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 amended subsection 3435(b) of the regulations in Title 3 of the California Code of Regulations pertaining to Asian Citrus Psyllid Interior Quarantine as two emergency actions which were effective on April 4, 2013 and April 16, 2013. 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, 2013.

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 Lindsay.rains@cdfa.ca.gov. The written comment period closes at 5:00 p.m. on September 2, 2013. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Lindsay Rains
Department of Food and Agriculture
Plant Health and Pest Prevention Services
1220 N Street
Sacramento, CA 95814
lindsay.rains@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 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 (FAC 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 (FAC Sections 401, 403, 407 and 5322).

Anticipated Benefits from This Regulatory Action

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 she is directed or authorized to administer or enforce.

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.

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 amendment of this regulation benefits the citrus industries (nursery, fruit growers, wholesalers, retailers, exporters) and the environment by having a quarantine program to prevent the artificial spread of ACP over long distances. Most all of the commercial citrus fruit and nursery stock production is located outside this proposed quarantine boundary area.

The California, national and international consumers of California citrus benefit by having high quality fruit available at lower cost. It is assumed that any increases in production costs will ultimately be passed on the consumer.

The amendment of this regulation benefits homeowners who grow citrus for consumption and host material which is planted as ornamentals in various rural and urban landscapes.

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 this regulation is preventing the artificial spread of ACP to uninfested areas of the State. Huanglongbing (HLB) is

generally distributed in Florida due to ACP being generally distributed there. The University of Florida IFAS 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 seven percent of the total Florida workforce. The overall California economy benefits by the amendment of this regulation which is intended to prevent ACP from becoming generally distributed in California and resulting in a similar affect on our economy as to what happened in Florida. This is now critical as HLB has been introduced into California.

There is no existing, comparable federal regulation or statute regulating the intrastate movement.

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 the only State 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.

AMENDED TEXT

These proposed emergency actions expanded the quarantine area for ACP by approximately 19,306 square miles in Riverside, Santa Barbara and San Bernardino counties. The effect of the amendment of this regulation is to provide authority for the State to perform quarantine activities against ACP within these additional areas. The total area which would be under regulation is now approximately 45,435 square miles.

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 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: Most businesses will not be affected. There are 33 retail nurseries in the affected areas. They will need to purchase pre-treated trees or apply approved treatments. Treatment costs will range from $860.49/gal and $1,139.40/140 fl.oz. If a private applicator is hired, an additional service fee of $100 is generally charged. There are 46 citrus growers in the proposed expanded

area. There is no additional cost to growers who take their fruit to a packinghouse inside the current quarantine area. Growers choosing a packinghouse outside the quarantine area will be required to hand clean produce or hire a cleaning machine, which generally costs between $5 and $10 per bin.

Small Business Determination
The Department has determined that the proposed regulations may affect small business.

Significant effect on housing costs: None.

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 the amendment of this regulation will have on worker safety or the health of California residents. The Department believes the amendment of this regulation benefits the welfare of California residents by protecting the economic health of entire citrus industry. In 2010 the estimated value was $2.1 billion for citrus fruit and $28.5 million for citrus nursery stock without all the upstream buyers and downstream retailers included (*Reference: John Gilstrap of California Citrus Nursery Board for citrus nursery stock* value and *USDA-National Agricultural Statistics Service 2010 data for citrus fruit)*. This is a needed source of revenue for the State's economic health and this amendment will help protect this source of revenue.

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 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 than the proposal described in this Notice.

AUTHORITY

The Department proposes to amend Section 3435(b) pursuant to the authority vested by Sections 407, 5301, 5302 and 5322 of the Food and Agricultural Code.

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 5301, 5302 and 5322 of the 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: Lindsay Rains, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room 210, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: Lindsay.rains@cdfa.ca.gov. In her absence, you may contact Stephen Brown 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/plant/Regulations.html).

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.

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