 would establish Alameda and Contra Costa counties as the eradication areas for LBAM. The entire two counties are being proposed as eradication areas as ongoing delimitation surveys may result in finds of additional small LBAM infestations outside the current known infested areas. To enable rapid treatment of newly discovered small infestations without frequent amendment of the regulation, the two counties should be established as eradication areas.

The effect of the adoption of this regulation will be to implement the State's authority to perform control and eradication activities against LBAM in Alameda and Contra Costa counties. Any eradication or control actions undertaken by the Department will be in cooperation and coordination with federal, city, county and other state agencies as deemed necessary by the Department to ensure no long-term significant public health or environmental impacts. To prevent the spread of the LBAM to non-infested areas in order to protect California's agricultural industry and environment, it is necessary to begin eradication activities against the LBAM immediately. Therefore, it is necessary to adopt this regulation as an emergency action.

Authority and Reference Citations

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

Reference: Sections 407, 5322, 5761, 5762 and 5763, 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). 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).

Section 3591.20. Light Brown Apple Moth Eradication Area.

The adoption of Section 3591.20 will establish that Alameda and Contra Costa counties are the eradication areas with respect to LBAM. The proposed adoption of the regulation will also establish the possible carriers and the means and methods that may be used to eradicate LBAM within the eradication areas. The effect of the adoption of this regulation is to provide authority for the State to perform eradication activities against LBAM in Alameda and Contra Costa counties.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that the proposed adoption of Section 3591.20 does not impose a mandate on local agencies or school districts and no reimbursement is required under Section 17561 of the Government Code.

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.