

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 adopted Section 3639 of the regulations in Title 3 of the California Code of Regulations pertaining to Huanglongbing (HLB) Disease Eradication Area as an emergency action that was effective on April 3, 2012. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than October 1, 2012.

This notice is being provided to be in compliance with Government Code Section 11346.4.

**PUBLIC HEARING**

A public hearing is not scheduled. 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 amendment to the Department. Comments may be submitted by mail, facsimile (FAX) at 916.654.1018 or by email to [sbrown@cdfa.ca.gov](mailto:sbrown@cdfa.ca.gov). The written comment period closes at 5:00 p.m. on September 10, 2012. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Stephen Brown  
Department of Food and Agriculture  
Plant Health and Pest Prevention Services  
1220 N Street  
Sacramento, CA 95814  
[sbrown@cdfa.ca.gov](mailto:sbrown@cdfa.ca.gov)  
916.654.1017  
916.654.1018 (FAX)

Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Existing law also provides that the Secretary may establish, maintain and enforce quarantine, eradication and other such regulations as she deems necessary to protect the

agricultural industry from the introduction and spread of pests (FAC 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 the pest (FAC Section 5761).

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 (Food and Agricultural Code 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).

The adoption of section 3639 established the entire State as an eradication area for plant disease HLB, the hosts and the means and methods which may be used to eradicate HLB. The effect of this action was to establish authority for the Department to conduct eradication activities in California against this pest.

The specific anticipated benefits of the amendment of this regulation are:

The existing law obligates the Secretary to investigate and determine the feasibility of controlling or eradicating pests of limited distribution but establishes discretion with regard to the establishment and maintenance of regulations to achieve this goal. The adoption of this regulation benefits the citrus industries (nursery and fruit) and the environment by establishing eradication authority enabling the removal of HLB infested host material from the environment. By removing the sources of HLB inoculum it is more biologically feasible to confine HLB's devastating impacts to the smallest area possible.

FAC Section 401.5 states, "The department shall seek to protect the general welfare and economy of the state and seek to maintain the economic well-being of agriculturally dependent rural communities in this state." The adoption of this regulation is one step to mitigate the spread of HLB through its vector, ACP. This prevents the ACP from naturally spreading ACP and increasing the chances of successfully containing the disease to the smallest area possible.

All eradication activities are conducted by the Department. Except for curry plants, any other host material infected with HLB will die as there is no cure. Homeowners and others will benefit by having this host material removed at no cost to them.

The California consumers benefit as the fruit from host trees infected with HLB is inedible. Confining the HLB infestation to the smallest area possible ensures citrus fruits and other host fruits are available for consumption and at reasonable prices.

The Department has evaluated and determined that the amendment of this regulation is not inconsistent with existing State regulations. There are no other comparable existing State regulations [Gov. Code Sec. 11346.5(a)(3)(D)].

There is no existing, comparable federal regulation or statute.

### **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 other nondiscretionary costs or savings to local agencies or school districts.

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

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

Cost impacts on a representative private person or business: The agency 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 may affect small business.

### **RESULTS OF THE ECONOMIC IMPACT ANALYSIS**

Amendment of these regulations will not:

- (1) Create or eliminate jobs within California;
- (2) Create new businesses or eliminate existing businesses within California; or
- (3) Affect the expansion of businesses currently doing business within California.

The Department is not aware of any specific benefits that the adoption of this regulation would have pertaining to California worker safety. The Department believes the adoption of this regulation benefits the general health and welfare of California residents by ensuring the availability of citrus for consumption at reasonable prices and protecting the economic benefits the estimated \$2.19 billion per year citrus industry brings to the State's economy. This regulation benefits over 99 percent of the citrus industries (nursery and fruit) that are located outside the quarantine area. The adoption of this regulation helps protect this economic engine and food source which benefits the general health and welfare of

California residents. This does not count the many thousands of backyard gardeners all over California who produce large quantities of fruit for their own use, and support the traditions, especially in the Asian culture, that many families have for citrus fruit. The adoption of this regulation also promotes the economic well-being of agriculturally dependent rural California communities and reduces the potential adverse environmental impacts caused by HLB [Gov. Code Sec. 11346.3(b)].

### **ALTERNATIVES CONSIDERED**

The Department must determine that no reasonable alternative it considered to the regulation 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 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.

### **AUTHORITY**

The Department adopted Section 3639 pursuant to the authority vested by Sections 407 and 5322 of the Food and Agricultural Code of California.

### **REFERENCE**

The Department adopted Section 3639 to implement, interpret and make specific Sections 407, 5322, 5761, 5762 and 5763, Food and Agricultural Code.

### **CONTACT**

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed to is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room 220, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov. In his absence, you may contact Lindsay Rains at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Stephen S. Brown.

### **INTERNET ACCESS**

The Department has posted the information regarding this proposed regulatory action on its Internet Web site ([www.cdfa.ca.gov/cdfa.pendingregs](http://www.cdfa.ca.gov/cdfa.pendingregs)).

### **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed actions, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be

obtained upon request. In addition, when completed, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations adopted by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.