

FINAL STATEMENT OF REASONS
DEPARTMENT OF FOOD AND AGRICULTURE
SUBMISSION OF REGULATIONS PERTAINING TO
Title 3, California Code of Regulations
Section 3591.20, Subsection (a)
Light Brown Apple Moth Eradication Area

Update of Initial Statement of Reasons/Policy Statement Overview

The initial statement of reasons/policy statement overview is still valid.

On February 1, 2008, a single male LBAM was trapped at a residence in the Carpinteria area of Santa Barbara County. On March 11, 2008 (California Pest and Damage Record (PDR) #1410089), an adult male LBAM was trapped at a neighboring residence to the initial LBAM detection in the Carpinteria area of Santa Barbara County. Both of these LBAM were trapped within three miles of each other and within one life cycle. This is indicative of an incipient infestation existing in the area. Additionally, this met the regulatory protocol for establishing a new regulated area in the Carpinteria area of Santa Barbara County. On March 21, 2008, Section 3434 was amended and it established a new regulated area in the Carpinteria area of Santa Barbara County of approximately ten square miles; rather than the entire county. On May 13, 2008 (PDR #1410152), another adult male LBAM was trapped in this same area of Carpinteria. It should also be noted that a single male LBAM was trapped on March 4, 2008 (PDR #1410087) in the Lompoc area.

What eradication options the Department intends to implement is dependent upon the size of the infestation, its location(s) and which materials may be registered for use and has adequate efficacy data. Minimally, the searching for all life stages as authorized by the regulation needs to continue in the entire county as an unknown introduction pathway exists. Prior to the implementation of any eradication activities, the

Department must also comply with any requirements contained in the California Environmental Quality Act.

Summary of and Response to Objections or Comments Regarding the Regulations

No public hearing was held or requested as a result of the distribution of the Notice for a 45 day public comment period. The 45 day public comment ended on April 28, 2008. No written comments were received during this public comment period.

The Department added documents to the rulemaking file as information relied upon after the Notice was published and provided over 15 days for the public to review and comment on the additional documents. The Department also elected to hold a public hearing after the minimum 15 day public review period for the additional documents was over.

The summary of and response to each objection or comment received during the minimum 15 day written comment period are as follows:

Comment:

Currently, thousands of LBAM's have been trapped in the Santa Cruz and Bay Area of Northern California with no reported crop damage. There is no way to determine the exact date the LBAM was "first" introduced into California. "Dr. James Carey, entomologist at UC Davis with specialties in invasion biology, insect demography, and population dynamics, served on the CDFA medfly (sic) scientific advisory panel from 1987 to 1994 and also testified on the medfly (sic) crisis in the state to the California Legislature Committee. Dr. James Carey, suspects that current distribution of the Light Brown Apple Moth (LBAM) in California, covering 10 counties with a combined area of more than 8,000 to 10,000 square miles (i.e., the size of Connecticut) suggests that this pest is not a recent introduction but has been in the state for many years, perhaps 30 to 50 years or longer. The argument that LBAM is a recent invader because no populations were detected by the CDFA in 2005 cannot be reconciled with LBAM's

current widespread distribution. This recent invader argument is simply not credible. For the “recent invader” argument to be valid, the assumption would have to be made that the pest is capable of spreading 4,000 to 8,000 square miles annually or, alternatively, from 50 to 100 miles outward per year. However, there is no precedent for this rate of spread for any insect. Not even close.

Response:

This comment is outside the scope of this rulemaking. However, the Department concurs there is no way to determine the exact date LBAM was introduced and became established in California. The Department does not concur that the current distribution of LBAM is more than 8,000 to 10,000 square miles. As of July 11, 2008, the total area under quarantine in California is approximately 1,600 square miles and the quarantine area includes a one and one half mile radius “buffer area” around all known infestations. Therefore, the infested area is less than 1,600 square miles. Additionally, the rate of natural spread is significantly different than artificial spread. LBAM has been found infesting nursery stock in several production nurseries located in various counties. Prior to the implementation of quarantine restrictions, this nursery stock was distributed throughout the Bay Area counties and some was documented as being distributed to San Luis Obispo and Santa Barbara counties. The documented movement from an infested area in Santa Cruz County to Santa Barbara County via a commercial vehicle carrying nursery stock was approximately 300 miles. LBAM’s documented presence in the nursery trade and its present sporadic distribution pattern suggests its spread has not been by the typical natural means of adult flight or caterpillars ballooning on the wind. Instead, the occurrence of LBAM over the relatively large urban area that it now occupies is consistent with a recent introduction when modern horticultural practices are taken into account. LBAM can spread by hitchhiking on horticultural plants moved by people much faster than it can through natural dispersal. Unlike the 1800s, when another pest moth called the gypsy moth entered the U.S., today, agricultural products and hitchhiking pests can be moved overnight across the U.S. and overseas in a day or two. Additionally, the Department has requested that Dr. Carey provide the details and data on which he has based his statements so they may be examined by other experts

in the field; a standard practice in academic settings. To date, Dr. Carey has declined to provide the requested details and data.

Comment:

Revisiting trade policy is essential. Right now the biologists and entomologists at CDFA and USDA have to shoulder the lion's share of the burden for dealing with pests. However, just as some mountains cannot be moved and some cancers cannot be cured, many pests simply cannot be eradicated. Thus need to consider more realistic trade policy consider non-zero risk. It is in the interest of all trading partners since really comes down to an agreement of risk between a buyer and a seller. The same group who is buying today is selling tomorrow and they too may have to deal with reciprocal quarantines if they demand zero risk at every turn.

Response:

The portion of the comment dealing with trade policy is outside the scope of this rulemaking. This regulation does not deal with trade policy issues. The Department concurs many pests cannot be eradicated once they are established. The Department does not concur that LBAM is one of these pests. The LBAM Technical Working Group (TWG) identified two specific groups of control methods that could be used in combination to eradicate LBAM populations. First, there are the available tools and strategies used to successfully manage LBAM populations in Australia and New Zealand that could be adapted to help achieve eradication of the LBAM from California, such as mating disruption, targeted larvacides, and intensive release of parasitoids. Second, there are additional tools currently under development that have not been used previously against LBAM, such as the release of sterile moths and a male moth attractant treatment, which are aggressively being developed. The documented successes of sterile releases during large area-wide programs against other insect pests make it an extremely desirable option, and USDA and CDFA now view it as the main overarching tool against LBAM. The Department's viewpoint, as well as the LBAM TWG and USDA, is that a larger, multi-generation spanning time frame must be employed for the LBAM eradication campaign to be successful. There are two general

time tables used to achieve eradication of a population. The first is to apply a treatment that is so effective that all individuals in that population are killed or rendered non-reproductive within a relatively short time frame, such as one life cycle. When eradicating pests, such as termites, cockroaches, etc., from specific areas, such as a building, most people would agree that this is the desired approach. The second time table is to apply treatments over multiple generations, eventually reducing populations to levels which are reproductively unsustainable, thereby resulting in a population collapse followed by extinction. This is the time table used in more complex, larger scale, or area-wide programs for pests such as exotic fruit flies, screwworm, and boll weevil. Containment of the pest is more of a concern with this time table than with the first because the pest is given more time to spread. Hence, quarantine actions are usually an integral part of this eradication strategy. When it comes to choosing which of these two time tables to employ against the current LBAM situation, the first one would certainly be very challenging logistically given the combination of tools, the large amount of products, the simultaneous time frame, and the large geographic area over which it would have to be implemented, and therefore could be seen as making eradication logistically impossible. However, the LBAM TWG, USDA, and the Department have acknowledged from the beginning that the second time table will be necessary for the LBAM eradication campaign to be successful, and it is the implementation of this time frame with all of its necessary components, such as a quarantine, that makes eradication possible.

Comment:

Get University of California involved. UC is the research arm of our state yet the only input UC writ large has to invasive pests is after the fact and picking up the pieces. To have token UC scientists on each panel amounts to little because there can be little independent thought on these panels. Everyone knows that the panel has its marching orders and, because these are technical advisory panels, the input is technical and not strategic. There are 150 ecologists just at UC Davis alone. There are probably 1,000 ecologists across UC system, many of whom are NAS members and elite scientists.

This brain trust can be tapped and engaged in helping to deal with exotic pest problems from agriculture and forestry to marine and freshwater systems. UC involvement would provide a much-needed degree of scientific input that is independent and objective and in an early stage of decision making (e.g. before the decision 3 to launch an eradication program).

Response:

This comment is outside the scope of this rulemaking and the Department does not concur with this comment. The Legislature enacted the University of California Pest Research Act of 1990. The Legislature requested that the Regents of the University of California establish a pest research center which will review and prioritize pest-related research activities conducted through the university. It is the intent of the Legislature that University of California programs engaged in pest research shall, when applicable, follow the research priorities established by the center. The center is encouraged to develop research priorities in cooperation with other public and private universities and with state, federal, and county agencies, including, but not limited to, the Department of Food and Agriculture, State Department of Health Services, Department of Forestry and Fire Protection, county agricultural commissioners, United States Department of Agriculture, National Science Foundation, National Institutes of Health, and the agricultural industry, and with environmental and public and occupational health groups. The statutory authority for this Act is contained in the California Food and Agricultural Code Sections 576 through 585. The Exotic Pest Research Center is currently located at the University of California, Riverside. One of the center's charges is establishing multidisciplinary, long-term research priorities for the University of California which focus on the application of ecologically based, environmentally sound prevention, control, and eradication practices against pests which pose a significant threat to the welfare of California's agricultural, forest, or urban settings. Further, the Legislature established that the center shall award pest research funds obtained by the center based upon a competitive application process and peer review. The center is encouraged to give high priority to exotic pest research proposals. In awarding pest research funds, the center shall give priority to proposals that support pest control methods which use ecologically

based and environmentally sound alternatives to pesticides and other chemicals, and eliminate or reduce pesticide use or eliminate or minimize pesticide residues, protect the public health and environment, and satisfy a majority of the following criteria:

- (a) Are cost-effective.
- (b) Improve the agricultural industry and the state economy.
- (c) Do not significantly or extensively duplicate other research.

It was the intent of the Act for the center to develop information systems that enable academics, farmers, and public policymakers to quickly analyze and apply pest research Data; provide information and advice to the Department, county agricultural commissioners, the agricultural community, and other interested parties concerning pest prevention and detection through outreach consultation, information dissemination, education services, demonstrations, seminars, and publications. In developing recommended exotic pest research priorities, the center is encouraged to give high priority to all of the following:

- (1) Development of methods to determine the origin of exotic pests.
- (2) Determination of the age and origin of exotic pests.
- (3) Geographic analysis of exotic pests to determine place of origin, including acoustical fingerprinting.
- (4) Improvements to existing exotic pest insect baits.
- (5) An examination of the manner in which the sterile insect technique actually works and improvements in sterile insect technology.
- (6) Assessments of wild exotic pest populations, and their regulating biological agents.
- (7) Studies of exotic pests and their natural enemies in climates similar to that of the various regions in California.
- (8) The exploration and introduction of natural enemies, including those from foreign countries, if necessary.
- (9) Computerization of all records of exotic pest captures.
- (10) Improvements in detection technology, which include better attractants.
- (11) Compilation, maintenance, and updated data about exotic pest research and exotic pest management programs operating within and outside the state.

The Department acknowledges that in order for the center to function as the Legislature intended, an adequate source of revenue directed to the University of California and separate from funds directed to the Department is needed.

Comment:

The Department is not complying with the California Environmental Quality Act and an Environmental Impact report (EIR) is **not available** for the LBAM project and is inconsistent with CEQA § 21061. An Environmental Assessment (EA) or an Environmental Impact Statement (EIS) are reports used under NEPA and are different from requirements for CEQA.

Response:

The Department does not concur with the comment that it is not complying with the California Environmental Quality Act. While the Department's compliance with the California Administrative Procedure Act and the (CEQA) are separate actions, they can be interrelated. What specific eradication options the Department intends to implement is dependent upon the size of the LBAM infestation, its location(s) and which materials may be registered for use and has adequate efficacy data. Minimally, the searching for all life stages as authorized by the regulation needs to continue in the entire county as an unknown introduction pathway exists. Prior to the implementation of any specific project eradication activities in Santa Barbara County, the Department must also comply with any requirements contained in CEQA. This was accomplished on May 1, 2008, when a Notice of Exemption, Form D, was filed with the Office of Planning and Research, Treatment of an Infestation of Light Brown Apple Moth (LBAM) in Santa Barbara County. All comments pertaining to CEQA which are not specific to Santa Barbara County are beyond the scope of this rulemaking. However, the Department concurs that a comprehensive EIR is not yet available. On February 14, 2008, the Department sent a "Notice of Preparation (NOP) of a Draft Programmatic Environmental Impact Report for the Light Brown apple Moth Eradication Program" to the State Clearinghouse, Responsible, Trustee, and Interested Agencies; and other Interested Organizations and Individuals concerning public scoping meetings.

Comment:

The National Association of State Departments of Agriculture (NASDA), CDFA, CDPR and EPA have too close of a relationship. When the protection offered by Regulations and Act's slowly erode over time, we loose the very protection the laws first provided, protection for human health and the environment. **NASDA** , a 10 member Board of Directors consisting of a five member Executive Committee; one At-Large member; and the presidents of the four NASDA regions. Executive Committee members are the officers of the association and serve a five-year term. (Each region has at least one member serving on the Executive Committee.)The regional presidents serve a one year term. The At-Large member is selected by the Executive Committee. Let me first start off by saying that, NASDA, has over time, done some outstanding work, and there is some encouragement into their interest and evaluation of Organic Agriculture. However, examples below, demonstrates the slow erosion of such important Act's as the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); sections 18 and 24(c), drastically reduce the protection originally provided for human health and the environment. These practices must stop, the environment is not a bottomless pit and human health cannot endure less protection any longer. Instead we should be strengthening these act and regulations.

Response:

This comment is outside the scope of this rulemaking which does not deal with NASDA, organic agriculture or "Acts" such as the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Comment:

One (1) moth find, does not constitute an emergency CEQA § 21060.3, and therefore does not constitute for the need for an Emergency Eradication for the County of Santa Barbara.

Response:

The Department does not concur with this comment. On February 1, 2008, a single male LBAM was trapped at a residence in the Carpinteria area of Santa Barbara

County. The emergency amendment of this regulation established the legal authority for “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.” It was immediately necessary to perform LBAM delimitation trapping surrounding this initial detection per the protocol approved by the USDA and the Department. If this delimitation trapping is not performed, the entire county would immediately be under both Federal and State quarantine. Additionally, there was an unknown LBAM introduction pathway into Santa Barbara County and it was immediately necessary to determine if LBAM was present in any other area of Santa Barbara County. On March 11, 2008 (California Pest and Damage Record (PDR) #1410089), an adult male LBAM was trapped at a neighboring residence to the initial LBAM detection in the Carpinteria area of Santa Barbara County. Both of these LBAM were trapped within three miles of each other and within one life cycle. This is indicative of an incipient infestation existing in the area. Additionally, this met the regulatory protocol for establishing a new regulated area in the Carpinteria area of Santa Barbara County. On March 21, 2008, Section 3434 was amended and it established a new regulated area in the Carpinteria area of Santa Barbara County of approximately ten square miles; rather than the entire county. On May 13, 2008 (PDR #1410152), another adult male LBAM was trapped in this same area of Carpinteria. It should also be noted that a single male LBAM was trapped on March 4, 2008 (PDR #1410087) in the Lompoc area. There is also an ongoing need for “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.” The balance of the comment is outside the scope of this rulemaking.

Comment:

Section 18 of FIFRA permits the application, with appropriate safeguards, of unregistered pesticides for certain emergency conditions, if authorized by EPA. Substantial crop losses nationwide are prevented every year by treatments authorized under the emergency exemption provisions. This provision of FIFRA is necessary and valuable to American agriculture and we support its continuation. An example of recent

section 18s with great value to agriculture are the exemptions which allowed the use of several fungicides to control Soybean rust on soybeans and possibly other related crops. The failure to control strains of such diseases as Soybean rust could result in the destruction of entire crops within the United States. Such emergencies demand a quick response. Efforts to revise the section 18 rules to make the process more efficient and responsive to the changing needs of agriculture must occur. A redefinition of the criteria for significant economic loss, the occurrence of a non routine event, and of an emergency condition would enhance the section 18 utility. The ability to issue multiyear tolerances and delegation of authority to states to reissue section 18s in event of continuing emergency conditions would make the process more efficient and reduce the paperwork burden and ease the review process both for states and EPA. There is a need for the development of criteria for wildlife monitoring in connection with section 18 exemptions to be included in guidance documents to the states, so that states can better anticipate when wildlife monitoring may be a requirement and the potential costs of monitoring which might accompany a section 18 approval. Allowing emergency exemptions for the purpose of resistance management or based on reduced risk is desirable. Resistance management is increasingly important to preserve existing pest control options. Many integrated pest management (IPM) programs require multiple strategies for effective pest control which may include the use of several pesticides at different stages of plant development and pest life cycles. The loss of registered pesticides jeopardizes successful IPM programs by limiting options. Emergency exemptions based on reduced risks would allow states to provide an alternative, to a registered use, when unusual conditions exist under which the registered use would pose unacceptable risks on a temporary basis. It is anticipated that reduced risk emergency exemptions would be rare and would result from conditions difficult, if not impossible, to anticipate in the usual registration review procedures and likely be temporary and localized in nature. A common sense approach in determining whether to grant section 18 emergency exemptions and tolerances is desirable. In the absence of available information, it is recommended that the EPA not rush to establish default assumptions not required by FQPA. EPA should not deny valid section 18 applications

for use of pesticides that have resulted in no detectable residues and pose no additional risk. EPA should expeditiously implement the FQPA provisions pertaining to reduced risk pesticides. The substitution of reduced risk pesticides for conventional pesticide materials should be encouraged whenever the reduced risk pesticide offers a practical alternative in terms of cost and effectiveness. Emphasis should be placed on finding reduced risk solutions to pest control problems currently addressed with materials having a high potential to cause adverse effects to human health and the environment. Due to the large investment of resources required to develop new reduced risk pesticides, measures should be taken to sustain their efficacy over time. It will require a cooperative effort among government, industry, farmers, and academic institutions in order to establish viable resistance management programs. NASDA believes that rulemaking should be conducted by the Environmental Protection Agency (EPA) to address the issue of the inter-relationship of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Endangered Species Act (ESA). The proposed rulemaking will ensure that implementation of FIFRA is in compliance with the requirements of section 7(a)2 of the Endangered Species Act (ESA). Those requirements pertain to evaluation of and possible consultation regarding the effects of agency actions on endangered or threatened species. Rules should be developed with the Secretaries of Agriculture, Commerce, and the Interior, all of whom have responsibilities that will be impacted by these regulations. The Endangered Species Act Amendments of 1988 directed EPA to develop a final FIFRA Endangered Species Protection Program. The program was also intended to ensure that growers could “continue production of agricultural food and fiber commodities.” EPA published an interim program in 1989, but has never established a final program. This situation has left registrants of and agricultural producers who use pesticide products vulnerable to allegations that they are in violation of the ESA, thus triggering its considerable civil and criminal penalty provisions. A number of lawsuits have been filed or noticed for filing, which implicate the entire FIFRA program and all domestic species listed as endangered or threatened under the ESA. No interest is served by the present situation. Endangered and threatened species may not enjoy the full protections promised by the

ESA. Producers and applicators of pesticide products have no security that those products can continue to be purchased and used in any situation where endangered and threatened species are implicated. Rulemaking would provide certainty to registrants, applicators, producers, and the general public regarding the inter-relationship of the FIFRA and ESA programs. Recent court rulings have called in to question the legality of applying a labeled pesticide in to and over waters of the U.S., without first receiving a National Pollution Discharge Elimination System (NPDES) permit. NASDA believes that the Clean Water Act never intended to require NPDES permit for pesticides that have been reviewed and approved by the United States Environmental Protection Agency (USEPA) for use in and over waters of the U.S. We strongly urge the U.S. EPA to revise the CWA rules to clearly exempt labeled uses of a pesticide from the requirement for an NPDES permit.

Response:

This comment is outside the scope of this rulemaking.

Comment:

The current process is not working, people can not keep up with the constant changes being made to Acts and Regulations, even if they are posted on EPA's web site or the California Regulatory Notice Register online http://www.oal.ca.gov/reg_notice.htm. Changing regulations to meet and suit the needs of Agriculture is not the right approach that should be taken, it just creates more problems. In addition, changes to the Health and Safety Code are not keeping up with the constant changes to the Food and Agriculture Code used to protect agriculture. With DPR regulating pesticide use and working in close relation with CDFA, the Health and Safety Code seems to be forgotten. Pesticide mention in the Health and Safety Code is infrequently mentioned.

Response:

The Department is obligated to and does comply with the California Administrative Procedure Act when adopting, amending or repealing regulations. The balance of this comment is outside the scope of this rulemaking.

Comment:

Currently, according to the California Department of Pesticide Regulation a horrendous 189,576,938 million pounds of “reported” pesticides are used every year! This is polluting our air, soil and water, which are precious and must be protected for human survival. With California now declaring a drought, water protection is even more important than ever. The number of pounds of pesticides used in the US is in the billions. Preliminary results of a project to reduce health risks from pesticide exposure, led by the Energy & Environmental Research Center (EERC) at the University of North Dakota (UND), verify that exposure to pesticides can induce pathological changes to the nervous system. During the first year of research, laboratory testing on rats demonstrated that the areas of the brain showing change following pesticide exposure are the same areas involved in multiple sclerosis. Results also show pesticide exposure damages the same brain areas linked to epilepsy, Parkinson's disease, and Alzheimer's. Pesticides can also cause severe damage to the gastrointestinal system and cause neurological dysfunction. Contact: For more information on the EERC led study see www.undeerc.org or contact: Gerald Groenewold, EERC Director, on (701) 777-5131 or email ghg@undeerc.org or Derek Walters, EERC Communications Manager, (701) 777-5113 or email dwalters@undeerc.org Having so many different pesticides interacting with each other is a real problem. Polluting our air, soil and ground water every year, how long do we think we can keep doing this? Water, air and soil are precious, (already predicted next wars will be over drinking water) we should be protecting them and planning for the future. It's not sustainable to think we can keep dumping 189,576,938 million pounds of pesticides every year and expect to have clean water, air and healthy soils not to mention healthy people. Conventional agriculture, as seen today is not sustainable.

Response:

This comment is outside the scope of this rulemaking.

Comment:

Having massive farms mono cropping, is only asking for huge pest problems which can

wipe out entire crop fields. In addition, Mono cropping encourages high pesticide use. We see this when CDFA has to massively spray toxic pesticides in a futile attempt to protect a growing style that doesn't work.

Response:

This comment is outside the scope of this rulemaking.

Comment:

Here in Santa Barbara we had numerous people become ill during the application of a highly toxic pesticide Naled- Organophosphate. In fact we have had cancers pop up and people die even though CDFA ensured us that it was safe! How could creating a toxic plum of 9 square miles for 3 months be safe, all this because 2 fruit flies were found. This approach does not eradicate the pest it injures people and destroys people's health.

Response:

The Department does not concur with this comment which is outside the scope of this rulemaking. The Department is not aware of any medically confirmed pesticide-related illnesses that were a result of its eradication program activities conducted in Santa Barbara.

Comment:

Understanding the insect and how it interacts with the environment, learning about the natural predators that control the insect and increasing biodiversity, are safe and sustainable approaches which protect people and agriculture. With biodiversity environment, management of pest problems is reduced due to balance between prey and predator. Increasing monitoring of plants at point of entry and educating the public are also important. Let's, encourage biodiversity and grow a variety of crops, rotate crops which improves the health of soil, produces healthier plants, and reduces pests. Advocate and use "organic fertilizers", synthetic fertilizers kill beneficial organisms found in healthy soil and promote algae blooms when it runs off into and ends up in the ocean. We must promote and grow plants that attract beneficial insects which manage pest

problems. Compost green material and return in back into the soil, mulch to manage weeds and much more. Use drip systems for irrigation. These are all simple easy solutions that drastically improve the health of the soil, reduce pest problems and drastically reduce pesticide use. Improving the health of the soils improves resistance to pest problems resulting in healthy plants and greater yields. On the other hand, with unhealthy soils comes unhealthy plants which results in lower yields a high pesticide use. Pesticides kill soils, making them less fertile year after year. What are needed are more co-op farms growing a variety of sustainable Organic crops. Massive farms which mono crop are not sustainable and are not the future of ag. View below a list of beneficial insects and plants that help attract them so that pest management is reduced as is high use of pesticide. By incorporating these plants into the agriculture community, farmers help promote biodiversity and in return produce better yields of crop while saving money. List of Beneficial insects that manage pests problems click on insect links: [http://www.ipm.ucdavis.edu/PMG/NE/List of Plants that attract beneficial insects](http://www.ipm.ucdavis.edu/PMG/NE/List%20of%20Plants%20that%20attract%20beneficial%20insects): www.lotusland.org/bmps/beneficial.pdf

[www.farmerfred.com/plants that attract benefi.html](http://www.farmerfred.com/plants_that_attract_benefi.html)

www.theodorepayne.org/gallery/glossary.htm

Response:

This comment is outside the scope of this rulemaking.

Comment:

Keep in mind, the organic industry is growing by leaps and bounds as more and more consumers are demanding organic produce, organic lawn care, organic tree care, organic clothing etc... all because we know it's better and most importantly it is sustainable. View stats from the Organic Trade Association <http://www.ota.com/organic/mt/business.html> Encouraging individuals/homeowners to grow a few of their own produce eliminates massive farms by off setting Super Market demands, and reduces pesticide by growing food organically. I understand that income from Agriculture is in the billions of dollars and that is good for California however is not 'sustainable' in its current approach. It's like a well just waiting to run dry. Eventually

the soil will be so contaminated with pesticides nothing will grow. The only simple, clean solution is to increase sustainable organic crops, not GMO or GMO pesticide laced food. Let's promote organic export within California, view stats from the Organic Trade Association <http://www.ota.com/organic/mt/business.html> . This will create jobs, improve air quality, enrich the soil and protect our precious water.

Response:

This comment is outside the scope of this rulemaking.

Comment:

It's not fair or ethical to force people to eat GMO foods because companies refuse to label their products as such. It's **dishonest** and deceptive to place GMO foods, cloned meat and cloned milk in the market place and not let people know what they are eating. If GMO and Cloned is so great label it and let people decide if they want to eat it or not. If people choose not to eat it, then the market has spoken, it's not marketable. IF people don't want it why waste a ridiculous amount of money funding something people don't want. If GMO and Cloned have to be hidden from people then one already knows that the market does not want it. We don't need GMO and Cloned products to feed the world we need organic sustainable products. Learn the dangers of cloned milk and meat. The following is a letter that was located at the FDA website: <http://www.fda.gov/ohrms/dockets/dockets/03n0573/03N-0573-EC2039-Attach-1.pdf>

Response:

This comment is outside the scope of this rulemaking.

Comment:

How is the Health care system impacted by the use of 189,576,938 million pounds of pesticides every year? From the health link above <http://www.undeerc.org/newsroom/newsitem.asp?id=267> we 'know' that pesticides pesticide exposure damages the same brain areas linked to epilepsy, Parkinson's disease, and Alzheimer's. Pesticides can also cause severe damage to the gastrointestinal system and cause neurological dysfunction. How many unnecessary

serious illnesses could be prevented if we just grew organic produce? How many lives could be saved? How much money would this save our Health Care system?

Response:

This comment is outside the scope of this rulemaking.

Comment:

You probably know that the European Union (EU) now has stricter Regulations for toxins than the USA, and yet the EU Economy is booming, even with the production of safer products in the market. In fact, the EU has the largest Economic Market, larger than the US. The EU has looked at ways to reduce long-term health care costs. They concluded that agents that can cause cancer, genetic damage and birth defects could **no longer** be sold or imported into the EU saving billions of dollars in health care cost. New law now requires agents that can cause cancer, genetic damage and birth defects lacing everything from gadgets to toys to beauty products **not** be sold or imported in the EU. With the EU taking this initiative, they not only improve their economic outlook but also most importantly improve the health of the people that live there along with the environment. The EU works on the **model of precautionary 'remove a product if it will cause harm'**. Here in the US, it's the opposite; **one must prove without a doubt that the toxins are causing harm.**

Response:

This comment is outside the scope of this rulemaking.

Comment:

Here in the United States, a desperate overhaul of Agriculture is much needed. First, stop mono cropping, this practice alone promotes very high use of pesticides which are polluting our air, water and soil. Agriculture must move towards a more sustainable organic approach. Much valuable and important research from the UC Sustainable Research and Education Program (SAREP) has already been completed and should be used to transition from current inefficient, high use pesticide conventional agriculture to no use sustainable organic agriculture. The costs and yields are comparable and the

benefits not only help to protect our water, air and soil but most importantly protect human health and the environment. <http://www.sarep.ucdavis.edu/Organic/pubs.htm>
<http://www.sarep.ucdavis.edu/pubs/Costs.htm> Consumers, in huge numbers are moving away from conventional agriculture purchases and flocking by huge numbers to purchase sustainable organic agriculture products. Consumers have “lost confidence” in conventional foods, unwilling to feed their families crop dusted, high pesticide use conventional food. Today, consumers are educated and know what the ‘unnecessary consequences’ are of consuming such high pesticide conventional foods. The organic industry is growing by leaps and bounds as more and more consumers are demanding organic produce, organic lawn care, organic tree care, organic clothing etc... all because we know it's better and it is sustainable. View stats from the Organic Trade Association <http://www.ota.com/organic/mt/business.html>.

Response:

This comment is outside the scope of this rulemaking.

Comment:

Any other written comment received not specifically summarized here.

Response:

Those comments are outside the scope of this rulemaking.

The summary of and response to each objection or comment received during the public hearing are as follows:

Comment:

I work with the Environmental Defense Center here in Santa Barbara. We're a non-profit environmental law firm. And we've been really involved on issues of agriculture for some time; and specifically I've been working on pesticide-related issues for a while. And we went through the Oriental fruit fly situation a year back and a similar hearing, so appreciate the opportunity to be here.

Response:

This comment is outside the scope of this rulemaking.

Comment:

I guess I'd like to start by saying that we are pleased that the Department has taken a least toxic approach in controlling this -- the Light Brown Apple Moth all across the state, and I'm more pleased to know that the Department has taken the twistie-tie approach here in Santa Barbara County as opposed to the aerial applications which have been prevalent up in northern California and have obviously caused a lot of concern up there. So we appreciate the way that this is being handled to date. I guess my comments just focus on really encouraging the Department to always use these types of least toxic control methods when dealing with these types of invasive pests because of the various problems that are encountered when dealing with the more toxic nature of some of the chemicals that have been considered.

Response:

In general, the Department uses the eradication approach which has the least impact on the environment, public and animal health when it is efficacious and feasible. The remainder of this comment is outside the scope of this rulemaking.

Comment:

In light of the Department of Food and Ag's current listening sessions, they're going, as you know, across the state taking input from communities about how to make a more sustainable, viable agricultural industry in California over the next 20, 30 years, these listening sessions are happening right now, and they're really encouraging the public to get involved and tell the Department what it will take to make a sustainable agricultural industry. So I think this is -- the timing of this hearing is actually very, very timely in a sense that this type of issue is going to become more and more common where we're faced with invasive pests that threaten agriculture and the viability of agriculture.

Response:

This comment is outside the scope of this rulemaking.

Comment:

And to really get the public to stand behind the industry and to stand behind the agencies that are in charge of regulating it, the public needs to know that the Department is taking a least toxic approach, a comprehensive approach, but the approach that's best for the communities as well as the industry and as opposed to the response that was originally given with the Oriental fruit fly where the Department came down and started applying naled to different communities. That was the wrong approach because it wasn't the least toxic approach, it wasn't the approach that the communities would have liked to see, and the way that the Department went about publishing and making that hearing and that whole issue known was not adequate. And so again, I'd like to thank you guys for being here.

Response:

In general, the Department uses the eradication approach which has the least impact on the environment, public and animal health when it is efficacious and feasible. The remainder of this comment is outside the scope of this rulemaking.

Comment:

I did receive a notice of this a couple of weeks ago, however, today calling the agricultural commissioner and the Department of Food and Ag and city hall here in Carpinteria, nobody knew about it despite me being notified a couple of weeks ago, so that was good, but I would like to see agency staff also be made more aware of these very important hearings.

Response:

The Department provided the "Notice" for the public hearing to Santa Barbara Supervisors Carbajal, Centino, Firestone, Gray and Wolf; Carpinteria Council Members Armendariz, Clark and Stein; Mayor Ledbetter, Vice-Mayor Carty, City Manager Durflinger, The Capitol and District Offices of The Honorable Pedro Nava and Tom McClintock; the known impacted businesses, the Santa Barbara County Commissioner, to any other party who requested notification and to over 200 other interested parties. The Department elected to hold this public hearing even though it was not required by

the California Administrative Procedure Act. The Department would be interested in knowing what other “agency staff” should be notified.

Comment:

So with that I'll just close my comments and just reiterate the importance of having the Department acknowledge least toxic approaches to invasive pest issues, really working with the communities collaboratively to make sure people are aware of what's happening. And of course we're all doing this to try to sustain the agricultural industry in this community and the State of California.

Response:

The Department concurs with this comment which is outside the scope of this rulemaking.

Mandate on Local Agencies and School Districts

The Department of Food and Agriculture has determined that Section 3591.20 does not impose a new mandate on local agencies or school districts. The amendment of this regulation, establishing State eradication authority in Santa Barbara County, does not impose a new mandate on the local agencies. Therefore, no reimbursement is required for Section 3591.20 under Section 17561 of the Government Code.

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 proposed action.

The cost impact of the changes in the regulations on a representative private person or business is not expected to be significantly adverse. The Department has also determined that this action will not have a significant adverse economic impact on

housing costs or California businesses, including the ability of California businesses to compete with businesses in other states.

Assessment

The Department has made an assessment that this amendment to the regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

Alternatives Considered

The Department of Food and Agriculture has determined 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.