Department of Food and Agriculture

Proposed Changes in the Regulations

Title 3, California Code of Regulations

Sections 3701, 3701.1, 3701.2, 3701.3 3701.4, 3701.5, 3701.6, 3701.7 and 3701.8, Citrus Nursery Stock Pest Cleanliness Program

Initial Statement of Reasons/Policy Statement Overview

Description of the Public Problem, Administration Requirement, or Other Condition or Circumstance the Regulation is Intended to Address.

These regulations are intended to address the obligation of the Department of Food and Agriculture to establish a mandatory disease testing program to protect citrus nursery source propagative trees from harmful diseases, pests and other risks and threats (Food and Agricultural Code Sections 6940, 6941, 6942, 6943, 6944, 6945 and 6946).

Specific Purpose and Factual Basis

Upon conducting a review of the Department's existing statutory authority, it was determined additional statutory authority exists which needs to be added to the authority and reference citations of Sections 3701, et. seq. These specific California Food and Agricultural Code (FAC) Sections are 5801, 5802 and 5803.

FAC Section 5801 states, "If the director, after investigation and hearing, determines that any kind or variety of plant is generally infected with a virus or mycoplasma-like disease that is dangerous or detrimental to the production of fruit, nut, or vine crops in this state, he may adopt regulations which prohibit or restrict the propagation by cuttings and the budding, grafting, or otherwise joining of tissue of such kind or variety of plant with any kind or variety of fruit or nut tree or vine."

FAC Section 5802 states, "If a source of any prohibited or restricted kind or variety of plant has been demonstrated to be free of dangerous or detrimental viruses or mycoplasma-like organisms, the director shall, in the regulation, permit use of such source."

FAC Section 5803 states, “It is unlawful for any person to bud, graft, or otherwise propagate or grow any fruit or nut tree or vine in violation of any regulations which are adopted pursuant to this article or to sell as nursery stock any plant which is so produced.”

After the Senate Bill 140 was introduced, the Department scheduled three meetings with citrus nursery stock producers and commercial fruit producers to discuss elements to be included in the proposed disease testing program. The first meeting was held in San Marcos, San Diego County on April 23, 2009. The second meeting was held in Tulare on May 12, 2009. At these two meetings, Department staff discussed the current citrus nursery disease testing program and received input from the industry and scientists on diseases, testing methods and frequency of testing to be included in the new program. A summary meeting was held on the second day of an ACP workshop in Riverside on June 11 and 12, 2009.

The Department held two scoping meetings (June 15, 2010 in Tulare, California and June 29, 2010 in Riverside, California) with industry to discuss the content of the proposed regulations. One of the purposes of these meetings was to determine which citrus diseases should be included in the new mandatory citrus program. Through these meetings it was determined by the industry and scientists that infectious variegation, leaf rugose, crinkly leaf, leaf blotch, dweet mottle, leprosis, psorosis A and B and tatter leaf-ctitrange stunt are all viruses which have been present in California for many years and the new mandatory citrus program should have testing requirements to ensure freedom from these viruses. The Department then proposed inspection and testing procedures to ensure freedom from these viruses in the regulation. Additionally, the Department held three public hearings for these regulations on September 15 and September 17, 2010 and December 1, 2010.

Senate Bill 140 also required that anyone propagating citrus by any means must comply with all of the eligibility requirements and testing protocols issued by the Secretary.

Therefore the Department is also proposing to amend Section 3701.1, General Provisions (a) to reflect the intent of FAC Section 5803. An additional sentence is proposed for this

subsection which states, “It is unlawful for any person to bud, graft, or otherwise propagate or grow any citrus in violation of these regulations or to sell as nursery stock any bud, budwood or plant, which is so produced.”

Economic Analysis

Existing regulations establish the Citrus Nursery Stock Pest Cleanliness Program. These proposed amendments to the authority cited and reference sections and the proposed amendment of Section 3701.1, General Provisions (a), do not materially change the existing program. These proposed changes merely provide additional legal clarity regarding the mandatory nature of the program. There are no additional economic impacts from these proposed amendments.

However, California is the number one economic citrus state in the nation, with the USDA putting the value of California citrus at $1,131,851,000 (Federal Register Vol. 71 No.83; published May 1, 2006; pg 25487). A 2002 report by the Arizona State University School of Business indicates that there is at least $825.6 million of direct economic output and another $1.6 billion when all upstream suppliers and downstream retailers are included. This represents over 25,000 direct and indirect employees. These amendments will help ensure a healthy citrus industry and protect this source of economic activity benefiting the public health and welfare of California residents.

Anticipated Benefits from This Regulatory Action

The broad objective of this regulatory action is to ensure additional legal statutory clarity in the authority and reference citations by citing FAC Sections 5801, 5802 and 5803 as appropriate for each section of the existing regulation. The other objective is to specify in the regulation that under FAC Section 5803 it is unlawful to not comply with these regulations. Both of these objectives provide additional legal clarity regarding the mandatory nature of the program. These amendments will help ensure a healthy citrus industry and protect this source of economic activity benefiting the public health and welfare of California residents.

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

Assessment

Based upon the Economic Analysis and the Anticipated Benefits from This Regulatory Action, 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. These regulations have already been in place since 2010 and these amendments to the regulations do not materially change the existing program and therefore would not create or eliminate new businesses.

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

The Department of Food and Agriculture has determined that these proposed amendments do 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 these amendments.

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.

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:

These amendments merely provide additional legal clarity to the existing regulations and there are no known additional private sector cost impacts.

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. The Department did not consider any alternatives to the proposed amendments of the existing regulations because it believes the proposed amended regulations are the best way to achieve its statutory goals.

Information Relied Upon:

Notice of Proposed Rulemaking and the Initial Statement of Reasons for the adoption of Sections 3701, 3701.1, 3701.2, 3701.3, 3701.4, 3701.5, 3701.6, 3701.7 and 3701.8.