

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Section 3591.20, Subsections (a), (b), (c) and (d)

Light Brown Apple Moth Fly Eradication Area

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 3591.20 is to provide authority to the State to eradicate or control infestations of light brown apple moth (LBAM), *Epiphyas postvittana*, from within the declared eradication areas by the established means and methods.

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

Emergency Amendment Effective April 3, 2007

On March 22, 2007, ten adult male LBAMs were detected in Golden Gate Park, San Francisco County. On March 26, 2007, six additional adult male LBAMS were trapped, three in Golden Gate Park and three from three separate traps located in areas outside of Golden Gate Park. On March 27, 2007, two adult male light brown apple moths were trapped in San Rafael and one adult male moth was trapped in Sausalito, located in Marin County. The number of adult LBAMs detected is indicative of incipient infestations existing in all of these areas located in Marin and San Francisco counties.

The amendment of Section 3591.20(a) established that Marin and San Francisco counties are additional eradication areas with respect to LBAM. The amendment of Section 3591.20(b)

established new hosts and regulate all hosts by genera. The effect of the amendment of this regulation is to provide authority for the State to perform eradication activities against LBAM in Marin and San Francisco counties.

Emergency Amendment Effective April 20, 2007

On April 2, 2007, two adult male LBAMs were detected in Santa Clara County. One was found in the Los Altos area and the other was found in the Palo Alto area. The detection of these adult LBAMs is indicative of incipient infestations existing in both of these areas located in Santa Clara County. The Department identified these LBAM on April 5, 2007. However, since LBAM is a federal action pest, the specimens were then forwarded to the United States Department of Agriculture (USDA) for their confirmation. On April 11, 2007, the USDA verbally confirmed the Department's identification of these LBAM specimens.

The amendment of Section 3591.20(a) established that Santa Clara County is an additional eradication area with respect to LBAM. The effect of the amendment of this regulation is to provide authority for the State to perform eradication activities against LBAM in Santa Clara County.

Emergency Amendment Effective April 23, 2007

On April 12, 2007, an adult male LBAM was detected in Monterey County (Prunedale area) and four adult male LBAMs were detected in Santa Cruz County (Soquel area). On April 13, 2007, one adult male LBAM was detected in San Mateo County (Belmont area). The detection of these adult LBAMs is indicative of incipient infestations existing in these counties.

The amendment of Section 3591.20(a) established that the counties of Monterey, San Mateo and Santa Cruz are additional eradication areas with respect to LBAM. The effect of the amendment of this regulation is to provide authority for the State to perform eradication activities against LBAM in counties of Monterey, San Mateo and Santa Cruz.

Emergency Amendment Effective June 5, 2007

On May 9, 2007, an adult male LBAM was detected in Napa County (Napa area). The Department identified this pest on May 11, 2007. Under an agreement with the United States Department of Agriculture (USDA) pertaining to new federal action pest detections in a new county, the Department forwarded this specimen to the USDA's Systematic Entomology Laboratory (SEL) for its confirmation. On May 15, 2007, the SEL confirmed LBAM as being found in Napa County.

The amendment of Section 3591.20(a) established Napa County as an additional eradication area with respect to LBAM. The effect of the amendment of this regulation is to provide authority for the State to perform eradication activities against LBAM in Napa County.

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 issued a federal order regulating the interstate movement of host material from the infested areas of California and all of Hawaii.

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 approximately one half mile and the current traps will attract a male moth within 100 meters. The real threat of long distance spread is through the human assisted movement of infested plants and plant parts, including green waste, and other possible carriers such as contaminated equipment or appliances.

The LBAM has the capability of causing significant irreparable harm to California's agricultural industry and some possible adverse environmental impacts. While the Department's compliance with the California Administrative Procedure Act and the California Environmental Quality Act (CEQA) are separate actions, they can be interrelated. Although adoption of specific regulatory authority can be the beginning of a project and therefore covered by CEQA, this regulation, for the reasons already set forth, constitutes a specific act necessary to prevent or mitigate an emergency as authorized by Public Resources Code section 21080, subdivision (b) (4) and Title 14, California Code of Regulations Section 15269, subdivision (c). The regulation is also an action required for the preservation of the environment and natural resources as authorized by Title 14, California Code of Regulations, sections 15307 and 15308.

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 plants species and habitats. There is an imminent threat for adverse consequences and ultimate extinction to some of these sensitive species if LBAM becomes permanently established in California.

Currently, 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 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 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.

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 apple, 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.

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 percent 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 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 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.

The amendments of Section 3591.20(a) established Marin, Monterey, Napa, San Francisco, San Mateo, Santa Clara and Santa Cruz counties as additional eradication areas for LBAM. The entire seven counties were 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 amendment of Section 3591.20(b) established new hosts and regulates all hosts by genera.

The effect of the amendments of subsection 3591.20(a) and (b) is to implement the State's authority to perform control and eradication activities against LBAM in Marin, Monterey, Napa, San Francisco, San Mateo, Santa Clara and Santa Cruz 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 was necessary to begin eradication activities against the LBAM immediately. Therefore, it was necessary to adopt this regulation as an emergency action.

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

The Department of Food and Agriculture has determined that the 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.

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 of Section 3591.20.

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:

The emergency adoption of Section 3591.20 provides authority for the Department to conduct eradication activities against light brown apple moth within Marin, Monterey, Napa, San Francisco, San Mateo, Santa Clara and Santa Cruz counties and there are no known private sector cost impacts.

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 3591.20:

Email dated May 15, 2007, from Marc Epstein, to LBAM, "SEL Verification Light Brown Apple Moth – New Record for Napa Co., CA."

"Pest Profile," updated March 16, 2007, Kevin Hoffman, California Department of Food and Agriculture.

"Lightbrown apple moth, Exotic host plants-common," printed March 13, 2007, <http://www.hortnet.co.nz/key/stone/info/hostplnt/iba-exo2.htm>.

"Lightbrown Apple Moth Life Cycle," printed March 12, 2007, HortFACT.

"Light Brown Apple Moth, *Epiphyas postvittana*," printed March 12, 2007, Government of South Australia.

"Light brown apple moth development calculator," printed March 12, 2007, NSW Department of Primary Industries.

"Light brown apple moth in citrus," June 2006, Primefact Number: 216.

"Botrytis and the Light Brown Apple Moth," undated, Bayer CropScience.

"Light Brown Apple Moth Procedures for USA Citrus Export Program," updated June 2006.

"China Export Quarantine IPM Guide," January 2006, Steven Falivene, NSW, DPI.

"Mini Risk Assessment, Light Brown Apple Moth, *Epiphyas postvittana* (Walker), [Lepidoptera: Tortricidae], September 21, 2003, Department of Entomology, University of Minnesota.

"Pests and Pest Management, Impact on Climate Change," February 2000, Dr. Robert W. Sutherst, CSIRO Entomology.

"Pest and Damage Record #1457156," dated May 9, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1374841,” dated April 18, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1374840,” dated April 18, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1370447,” dated April 17, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1314246,” dated April 17, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1449856,” dated April 16, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1370450,” dated April 16, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1370446,” dated April 16, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1370445,” dated April 16, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1370444,” dated April 16, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1370443,” dated April 16, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1369893,” dated April 13, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1370437,” dated April 12, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1370436,” dated April 12, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1449854,” dated April 12, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1379228,” dated April 2, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1379227,” dated April 2, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1356332,” dated March 27, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1356331,” dated March 27, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1356329,” dated March 27, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1416446,” dated March 26, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1416445,” dated March 26, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1416444,” dated March 26, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1416443,” dated March 26, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1289026,” dated March 26, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1398020,” dated March 22, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.