FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists, and that the foregoing adoption of a regulation is necessary for an immediate action to avoid serious harm to the public peace, health, safety or general welfare, within the meaning of Government Code Section 11342.545 and Public Resources Code Section 21080. The Secretary provided five working days advance notice to allow public comment, within the meaning of Government Code Section 11346.1(a)(3).

Description of Specific Facts Which Constitute the Emergency

Senate Bill 140 (SB 140), chaptered November 2, 2009, requires that the California Department of Food and Agriculture (Department) 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. The bill also requires that anyone propagating citrus by any means must comply with all of the eligibility requirements and testing protocols issued by the secretary. Further the bill authorizes 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 declares that it is to take effect immediately as an urgency statute.

Adding to the urgency of establishing the CNSPCP is the presence of the Asian citrus psyllid (ACP), *Diaphorina citri*, in California, the presence of both ACP and Huanglongbing (HLB) in Mexico, and the fact that in July of 2009 ACP larvae on an intercepted plant shipment tested positive for HLB.

The first find of ACP in California was in San Diego County on August 27, 2008. That and subsequent finds have led to the establishment of quarantines in Imperial, Los Angeles, Orange, Riverside and San Diego counties. Currently, 15,937 square miles of the State are under quarantine for this pest. By itself, ACP causes only minor cosmetic damage to citrus trees.

However, when it 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.

Huanglongbing, first identified in China in 1919, 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.

As late as 2007, HLB was known to exist only in Asia, Africa, Brazil (first identified in 2004, now affects 218 municipalities), the Indian subcontinent, the Saudi Arabian Peninsula and in the US, Florida, where it was first identified in 2005. Since then HLB has been found throughout the state of Florida and has also been identified in Louisiana (2008), South Carolina (2009), and the territory of Puerto Rico. Of most concern to the California citrus industry is the presence of both the ACP and HLB in Mexico. HLB was first identified in Mexico on June 26, 2009 on the Yucatan Peninsula. In December 2009, HLB was found in the states of Jalisco and Nayarit, just 1000 miles south of California.

The probability is high that a private citizen, tourist or immigrant will introduce the HLB-associated bacterium into California through the inadvertent movement of plant material including fruit from their homeland or areas visited to their backyard in a residential area. One possible explanation for the Florida situation is that numerous backyard citrus trees had been infected with HLB but in the absence of a vector, it went unnoticed. Once the ACP became established, it moved the HLB-associated bacteria from backyards into commercial groves. The movement of both HLB-associated bacteria and the ACP appear to have been accelerated through the movement of citrus plants through retail nurseries and garden centers. HLB has a latency

period of several years in infected trees, meaning the disease could be present and be spread for

years before it is first detected.

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 25490). 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. To protect this source of revenue, California must do everything possible to protect the citrus industry from both HLB-associated pathogens and ACP.

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. 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.

Commercial citrus fruit producers appealed successfully to the legislature to establish a California Citrus Pest and Disease Prevention Committee and to adopt an assessment on sales of citrus fruit. The Committee is to oversee the expenditure of this assessment to develop, subject to the approval of the secretary, a statewide citrus specific pest and disease work plan that includes informational programs to educate and train residential owners of citrus fruit, local communities, groups, and individuals on the prevention of pests, and diseases and their vectors, specific to citrus and programs for surveying, detecting, analyzing, and treating citrus pests and diseases.

Although California has had a voluntary citrus nursery stock disease testing program in place since 1962, citrus nursery stock producers were moving towards adopting a mandatory citrus-

disease testing program prior to the first finds of ACP in California because they recognized that a clean nursery stock program is the foundation of a robust fruit production industry. Realizing that Florida was at a loss of ample supplies of HLB-free citrus stock when the pathogen was detected in 2005, they laid plans for expanding 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. Additionally, citrus nursery stock producers held a series of meetings amongst themselves to develop a mandatory program. Following these meetings, they approached Senator Corbett, requesting that she author a bill to provide for a mandatory citrus-disease testing program. Senator Corbett introduced SB 140 on February 2, 2009. After the bill 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. Day one of the workshop consisted of presentations by the following:

1. FundeCitrus (a research institute funded by Brazilian farmers and the juice industry) staff describing the devastating impact of HLB in Brazil. HLB was present in one grove in 30 in 2004 but spread to one in five by 2008. FundeCitrus and the citrus industry lobbied successfully for a federal law which, since 2005, makes it an offense to leave a HLB-infected orange tree planted once laboratory tests have diagnosed the disease. Subsequent data showed less than one percent of trees were infected.

2. AVASA (the national certification program in Spain) staff describing the Spanish citrus certification program which, since 1996, has required 100 percent of citrus propagative source materials to be produced under screen.

3. A Florida citrus nurseryman describing the impact of ACP, HLB and citrus canker on the Florida citrus industry and resulting regulations. Two counties were known to be infected with HLB in 2005. By 2008, HLB had been identified in 32 counties. Florida hopes to manage HLB by a three pronged approach: starting with disease-free nursery trees (all citrus nursery stock and the propagative sources of the stock must be maintained in insect-resistant structures), scouting for and removing infected trees and controlling the ACP.

4. A description by USDA staff of the Citrus Health Response Plan, and

5. Presentations by construction industry and banking representatives regarding greenhouse/screenhouse design, construction costs and financing options. It was noted that nurseries must obtain building permits and financing prior to initiating construction of protective structures – a process that can take several months to a year.

The Department's summary of the proposed program was scheduled for the second day of the workshop. Originally, Department staff had developed a two-pronged approach. One approach would have allowed propagative source trees to be maintained in the field and resulted in common nursery stock. The second method would have required that all propagative source trees, except seed trees, be maintained inside insect-resistant screenhouses and resulted in certified nursery stock. However, based on the information presented by representatives from other areas already impacted by HLB, staff revised the proposal to require all mother trees be maintained in insect-resistant structures beginning January 1, 2012 and the same for all increase trees beginning January 1, 2013. These dates were chosen to both provide for the protection of citrus propagative sources as soon as feasible and to allow nurserymen adequate time for the process of constructing the required structures. Because nurseries must obtain building permits and financing prior to initiating construction, it may take up to a year before construction can commence. The proposals regarding insect-resistant structures met with no opposition at the meeting. The remainder of the discussion centered on performance standards for protective structures, disease tests that would be included in the new program and testing frequency.

During the summer of 2009 Department staff began drafting proposed regulations under the

assumption that SB 140 would take affect without substantial alteration. However, the bill was significantly amended prior to passage, necessitating discussions both internally with Departmental legal staff and externally with the author of the bill to determine the exact scope and authority of the bill.

Section 3701Definitions

The purpose of Section 3701 is to ensure that relevant terms are defined and can be clearly understood by those persons directly affected by them, as provided by Food and Agricultural Code (FAC) Section 6941(c)(4).

Section 3701.1 General Provisions

FAC Section 6940 states that the article only applies to *citrus nursery source propagative trees* while Section 6941(c)(1) states that the program shall require that any person who, by any method of propagation, produces any *citrus nursery stock* shall comply with all the program requirements as outlined in the article. The purpose of Section 3701.1 is to clarify that participation in and compliance with the program is mandatory for all producers (with the exception of the Citrus Clonal Protection Program) of citrus nursery stock propagative material. This material is generated from citrus nursery source propagative trees and is used in the production of citrus nursery stock.

FAC Section 6941(c)(5) requires participants to comply with the requirements of Section 3069 of Title 3 of the California Code of Regulations. Since the proposed mandatory program is replacing a voluntary program, this requirement is included in the Section 3701.1 to ensure that participants are aware that the requirement is being carried over to the mandatory program. The purpose of Section 3701.1(d) is to list the administrative duties for which the Department is responsible as provided in FAC Section 6941(a).

FAC Section 6945 states that the article shall be construed liberally to effectuate the Legislature's intent that an effective citrus nursery stock pest cleanliness program be established. A necessary

component of an effective nursery stock cleanliness program is a provision for dealing with material not meeting the requirements of the program. The purpose of Section 3701.1(b) is to ensure that producers of citrus nursery propagative material are aware that any propagative materials produced out of compliance with the program may be subject to destruction.

Section 3701.2 Program Responsibilities

FAC Section 6945 states that the article shall be construed liberally to effectuate the Legislature's intent that an effective citrus nursery stock pest cleanliness program be established. In order to have an effective program, the roles of participants and the Department must be clearly defined. The purpose of Section 3701.2 is to establish the responsibilities of the program participants and the Department. The participant will be responsible for maintaining fairly exhaustive records for material in the program. It is necessary for the participants to maintain these records to enable trace back or trace forward in case a disease of concern is detected in either the source of the nursery stock propagative trees, the nursery stock propagative trees themselves or in the propagative materials or nursery stock produced from them. Some of these recordkeeping requirements currently exist in Section 3407, Citrus Tristeza Virus Interior Quarantine. The Department is filing an amendment to repeal the duplicative portions of Section 3407 concurrently with the filing for adoption of these regulations.

Section 3701.3 Eligibility Requirements

FAC Section 6941(c)(1) requires that a person producing citrus nursery stock comply with all eligibility requirements but does not specify what those requirements are. The purpose of Section 3701.3 is to establish eligibility requirements for the sources of the trees which will be entered in the program, to allow for topworking using registered materials, to provide for the registration of trees infected with the HSVd citrus viroid IIa (CVd-IIA, non-cachexia variant) and to establish the length of time during which field-grown and non field-grown increase trees may be used as sources of propagative material without further testing.

Section 3701.4 Planting Location and Maintenance Requirements

FAC Section 6941(a) provides that the Department will develop a program that will protect citrus nursery source propagative trees from harmful diseases, pests, and other risks and threats and Section 6941(c)(3) states that the program shall specify phase-in periods for various requirements. Because of the twin threats of ACP and HLB, the Department has determined that citrus nursery source propagative trees will be best protected if grown in insect-resistant structures. The purpose of Section 3701.4 is to establish protective measures regarding planting and maintenance requirements for trees in the program, including that scion mother trees must be located in insect-resistant structures effective January 1, 2012 and that seed and increase trees must meet the same requirement effective January 1, 2013. During the scoping meetings held in 2009, the Department had proposed that nurseries could continue to maintain field-grown seed trees since it was believed that none of the citrus diseases of concern were seed transmitted. However, on April 6, 2010, the United States Department of Agriculture published notice in the Federal Register that they are amending the regulations governing the importation of propagative seed of several Rutaceae genera from countries where Huanglongbing was present because scientific evidence indicates that HLB may be seed transmitted. Due to this decision, the proposed regulations now stipulate that seed trees will also have to be grown in insect resistant structures. Since the industry will have shorter notice of this impending rule than for the other dates agreed upon at the scoping meetings, the effective date is one year later than for scion source trees.

Producing plants in insect-resistant structures is only one part of a pest-cleanliness program. The structure must also be maintained and utilized properly. Recognizing that nurseries operate in many different ways, the Department developed a performance standard for properly operating and maintaining an insect-resistant structure and will rely on the participant nurseries to develop their own methods for meeting this standard. The adoption of Section 3701.4 will establish that

participants maintaining insect-resistant structures will be required to sign a compliance agreement that includes a plan for how they will meet the maintenance and utilization performance standard outlined in the section.

Section 3701.5 Insect-Resistant Structures Performance Standard

FAC Section 6941(a) requires the Department to develop a program that will protect citrus nursery source propagative trees from harmful diseases, pests, and other risks and threats. Because of the twin threats of ACP and HLB, the Department has determined that citrus nursery source propagative trees will be best protected if grown in insect-resistant structures and has developed a performance standard for the construction such a structure which will allow the participant nurseries to construct a structure that meets both a protective standard and their operating needs. The purpose of the adoption of Section 3701.5 is to establish the performance standard that insect-resistant structures must meet.

Section 3701.6 Inspection and Testing Procedures

The purpose of sub-sections 3701.6(a) and (b) is to list the entities designated to perform disease and pathogen diagnostic testing and analysis and to provide for their designation as authorized by FAC Section 6943(a).

The purpose of the adoption of sub-sections 3701.6(c) and (d) is to establish the approved testing methods, frequency of testing and the diseases for which testing will be required as authorized in FAC Sections 6940(c) and 6941(c)(2).

The purpose of the adoption of 3701.6(g) is to establish the frequency and types of inspections to

which a participant will be subject as authorized by FAC Section 6941(c)(2).

Section 3701.7 Refusal, Suspension or Cancellation of Registration

FAC Section 6945 states that the article shall be construed liberally to effectuate the Legislature's intent that an effective citrus nursery stock pest cleanliness program be established. A necessary component of an effective nursery stock cleanliness program is a provision for dealing with material not meeting the requirements of the program. The purpose of the adoption of Section 3701.7 is to establish the criteria used as the basis for suspension or cancellation of registration. The criteria for suspension versus cancellation are very similar and the final decision would be based on the severity of the disease threat and/or infraction. Factors to consider in making the final decision could include, disease detected inside the structure (How many trees are infected, with what type of disease and how long since previously tested?), insect detection(s) inside the structure (How many insects and are the insects vectors of citrus diseases?), or a breach in the structure (How large and how long was it present before detection and repair?). There are enough variables that developing a strict set of rules for suspension vs. cancellation is virtually impossible. This section also sets time limits for the removal of trees no longer eligible to be in the program. Trees that are ineligible due to reasons other than testing positive for a disease of concern must be removed within one month of the participant receiving notification from the Department. However, trees testing positive for any of the diseases of concern must be removed within 48 hours of the participant being notified by the Department since they pose a threat of infection to all other trees in the same structure.

Section 3701.8 Application and Fees

FAC 6941(c)(1) requires that participants comply with all eligibility requirements issued by the secretary, one of which will be that each participant must complete and submit an annual application to participate in the program. The purpose of the adoption of 3701.8(a) is to ensure that participants are aware of the kinds of information they will be required to submit to the Department annually.

The purpose of the adoption of 3701.8(b) is to establish the fees for which participants are responsible and that the fees are to be used solely to reimburse the Department for the costs of administering the program as authorized by FAC 6944. The regulations also stipulate that participants will be subject to an additional fee equal to the amount charged by the laboratory selected to do the analyses. Since laboratory fees may vary from year to year or from facility to facility, this provision is necessary to allow the Department flexibility in choosing which of the approved laboratories will be selected without having to continually amend the regulations.

Sections 3000-3006 Registration and Certification of Citrus Trees

The effect of the repeal of Sections 3000-3006 will be to rescind this voluntary program as it is duplicative of and will be replaced by the adoption of Sections 3701 et. seq.

Section 3407, Citrus Tristeza Virus Interior Quarantine

The effect of the amendment of Section 3407 is to rescind those requirements that will be duplicative once Sections 3701 – 3701.8 take affect. Specifically, propagative material from source trees maintained inside insect-resistant structures will be exempt from the moving permits requirements in this section.

The effect of the adoption of these regulations is to provide authority for the State to establish and administer a Citrus Nursery Stock Pest Cleanliness Program in order to provide a source of protected, disease-tested citrus nursery stock to the citrus industry. Since it is necessary to not only rapidly establish a program to protect the health of citrus propagative sources, given the presence of ACP and the eminent threat of Huanglongbing, but also to provide sufficient notice to citrus nursery operators of the provisions of the program, it is necessary to adopt this regulation as an emergency action.

The Department has also relied upon the following documents for this proposed emergency action:

Federal Register, Vol. 75, no. 65, April 6, 2010, page 17289.

National Quarantine Citrus Greening and Asian Citrus Psyllid, dated December 7, 2009, United States Department of Agriculture.

Pest and Damage Record #1557491, dated July 13, 2009, California Department of Food and Agriculture.

Agenda for Asian Citrus Psyllid Workshop June 11-12, 2009, and its attachments.

Agenda for Citrus Nursery Stock Pest Cleanliness Program scoping meeting May 12, 2009 and its attachments.

Agenda for Citrus Nursery Stock Pest Cleanliness Program scoping meeting April 23, 2009 and its attachments.

Letter from Susan McCarthy to California Citrus Nurseries and Commercial Citrus Producers, dated April 1, 2009.

Citrus Health Response Plan State of Florida, 2006-2007.

Informative Digest

FAC Sections 6940-6946 provides that the Department is obligated to develop and establish a mandatory Citrus Nursery Stock Pest Cleanliness Program to protect citrus nursery source propagative trees from harmful diseases, pests, and other risks and threats and that the program shall be administered by the Secretary.

Section 3701 et. seq. Citrus Nursery Stock Pest Cleanliness Program

The adoption of Section 3701 et. seq. will establish 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 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 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.

FAC Sections 5821-5823 provide for a voluntary citrus nursery stock registration and certification program that has similar, in some cases identical, requirements for disease testing and tree registration.

Sections 3000 et. seq., Registration and Certification of Citrus Trees

Concurrent with the request for adoption of Section 3701 et. seq., the Department is proposing to repeal Sections 3000-3006, Registration and Certification of Citrus Trees.

FAC Sections 5301, 5302 and 5322 provide for a mandatory citrus tristeza virus interior quarantine. The quarantine specifies moving permit requirements that will no longer be necessary for certain types of propagative materials once the proposed regulations are in effect.

Section 3701, Citrus Tristeza Virus Interior Quarantine

Concurrent with the request for adoption of Section 3701 et. seq., the Department is proposing to amend Section 3407, Citrus Tristeza Virus Interior Quarantine to exempt certain propagative materials from the requirements for a moving permit.

There are no comparable federal regulations or statutes.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3701 et. seq. does not impose a mandate on local agencies or school districts.

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 reimbursable savings to local agencies or costs or savings to school districts under Section 17561 of the Government Code and no costs or savings in federal funding to the State.