FINDING OF EMERGENCY

The Secretary of the California Department of Food and Agriculture (Department) determined that an emergency exists; infestations of the Asian citrus psyllid (ACP), *Diaphorina citri* and Huanglongbing (HLB), *Candidatus* Liberibacter, have been detected in multiple counties and new counties throughout California. The Department is proposing an emergency amendment of California Code of Regulations (CCR) Section 3435, the effect of which will be to restrict movement of ACP host nursery stock between three regional quarantine zones and bulk citrus between seven regional quarantine zones.

Emergency Defined

"'Emergency' means a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare," Government Code Section 11342.545. If a state agency makes a finding that the adoption of a regulation is necessary to address an emergency, the regulation may be adopted as an emergency regulation. Government Code Section 11346.1(b)(1).

In this document, the Department is providing the necessary specific facts demonstrating the existence of an emergency and the need for immediate action to prevent serious harm to the general welfare of the citizens of California, pursuant to Government Code Section 11346.1(b)(2).

Government Code Section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency.

Government Code Section 11346.1(a)(3) provides that if the emergency situation clearly poses such an immediate, serious harm that delaying action to allow public comment would be inconsistent with the public interest, an agency is not required to provide notice pursuant to

Government Code Section 11346.1(a)(2). The Secretary believes that this emergency—in light of new scientific evidence presented in the November 22, 2017 University of California briefing paper on the ACP/HLB invasion of California--clearly poses such an immediate, serious harm that delaying action to give the notice pursuant to Government Code Section 11346.1(a)(2) would be inconsistent with the public interest, within the meaning of Government Code Section 11349.6(b).

The purpose of CCR Section 3435 is to prevent the artificial spread of ACP and HLB to uninfested areas. Preventing the artificial spread of ACP and HLB, especially long-distance artificial spread, is a key component of controlling the ACP/HLB complex. For example, the Florida Department of Agriculture and Consumer Services chose not to attempt to control the artificial spread of ACP. Consequently, when Huanglongbing was introduced in Florida, it swept through the state wherever ACP was present, which was essentially the entire state. The HLB disease has a latency period of up to two years, during which existing laboratory testing procedures are unable to detect the disease. Although the Department has and continues to conduct extensive surveys for HLB, the disease is still present in California. If the disease is present and the vector (ACP) has been successfully eradicated in that area, the infested host will not be able to further spread the disease.

However, ACP has the capability of transmitting the disease during the latency period when the disease is not detectable. Therefore, controlling ACP is critical in controlling HLB, even in the apparent absence of the disease's presence. The movement of one ACP-infested host plant by an individual or through the movement of infested commercial nursery stock or by a landscaper will result in a new infestation.

During 2012, HLB was detected in California, and now portions of Los Angeles, Orange, Riverside, and San Bernardino counties are under quarantine for HLB. HLB detections, including the detection of HLB-infected ACPs, have increased significantly in some of these areas over the past twelve months. HLB can remain at sub-detectable levels in trees for up to five years. Consequently, the level of risk for the artificial movement of HLB within the large contiguous quarantine areas in southern California and between non-contiguous quarantine areas in other

parts of the state is higher now than it was in 2008, when ACP was originally detected, due to the uncertain distribution of HLB within the state.

The current ACP quarantine regulation does not adequately address the heightened risk of artificial movement, and the HLB quarantine only applies where HLB is known to occur. Each day that this quarantine amendment is not in place increases the odds that artificial spread of ACP will occur unabated, and if HLB is in new areas at undetectable levels, then the ACP/HLB complex will be able to begin its devastating destruction in that area. The ACP/HLB complex may occur throughout the state of California.

Providing five days advance notice of an emergency rulemaking to interested parties delays being able to get this quarantine regulation in place by an additional eight to ten days. This delay increases the chances of the Department's inability to prevent long distance artificial spread of HLB, including to other areas of the Central Valley's major citrus production area. The initiation of this emergency action parallels a regular rulemaking that was initiated before the availability of the briefing paper dated 11/22/2017. There are four days left in the 45 day comment period for that notice, so more than five days have been available for the public to comment on this amended regulation. To date, no comments on the substance of this regulation have been received (Keith Okasaki email dated 12/14/2017) and a request for a public meeting was submitted.

The information contained within this finding of emergency meets the requirements of Government Code Sections 11346.1 and 11346.5.

The Secretary is proposing to amend CCR Section 3435 pursuant to the authority in Food and Agricultural Code (FAC) Section 403 ("the department shall prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds"), Section 407 ("the director may adopt such regulations as are reasonably necessary to carry out the provisions of this code which he is directed or authorized to administer or enforce), and Section 5322 ("the director may establish, maintain, and enforce quarantine, eradication, and such other regulations

as are in his or her opinion necessary to circumscribe and exterminate or prevent the spread of any pest which is described in Section 5321").

Additionally, FAC Section 401.5 states: "The department shall also seek to enhance, protect, and perpetuate the ability of the private sector to produce food and fiber in a way that benefits the general welfare and economy of the state."

California Environmental Quality Act

A Statewide Plant Pest Prevention and Management Program Environmental Impact Report (PEIR) was prepared by the Department as the lead agency under the California Environmental Quality Act. The PEIR addresses the potential impacts and mitigations when implementing the Statewide Plant Pest Prevention and Management Program activities related to ACP.

The PEIR may be accessed at the following website:
http://www.cdfa.ca.gov/plant/peir/.

Evidence of an Emergency

By itself, ACP causes only minor cosmetic damage to citrus trees. However, when ACP becomes infected with HLB, it becomes a carrier for the disease and can transmit the HLB-associated bacteria from the fourth nymphal instar through the adult stage with a latency period as short as one day or as long as 25 days. HLB was first identified in China in 1919 and is considered to be the most devastating of all citrus diseases. Once infected, there is no cure for HLB-infected citrus trees, which decline and die within a few years. Additionally, the fruit produced by infected trees is not suitable for either the fresh market or juice processing due to the significant increase in acidity and bitter taste.

Both ACP and HLB are federal action quarantine pests subject to interstate and international quarantine restrictions by the United States Department of Agriculture (USDA). Both ACP and HLB now occur in Mexico and HLB has continued to spread to the north and now occurs south of the State of Sonora. In mid-January 2012, HLB was confirmed in the Rio Grande Valley in Texas. Additionally, in July 2009, ACP nymphs were intercepted in a plant shipment from India

sent to the Fresno area, and the nymphs tested positive for HLB. On March 30, 2012, the USDA confirmed the presence of HLB in the Hacienda Heights area of Los Angeles County and the only known infected tree was removed. However, the Department established a HLB Interior Quarantine of approximately 93 square miles surrounding the find site. Additionally, on July 9, 2015, the USDA confirmed the presence of HLB in the San Gabriel area of Los Angeles County. On December 29, 2016, the USDA confirmed the presence of additional HLB in Los Angeles and Orange counties. On July 25, 2017, HLB was present in Riverside County. ACP was first detected in California in 2008 in San Diego and has since spread north as far as Placer County. Note also that in northern California even counties with only a few ACP detections – for example Santa Clara County – may still have relatively high risk levels because of population census data that indicate the background risk of the presence of infected citrus in private yards is relatively high.

It is imperative that the Department prevent the artificial spread of ACP wherever possible to ensure the devastating damage caused by HLB is limited to the smallest area possible. An economic analysis study by the University of Florida IFAS Extension concluded that after its introduction in Florida, HLB had a total negative impact of $3.64 billion and eliminated 0.08 percent of the total Florida workforce.

California is the number one economic citrus state in the nation. The California Agricultural Statistics Review for 2015-16 puts the value of citrus (Grapefruit and Oranges) at $823,744,000.00 (California Agricultural Statistics Review, 2015-16; pg 60). A 2002 report by the Arizona State University School of Business indicates that there is at least $825.6 million of direct economic output from citrus and another $1.6 billion when all upstream suppliers and downstream retailers are included. This represents over 25,000 direct and indirect employees. To protect the source of this economic activity, California must do everything possible to exclude both HLB-associated pathogens and ACP from the state.

From 2015 and running through 2017, the Department and the California Citrus Pest and Disease Prevention Committee (CCPDPC) began a series of meetings and discussions regarding revision of regulations governing movement of ACP host materials. Among issues

discussed were the differential risks between host nursery stock and bulk citrus for the artificial movement of ACP. Host nursery stock has a much higher likelihood of starting a new infestation if it is transported out of a quarantine area while infested with ACP because all life stages that may be present on the plant can continue to feed and survive on the living plant. Whereas the likelihood of ACP infested host nursery stock being transported out of a quarantine area is lower than that of ACP infested bulk citrus being transported out of a quarantine area, the likelihood of establishing a new infestation is greater due to the fact that ACP can complete its life cycle on living nursery stock. ACP eggs and nymphs transported on bulk citrus cannot complete their lifecycle on the dead leaves and stems incidentally moved with bulk citrus fruit and must first find a suitable host plant upon which to complete their life cycle and establish a new infestation. Bulk citrus is generally transported to a cleaning and processing facility where it is subjected to processes that mitigate ACP infestation for all life stages. The number of shipments of bulk citrus within and between ACP quarantine areas is far greater than the number of shipments of host nursery stock. Due to these differential risks posed by different commodities, the CCPDPC made a motion for ACP-host nursery stock and bulk citrus to be regulated independently of one another within separate regional quarantine zones. Based on the meetings and discussions from 2015 through 2017, the Department decided to revise the regulations and initiate rulemaking. The Department submitted a Notice of Proposed Rule Making to the Office of Administrative Law on October 24, 2017.

On November 22, 2017, the University of California provided the Department a briefing paper that provided new scientific evidence and analysis indicating that a statewide emergency exists. The following information from the briefing paper supports the conclusion that there is an urgent statewide need to implement ACP regional quarantines:

Since 2012, a background risk level for HLB in residential citrus in each square mile of interest has been calculated 2-3 times per year using a risk model developed in Florida and adapted for use in California by Dr. Tim Gottwald. The model uses a range of risk variables including census data, topography, land use, and known incidence of both HLB and ACP to produce a risk value ranging from 0 (extremely low risk) to 1 (very high risk) that applies to each square mile. The area of LA includes Hacienda Heights and San Gabriel, the locations of the first HLB discoveries

in California. These areas have the highest risk category (red) assigned by the model. The risk level is generally higher in the south than north, because of the known presence of HLB and large ACP population in the southern counties. In other words, the risk model correctly anticipated the presence of HLB. Second, there are areas of elevated risk of HLB throughout the state.

After ACP infests an area with pre-existing infected trees present, the vector population eventually comes into contact with the infected trees and foci of disease begin to build around them. This is because ACP acquires the pathogen from the infected trees and establishes a recurring cycle of infection and acquisition. Because trees remain asymptomatic for a long period of time, spread in the absence of detection and tree removal can occur.

The November 22, 2017 UC brief indicates that over the last six months there has been a dramatic increase in the rate of new detections of HLB infections in both ACP and citrus trees. In addition, there has been a recent increase in the number of cities in which positive finds have been reported and a sharp increase in the number of ACP nymph detections. The pathogen is becoming more prevalent in the vector population and in the tree population. At the same time, the upswing in nymphal detections indicates that the transmission rate is increasing and the increase in the number of cities with positive detections indicates that the geographic extent of the epidemic is increasing rapidly.

This November 22, 2017 UC brief also indicates that until recently, the rate of accumulation of new positive ACP and tree detections had been relatively stable. Over the last six months there has been a dramatic increase in the rate of new detections of HLB infections in both ACP and citrus trees. In addition, there has been a recent increase in the number of cities in which positive finds have been reported and a sharp increase in the number of ACP nymph detections. This indicates an exponential increase in the intensity of the HLB epidemic at multiple scales. The pathogen is becoming more prevalent in the vector population and in the tree population. At the same time, the upswing in nymphal detections indicates that the transmission rate is increasing and the increase in the number of cities with positive detections indicates that the

geographic extent of the epidemic is increasing rapidly. Most of these changes have become apparent only in the last six months. Given the very sharp increase in the intensity of the epidemic, a rapid response is needed to implement additional measures to slow the rate of spread of HLB beyond its current range before the opportunity is lost.

The level of HLB is measured via DNA analysis with CT values. The lower the CT value in an ACP or citrus sample, the higher the level of HLB. The Ct values obtained from ACP samples inside the quarantine areas are showing a much faster increase in the proportion of low values (CT <32 to 33), indicating an intensification of the pathogen population in the local vector population. The appearance of ACP with low Ct values outside the existing quarantine areas highlights the risk of ACP moving the disease around and the need for quarantine regulations that apply at a larger scale than the current radius around confirmed HLB-positive trees.

In instituting a quarantine policy, the aim is to limit the flow of vectors and disease throughout the state and thus safeguard the industry and homeowners as a whole. Given developments in the California HLB epidemic, it is of the utmost urgency to further compartmentalize the state using quarantine zones defined by HLB risk to commercial citrus (rather than 5 mile and county wide quarantines) to reduce the potential for spread of HLB to zones where neither ACP nor HLB in citrus trees have been detected. The proposal to divide the state into seven zones for bulk citrus movement and three zones for nursery stock will serve to restrict the dispersal of HLB and its ACP vectors. The exponential escalation of the number of infected ACP and citrus trees throughout the state and in Mexico requires an immediate regulatory response to restrict spread before the opportunity for effective measures is lost.

The Department concurs with the conclusions of the briefing paper. Therefore, it is necessary to pursue the amendment of CCR Section 3435 as an emergency by restricting movement of ACP host nursery stock between three regional quarantine zones and bulk citrus between seven regional quarantine zones.

Background

The California citrus industry has taken a great deal of responsibility in preparing for the introduction and establishment of HLB-associated bacteria and psyllid vectors. Funding has been allocated towards research on easy, early (i.e., pre-clinical) detection methods (i.e., one primer set to detect all strains rather than primer sets specific for each known strain; host systemic responses) and the identification of HLB-associated bacterial strains, and vector relationships. In addition, a public relations firm has been hired to determine the most effective and efficient methods to educate the general public and make them feel as though they are part of the solution. Industry leaders (research and marketing boards) are involved in procuring federal funds for national research programs in the areas of host plant resistance, etiological agents and variants of HLB, specific native and exotic natural enemies of the insect vectors, and pesticide efficacy and new chemistries.

California citrus industry leaders recognized that Florida lacked supplies of HLB-

citrus stock when the pathogen was detected in 2005. As a result, plans are underway to expand the screenhouse facility at the UC Lindcove Research and Extension Center that houses the industry's pathogen-free budwood source to allow for the protection of additional varieties. Other alternatives are being considered to protect valuable citrus propagation sources, germplasm, and breeding material such as isolated and/or protected locations and tissue culture. For long-term survey and management, the industry may pursue the formation of pest control districts.

Senate Bill 140 (SB 140), chaptered November 2, 2009, required the Department to establish a Citrus Nursery Stock Pest Cleanliness Program (CNSPCP) to protect citrus nursery source propagative trees from harmful diseases, pests, and other risks and threats. One of the diseases of primary concern was HLB. The bill also required that anyone propagating citrus by any means must comply with all of the eligibility requirements and testing protocols issued by the secretary. Furthermore, the bill authorized the department to adopt and enforce regulations to carry out the program and to issue orders establishing rates or prices to cover the department's costs for administration, testing, inspection and other services under the program. The bill declared that it was to take effect immediately as an urgency statute.

The Department adopted Sections 3701, et. seq., as an emergency action effective May 17, 2010, to establish a mandatory Citrus Nursery Stock Pest Cleanliness Program. The adoption of Section 3701 et. seq. established that participation in the Citrus Nursery Stock Pest Cleanliness Program is mandatory for any person (with the exception of the Citrus Clonal Protection Program) who by any method of propagation, produces any citrus nursery stock. The Citrus Nursery Stock Pest Cleanliness Program describes the diseases for which testing is required and the test methods to be used, a list of laboratories approved for performing the tests, frequency of such testing, requirements and time frames for growing registered mother trees and increase trees in protective structures, a performance standard for such structures, a fee schedule for participants, record-keeping requirements for the Department and participants, elements of a required application form and compliance agreement between nurseries and the Department, provisions for suspending or cancelling the registration status of citrus trees, and provisions for mandatory destruction of trees and/or propagative materials for which registration has been cancelled.

The implementation of biological control methods (the use of beneficial organisms to attack pest populations) will be an important component of an integrated pest management program to reduce populations of the ACP. As there are no known native psyllids that occur on California citrus, exotic natural enemies from the pest's area of origin may need to be imported into the United States or from Florida under strict quarantine protocols. There may be some generalist predators such as the coccinellid beetles that will come into citrus from other habitats but to what extent these would be effective is not known at this time. Natural enemies obtained from commercial sources or mass reared by government or industry personnel can be periodically released into field situations once the psyllid becomes established.

Populations of ACP in Florida are fed upon by many generalist arthropod predators such as spiders, lacewings, hover flies or syrphids, and minute pirate bugs, and are attacked by a number of parasites. The coccinellids exert the greatest amount of control. Two lady beetles, *Olla v-nigrum*, which is native to California and *Harmonia axyridis*, are the most important

predators of ACP nymphal stages in Florida. *Harmonia axyridis* was imported from Japan to control the pecan aphid and is established in parts of California. Two tiny parasitic wasps have been imported and released in Florida. *Tamarixia radiata* was imported from Taiwan and Vietnam, and *Diaphorencyrtus aligarhensis* was imported from Taiwan. *Tamarixia radiata* has already been imported into California and releases of this parasitoid have occurred.

Project Description

Under this proposed emergency action, the movement of ACP-host nursery stock and bulk citrus would be regulated independently of one another within and between separate regional quarantine zones. The regional quarantine zones would be established based on specific pest risk criteria. This amendment establishes criteria for the designation of regional quarantine zones, how a regional quarantine zone may be amended or expanded, if there are additional detections of ACP, specifies the process for adding counties or portions of counties to a regional quarantine zone, and establishes an appeal process and an online list serve option for obtaining information regarding ACP regulation. The list serve will function as a form of active communication to provide current and immediate updates to regional quarantine zones to those stakeholders impacted by the regulation. Any interested party may choose to subscribe to the list serve to receive such updates.

CCR Section 3435 Subsection (b)(1) establishes that a county or portion thereof shall be included in the appropriate host nursery stock regional quarantine zone and bulk citrus regional quarantine zone when:

1) Survey results indicate an ACP or HLB infestation is present or not. The presence or absence of an ACP or HLB infestation is determined by regularly scheduled detection surveys conducted throughout the state in commercial and residential citrus. This is necessary to ensure that areas where ACP and/or HLB occur, or do not occur, are subject to appropriate restrictions based on the risk of ACP or HLB spreading artificially. Areas where ACP and/or HLB have been detected pose a greater risk for spreading ACP and/or HLB out of the area via host commodities and other possible carriers or

2) The local California County Agricultural Commissioner has been notified and requests the quarantine. This is necessary to comply with the FAC Section 5251, which requires the Department to immediately report the discovery of a pest to the local California County Agricultural Commissioner and
3) Notification of the regional quarantine zone change, including a map of the host nursery stock regional quarantine zones and\or bulk citrus regional quarantine zones, a written description of the boundaries of the regional quarantine zones, the Department's evaluation of the pest risk factors associated with the county or portion thereof, and instructions on the process to appeal the designation of a county or portion thereof into a regional quarantine zone, is posted to the Department's website. This is necessary to ensure that entities affected by the change will be provided a visual and written description of the change in a county's regional quarantine zone status, the reasoning behind the change, and notification that there is a process to appeal the change.

CCR Section 3435 Subsection (b)(1) also establishes that any Individual or local entity may receive notification about changes to the regional quarantine zones, including through a list serve subscription. The list serve will function as a form of active communication to provide current and immediate updates on changes in regional quarantine zones. Any Individual or local entity may choose to subscribe to the list serve to receive such updates. This is done to ensure that the public and affected entities have several methods of receiving information.

CCR Section 3435 Subsection (b)(1) establishes that any Individual or local entity may appeal a regional quarantine zone designation, describes the process to do so, requires the Department to respond in writing within 10 working days following receipt of the appeal, and that the designation of a county or portion of a county into a host nursery stock and bulk citrus regional quarantine zone shall remain in effect during the appeal. There is a need to have continued opportunity for both local and public input. This section provides that opportunity. However, prior to this proposed regulation, the Secretary amended the current regulation as an emergency action. It is necessary to continue to recognize the emergency nature of the proposed regulation's subject matter. Therefore, it is necessary that any appeal of an area designation be

held to a high standard by requiring the appeal to contain clear and convincing evidence related to the pest risk factors set out in CCR Section 3435 Subsection (b)(2).

CCR Section 3435 Subsection (b)(2) establishes the pest risk factors considered by the Department when including a county or portion thereof in a regional quarantine zone. Establishing criteria for including a county in the appropriate regional quarantine zone is necessary and crucial in preventing the further spread of ACP or HLB to other areas of the state. Establishing criteria also ensures that the reasons for inclusion in or exclusion from a regional quarantine zone is apparent to stakeholders and the public. The factors are weighed according to circumstances of the specific county or area being considered for a zone. The pest risk factors for designating a county or portion of a county to a regional quarantine zone includes factors such as presence or absence of ACP and HLB, substantially similar levels of ACP detections, substantially similar levels of HLB detection, the proximity to the United States and Mexico border, geographical barriers to the natural movement of ACP, contiguous commercial citrus growing regions, and the existence of sufficient citrus commodity cleaning and packing capacity. The criteria were established in consultation with subject matter experts at the University of California, the State Primary Entomologist, and State Primary Plant Pathologist. The criteria were selected for the following reasons:

ACP and HLB detection levels are determined via regularly scheduled surveys conducted throughout the state in areas where citrus is grown in commercial or residential settings. Regions where multiple ACP are routinely detected throughout the area and during every survey period are considered generally infested. Regions where ACP have been detected, but are not routinely detected throughout the area or during every survey period, are considered partially infested. Areas where ACP has not been detected are considered uninfested.

Regions with substantially similar levels of ACP detections pose an equivalent level of risk for spreading ACP and should be included in the same regional quarantine zone. Areas with high detections of ACP that are proximate to HLB-infested areas of California pose a greater risk for the artificial spread of HLB–infected ACP because an HLB-infected ACP does not trigger a HLB

quarantine. Therefore, these areas of high ACP detections that are proximate to HLB-infested areas should be included in the same regional quarantine zone.

Regions near or containing HLB detections pose an equivalent level of risk for spreading HLB-infected ACP and should be included in the same region.

Proximity to the border of the United States and Mexico poses a higher level of risk for spreading potentially HLB-infected ACP due to the presence of HLB in border areas of Mexico and the uncertain distribution of HLB in Mexico due to a low levels of HLB survey activities.

Geographical barriers to the natural movement of ACP reduce the risk of ACP moving naturally between suitable habitats. ACP can fly long distances and may also be carried on the wind. Geographical barriers such as high mountains and large expanses of host-free areas prevent ACP from moving naturally between suitable habitat. The reduced risk of natural movement between regions separated by geographical barriers coupled with restrictions on the movement of regulated articles maximizes the likelihood of preventing HLB-infected ACP from moving between such regions naturally or artificially.

Contiguous citrus growing regions reduce the risk of ACP moving artificially between such regions because the movement of potentially ACP-infested bulk citrus shipments and conveyances used for citrus harvesting activities are self-contained within each contiguous citrus growing region.

The existence of sufficient citrus commodity cleaning and packing resources within contiguous citrus growing regions reduces the risk of artificial movement of ACP between non-contiguous regions due to the contiguous regions' ability to process the majority of bulk citrus in the same region where it is grown. This minimizes the risk of artificial spread via potentially infested bulk citrus or conveyances moving between non-contiguous citrus growing regions. The determination that sufficient citrus commodity cleaning and packing resources exist in a contiguous citrus growing region is made by the Department in consultation with citrus industry

experts knowledgeable in citrus variety, acreage increase or decrease trends, historical production volumes for different regions, and volume capability of cleaning and packing resources in different regions.

CCR Section 3435 Subsection (c)(4) establishes that citrus fruit in bulk containers or bins or any citrus fruit with leaves and stems attached, including associated green waste, is a host and possible carrier of ACP. Green waste associated with bulk citrus, such as stems and leaves removed from bulk citrus during the cleaning process, is a risk for the spread of ACP that may not move within or from a regional quarantine zone unless the pest risk has been adequately mitigated. Bulk citrus is listed in the current regulation as a host with restricted movement within and from any area under quarantine for ACP. The proposed regulation takes the necessary step of restricting the movement of green waste associated with bulk citrus in order to ensure that the pest risk is adequately mitigated after the fruit has been cleaned, graded, and packed, at which point the fruit is exempt. (Green waste, such as leaves and stems of bulk citrus, is removed at the initial stages of the citrus cleaning, grading, and packing process, and does not undergo adequate pest risk mitigation steps as does the fruit.)

CCR Section 3435 Subsection (c)(5)(A) establishes a quarantine regulation exemption for defoliated, dormant, bare-rooted host nursery stock. This exemption is written in the current regulation, but has been reordered in Section 3435 Subsection (c)(5)(A). There is no substantive change.

CCR Section 3435 Subsection (c)(5)(B) establishes a quarantine regulation exemption for defoliated, dormant nursery host stock in containers where all leaf litter and any weeds have been removed. This exemption is written in the current regulation, but has been reordered in Section 3435 Subsection (c)(5)(B). There is no substantive change.

CCR Section 3435 Subsection (c)(5)(C) establishes a quarantine regulation exemption for host fruit commercially cleaned, graded, and packed within a bulk citrus regional quarantine zone allowing it to move within or from the zone. This exemption is written in the current regulation, but has been reordered in Section 3435 Subsection (c)(5)(C). There is no substantive change.

CCR Section 3435 Subsection (c)(5)(D) establishes a quarantine regulation exemption for non-commercially cleaned host fruit for personal consumption and under 25 pounds in weight. Such fruit may move within and from a bulk citrus regional quarantine zone if free of all stems and leaves. This exemption is written in the current regulation, but has been reordered in Section 3435 Subsection (c)(5)(D). There is no substantive change.

Section 3435 Subsection (c)(5)(E) establishes a quarantine regulation exemption for green waste associated with bulk citrus fruit covered in Section 3435 Subsection (c)(4). This exemption allows green waste of bulk citrus fruit to move within a bulk citrus regional quarantine zone. Since bulk citrus fruit is prohibited from moving within or from a regional quarantine zone unless moved under the terms of a special permit (CCR 3435 Subsection (d)(2)(A), this exemption is necessary because the pest risk is equivalent within each regional quarantine zone, and green waste of bulk citrus will not pose a risk of spreading the pest within the zone. Movement of green waste from a regional quarantine zone may occur only under the terms of a special permit.

CCR Section 3435 Subsection (d)(1)(A) establishes restrictions that prevent any host nursery stock or other potentially infested article and commodity from moving out of Host Nursery Stock Regional Quarantine Zones 2 or 3 unless moved under the terms of a special permit. This is necessary in order to ensure that host nursery stock moving between host nursery stock regional quarantine zones with differing levels of pest risk are adequately mitigated. Additionally, all host nursery stock offered for sale or distribution must be treated in a Department approved manner and bear a zone-specific label stating it may not be moved outside of the nursery regional quarantine zone. The treatment is necessary to protect exposed host nursery stock from becoming infested with ACP while it is awaiting sale or distribution within a host nursery stock regional quarantine zone. The label will inform consumers of quarantine restrictions and that the plants may not be moved outside of the regional quarantine zone, helping to prevent the artificial spread of ACP on host nursery stock. Quarantine requirements to appropriately treat and label regulated nursery stock is a requirement in the current regulation.

CCR Section 3435 Subsection (d)(1)(B) establishes that articles or commodities originating in Host Nursery Regional Quarantine Zone 1 may be moved directly through and delivered to

another host nursery regional quarantine zone without delay and by a direct route in an enclosed vehicle or container or completely enclosed by a covering to prevent exposure to ACP while transiting the zone. This is necessary to allow low risk host nursery stock from the uninfested Host Nursery Regional Quarantine Zone 1 to move into the other nursery regional quarantine zones without the quarantine requirements of treating and tagging, as Zone 1 is currently not known to be infested with ACP and is therefore a low risk for spreading ACP.

CCR Section 3435 Subsection (d)(2)(A) establishes that bulk citrus and associated green waste covered in Section 3435 Subsection (c)(4) are prohibited from moving within or from a bulk citrus regional quarantine zone unless moved under the terms of a special permit. This is a requirement in the current regulation and is necessary to prevent the artificial spread of ACP on bulk citrus fruit. There is no substantive change.

CCR Section 3435 Subsection (d)(2)(B) establishes that articles or commodities originating in Bulk Citrus Regional Quarantine Zone 1 may be moved directly through and delivered to the other bulk citrus regional quarantine zones without delay and by a direct route in an enclosed vehicle or container or completely enclosed by a covering to prevent exposure to ACP while transiting the other quarantine zones. This is necessary to allow bulk citrus from the Bulk Citrus Regional Quarantine Zone 1 to move into the other bulk citrus regional quarantine zones without additional restrictions because Zone 1 is comprised of counties that are not infested with ACP and therefore represent a low risk for spreading ACP.

CCR Section 3435 Subsection (d)(3) establishes restrictions that prevent possible carriers of ACP from moving out of a regional quarantine zone unless treated or cleaned in an approved manner. This is necessary because any appliances or machinery involved in growing, harvesting, processing, or hauling ACP-host material are possible carriers of ACP, and must therefore be treated or cleaned before leaving a regional quarantine zone in order to prevent spreading ACP.

The Department also relied upon the following information:

Briefing Paper: “Recent changes in the ACP/HLB invasion in California and implications for regional quarantines.” Neil Mc Roberts, Carla Thomas, Brianna McGuire, Beth Grafton Cardwell, David Bartels, Tim Gottwald. November 22, 2017.

Map: “Regional Quarantine for Nursery Stock Movement Original.” 2017.

Map: “Regional Quarantine for Bulk Citrus Movement Original.” 2017.

Map: “Regional Quarantine for Nursery Stock Movement Initial.” 2017.

Map: “Regional Quarantine for Bulk Citrus Movement Initial.” 2017.

Map: Regional Quarantine for Bulk Citrus Inset of Zone 5 and 6.” 2017.

Economic Impacts of Citrus Greening (HLB) in Florida, 2006/07-2010/11, University of Florida IFAS Extension.

Federal Register, Vol. 76, No. 81, dated April 27, 2011, Docket No. APHIS-2010-0048, Citrus Canker, Citrus Greening and Asian Citrus Pysllid; Interstate Movement of Regulated Nursery Stock.

“New Pest Response Guidelines, Citrus Greening Disease,” dated June 2, 2008, United States Department of Agriculture, Animal and Plant Health Inspection Service.

Okasaki, Keith. ACP Rulemaking email dated 12/14/2017.

Authority and Reference Citations:

Authority: Sections 401, 403, 407, 5301, and 5322, Food and Agricultural Code

Reference: Sections 401, 401.5 403, 407, 5251, 5302, and 5322, Food and Agricultural Code and Section 3435 of the California Code of Regulations.

Informative Digest

Existing law, FAC Section 403, provides that the department shall prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds.

Existing law, FAC Section 407, provides that the Secretary may adopt such regulations as are reasonably necessary to carry out the provisions of this code which the Secretary is directed or authorized to administer or enforce.

Existing law FAC 5301 states that the director may establish, maintain, and enforce such quarantine regulations as she deems necessary to protect the agricultural industry of this state from pests. The regulations may establish a quarantine at the boundaries of this state or elsewhere within the state.

Existing law, FAC Section 5321, 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.

Existing law, FAC Section 5322, provides that the Secretary may establish, maintain, and enforce quarantine, eradication, and such other regulations as are in her opinion necessary to circumscribe and exterminate or prevent the spread of any pest which is described in FAC section 5321.

Existing law, CCR Section 3435, defines the state's interior quarantine area for ACP, articles and commodities covered by the quarantine, restrictions, and exemptions.

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 amendment of CCR

3435 benefits the citrus industries (nursery, fruit for domestic use and exports, citrus packing facilities) and the environment (urban landscapes) by establishing a quarantine program to prevent the artificial spread of ACP over long distances.

This amendment provides the necessary regulatory authority to prevent the artificial spread of a serious insect pest, which is a mandated statutory goal.

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 amendment of CCR Section 3435 is preventing the artificial spread of ACP to uninfested areas of the State.

HLB is generally distributed in Florida due to ACP being generally distributed there. The University of Florida Institute of Food and Agricultural Services Extension calculated and compared the impact of having and not having HLB present in Florida and concluded HLB had a total impact of $3.64 billion and eliminated 0.08 percent of the total Florida workforce. The overall California economy benefits by the amendment of this regulation, which is intended to prevent ACP and HLB from becoming generally distributed in California and negatively impacting California’s economy as happened in Florida. It is critical to adopt this regulation at the current juncture because HLB has been introduced into California.

The California, national, and international consumers of California will benefit by having high quality fruit available at lower cost. 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 amendment of CCR Section 3435 benefits homeowners who grow citrus for consumption and grow host material such as ornamentals in various rural and urban landscapes because the regulation prevents damage to these hosts and the need for them to be treated to mitigate infestations of ACP.

The USDA must regulate the entire state if California does not establish a parallel interior

quarantine which is substantially the same as the federal domestic regulation. In the absence of a parallel interior quarantine, the USDA may quarantine all of California in order to immediately prevent the affected host material from shipping interstate. The proposed emergency amendment of CCR Section 3435 would keep more onerous federal requirements at the minimum level necessary.

The Department is the only agency which can implement plant quarantines. As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of this regulation and has determined that it is not inconsistent or incompatible with existing state regulations.

Section 3435. Asian Citrus Psyllid Interior Quarantine.

The Department is proposing to amend the current CCR Section 3435, which currently regulates all ACP-host material under a single set of quarantine restrictions and boundaries. Under the proposed CCR Section 3435, the movement of ACP-host nursery stock and bulk citrus would be regulated independently of one another within and between separate regional quarantine zones. The regional quarantine zones would be established based on specific pest risk criteria.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3435 does not impose a mandate on local agencies or school districts. No reimbursement is required under Section 17561 of the Government Code because each county agricultural commissioner in a county where ACP has been detected has requested the State to implement a state interior quarantine for ACP.

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 cost to any local agency or school district requiring reimbursement pursuant to Government Code 17500 et seq. and no costs or savings in federal funding to the State.