

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 (Department) amended subsection 3439 of the regulations in Title 3 of the California Code of Regulations pertaining to Huanglongbing (HLB) Disease Interior Quarantine as an emergency action that was effective on May 24, 2018. 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 November 20, 2018.

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 916.651.2900 or by email to Dean.Kelch@cdfa.ca.gov. The written comment period closes at 5:00 p.m. on November 19, 2018. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Dean Kelch
Department of Food and Agriculture
Plant Health and Pest Prevention Services
1220 N Street
Sacramento, CA 95814
Dean.Kelch@cdfa.ca.gov
916.403.6650
916.651.2900 (FAX)

Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department, 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

The specific purpose of Section 3439 is to provide authority to the State to regulate the movement of hosts and possible carriers of Huanglongbing (HLB), *Candidatus Liberibacter asiaticus*, from and/or within a regional quarantine zone. Under the proposed regulation change, Section 3439 would adopt criteria, notification, and an

appeals process for HLB quarantine designations.

Anticipated Benefits from This Regulatory Action

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 that the Secretary is directed or authorized to administer or enforce.

Existing law, FAC Section 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 5302, states that the director may make and enforce such regulations as she deems necessary to prevent any plant or thing which is, or is liable to be, infested or infected by, or which might act as a carrier of, any pest, from passing over any state quarantine line.

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 that is described in FAC Section 5321.

Existing law, FAC Section 5911, declares that HLB is a clear and present danger to California's citrus industry, as well as other commodities and plant life, and that prevention and management of HLB is in the public interest and for the purpose of protecting health, peace, safety, and general welfare of the people of this California.

Existing law, CCR Section 3439, defines the state's interior quarantine area for HLB, 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. This amendment provides the necessary regulatory authority to prevent the artificial spread of a serious insect pest which is a mandated statutory goal.

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

The adoption of this regulation 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 HLB over long distances, including to currently noninfested parts of the state.

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 and its vector, Asian Citrus Psyllid (ACP). This prevents the ACP from naturally spreading and increasing the chances of successfully containing the disease to the smallest area possible.

All quarantine activities are conducted by the Department. Most 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.

California consumers benefit as the fruit from host trees infected with HLB is inedible. Confining HLB infestations to the smallest area possible ensures citrus fruit and other host fruits are available for consumption at reasonable prices. The Department considered any other possible related regulations in this area, and we find that these are the only regulations dealing in this subject area, and that the Department is the only State agency that 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 consistent and compatible with existing state regulations. There is no existing comparable federal regulation or statute regulating the intrastate movement of HLB hosts.

AMENDED TEXT

The emergency rulemaking action of May 24, 2018 amended Title 3, CCR Section 3439, Huanglongbing Interior Quarantine, to repeal all existing Huanglongbing Disease Interior Quarantine Zones and established criteria for a quarantine area. The regulation established an appeal process for interested parties to challenge an area quarantine designation and a list serve subscription for purposes of receiving updates on changes in regional quarantine zones.

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 Department has determined there are approximately 27 citrus production nurseries, 43 citrus growers, 3

packers/processors, and 3 citrus transporters in the currently existing HLB quarantine areas. Amendment of Section 3439 would have little adverse economic impact on growers, as a group. The amendment of this regulation benefits the vast majority of the California citrus industry and the environment by having a quarantine program to prevent the spread of HLB, thus confining HLB's devastating impacts to the smallest area possible. Almost all of the State's commercial citrus fruit and nursery stock production is located outside the area known to be infected with HLB.

The Department 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. Growers will be minimally impacted if they send their fruit to a packing house or processor within their quarantine region. All loads of bulk citrus must be either field cleaned, pre-harvest or post-harvest treated with an approved product effective against psyllids. There are two quarantine requirement options for these growers: Option (1) or two options from either (2), (3), and (4). 1) Prior to moving out of the HLB quarantine area, the citrus fruit must be run through a wet wash to remove all stems, leaves, and plant debris from the fruit. 2) Field clean the fruit to remove leaves and stems during the harvest process, 3) Spray and harvest the grove with an approved product within 14 days of harvest. 4) Post-harvest treatment option with an approved product. Information for Citrus Growers/Grove Managers in an Asian Citrus Psyllid (ACP) Bulk Citrus Regional Quarantine Zone or Huanglongbing (HLB) Quarantine Area July 24, 2018

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Based on the information above 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 amendment of this regulation would have pertaining to California worker safety. The Department believes the amendment 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 more than 99 percent of the citrus industries (nursery and fruit) that are located outside the quarantine area. The amendment of this regulation helps protect this economic engine and food source which benefits the general health and welfare of California residents. This amendment protects

thousands of backyard gardeners throughout California who produce large quantities of fruit for their own use, and it supports the traditions, notably in Asian cultures, that many families have for growing and using citrus fruit. The amendment 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 [Government Code Sec. 11346.3(b)].

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

AUTHORITY

The Department proposes to amend CCR Section 3439 pursuant to the authority vested by Sections 407, 5301, 5302 and 5322 of the FAC.

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 407, 5301, 5302, 5321, 5322, 5911, FAC.

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: Dean Kelch, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room 210, Sacramento, California 95814, (916) 403-6650, FAX (916) 651-2900, E-mail: Dean.Kelch@cdfa.ca.gov. In his absence, you may contact Laura Petro at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Dean Kelch.

INTERNET ACCESS

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

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department 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.