Response to Comments on Proposed Regulations for the Citrus Nursery Stock Pest Cleanliness Program File No. 2010-0506-02E

After reviewing the comments submitted in reference to file no. 2010-0506-02E, the California Department of Food and Agriculture (CDFA) offers the following response.

The comments can be divided into four general categories:

1) Comments on sections that may have an immediate, deleterious affect on a nursery's ability to conduct business.

2) Comments on sections that may have a deleterious affect on a nursery's ability to conduct business in the future.

3) Comments on the Department's compliance with the Food and Agricultural Code.

4) General comments.

Category 1 - summary and CDFA response:

Comment:

There is insufficient greenhouse space to meet the proposed testing requirements for viroids (Section 3701.6(d)(1)(B)(i)). Since we can't get our trees tested in time to meet this requirement, we'll be unable to propagate from them.

Response:

Both viroid and psorosis testing is performed by the Citrus Clonal Protection Program (CCPP) through the use of index plants which require greenhouse space. The proposed program would result in a much larger demand for viroid testing, perhaps as many as 5000 trees in 2010. Since it is necessary to allow some time for the CCPP to add greenhouse space and/or develop an alternate test method, the Department is submitting an amended text as part of the emergency rulemaking. The proposed requirement was that trees would be tested for viroids prior to their first use as a propagative source or at three years from date of propagation. CDFA has amended that section to state only that viroid testing must occur within three years from date of propagation, and has delayed the psorosis testing for two years. This has the effect of phasing in the initial viroid testing

over three years and also making more index trees available for the viroid testing, and should allow nurseries sufficient time to meet this requirement.

Comment:

It is physically impossible for some nurseries to comply with the proposed regulations for insect-resistant structures.

Response:

The Department is aware that some nurseries may be unable to meet the screenhouse requirements, but has determined that this requirement is necessary in order to protect the citrus industry from the threat of HLB. During the June 2009 workshop, the Florida, Spain and Brazil representatives all heavily emphasized that it is imperative to be proactive against this disease. As early as 2006, the HLB/ACP Task Force – Science and Technology Committee (of which the above commenter is a member), was recommending that it be mandatory to enclose all citrus source material. In March 2009, the Task Force recommended, "Effective January 1, 2010, it should be mandatory that all citrus nursery stock . . . be propagated and maintained in secure screened enclosures.

Category 2 – summary and CDFA response:

Comment:

Meeting the seed tree screenhouse requirements of Section 3701.4(a)(2) is impossible and will result in a dire shortage of citrus seed. Also, this requirement is based on very little scientific evidence of seed transmission of Huanglongbing (HLB).

Response:

As stated in the Finding of Emergency, Section 3701.4(a)(2) was added extremely late in the process due to the issuance in April 2010 of a Federal Order on citrus seed. Since that time, the Department has learned of a soon-to-be-published paper wherein the primary investigator reports that he was unable to show HLB seed transmission despite conducting a much more rigorous study than was previously done. Since the screenhouse requirement for seed trees is not scheduled take effect until January 1, 2013, and the United States Department of Agriculture may revise the Federal Order upon review of the

research, there is ample time for the Department to address the situation through the regular, noticed rulemaking action subsequent to this emergency action.

Comment:

CDFA estimates in its submittal letter accompanying the proposed regulations that the process of obtaining building permits may require several months to a year. Actual experience for planning and constructing greenhouse and insect-proof enclosure structures demonstrate that these approvals can and do take substantially longer.

Response:

CDFA made this statement in response to discussions with the nursery industry. The earliest date for screenhouses is January 1, 2012 to allow time for phase-in of this requirement. The time needed to meet this requirement was the main reason that the Department decided to go forward with these regulations as an emergency action. If the commenter is correct, there is even greater urgency to provide advance notice to the industry than the Department was aware of. As stated above, representatives from other areas where HLB is present have very strongly emphasized to the Department the importance of taking protective action as soon as possible. Should it become obvious during the regular, noticed rulemaking that CDFA was misinformed about the amount of time required for constructing insect-resistant structures, the screenhouse deadlines can be addressed during that process.

Category 3 – summary and CDFA response

Comment:

The Department did not "consider input from interested parties as to the feasibility, cost, justification, and effectiveness of the program" as required by Food and Agricultural Code (FAC) 6941.

Response:

Aside from the seed tree screenhouse and HLB testing requirements, all of the major components of the proposed program were discussed with the industry at the scoping meetings and agreed upon at the June 2009 workshop. As required by FAC Section 6944,

the fees proposed by the Department are sufficient to reimburse the Secretary for carrying out his duties pursuant to this article.

Category 4 – summary and CDFA response

Comment:

Regulations would require that all registered and increase trees include the individual seed source registration number (Section 3701.2(A)). Seed trees are not individually harvested, processed or tracked.

Response:

The Department amended Section 3701.2(A) to state that, ". . . the records shall include the source(s) of the vegetative propagative materials used . . ." This amendment will eliminate the requirement for tracking seed.

There are a number of other comments of a more general nature that will be addressed during the regular, noticed rulemaking period. Furthermore, the Department will hold two scoping meetings to discuss these and other concerns and may amend the regulations prior to noticing them for the 45-day comment period.