

## FINDING OF EMERGENCY

The Secretary of the California Department of Food and Agriculture (Department) determined that an emergency exists; the infestation of the Asian citrus psyllid (ACP), *Diaphorina citri*, the vector of Huanglongbing disease (HLB) of citrus, is spreading through the movement of bulk citrus shipments within the existing quarantine areas. The Department is proposing an emergency amendment that prohibits the movement of bulk citrus within the quarantine areas, except for shipments moved under the terms of a special permit as authorized under Title 3, Section 3154 of the California Code of Regulations.

### Emergency Defined

“Emergency’ means a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare,” Government Code Section 11342.545. If a state agency makes a finding that the adoption of a regulation is necessary to address an emergency, the regulation may be adopted as an emergency regulation. Government Code Section 11346.1(b)(1).

In this document the Department is providing the necessary specific facts demonstrating the existence of an emergency and the need for immediate action to prevent serious harm to the general welfare of the citizens of California, pursuant to Government Code Section 11346.1(b)(2).

Government Code Section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency.

Government Code Section 11346.1(a)(3) provides that if the emergency situation clearly poses such an immediate, serious harm that delaying action to allow public comment would be inconsistent with the public interest, an agency is not required to provide notice pursuant to Government Code Section 11346.1(a)(2). The Secretary believes that this emergency clearly

poses such an immediate, serious harm that delaying action to give the notice pursuant to Government Code Section 11346.1(a)(2) would be inconsistent with the public interest, within the meaning of Government Code Section 11349.6(b).

The purpose of this amendment to the regulation is to prevent the artificial spread of ACP within the quarantine areas. In California, we have only confirmed HLB in the Hacienda Heights and San Gabriel areas of Los Angeles County. The confirmed infested trees were removed. However, the HLB disease has a latency period of up to two years prior to being able to detect it through existing laboratory testing procedures. Although the Department has and continues to conduct extensive surveys for HLB without any detections in further areas, the disease may still be present in California

However, ACP has the capability of being able to transmit the disease prior to it being able to be detected by existing laboratory techniques. Therefore, controlling ACP within as well as from the quarantine area is critical in controlling HLB, even in the apparent absence of the disease's presence. The movement of one ACP through the movement of infested bulk fruit may result in a new HLB infestation. With the upcoming citrus harvest season approaching, the movement of bulk citrus is imminent. Each day that this regulation amendment is not in place increases the odds that artificial spread of ACP will occur unabated within the quarantine area and if HLB is in the area below detectable levels, the ACP/HLB complex would be able to begin its devastating destruction in that area.

Providing five days advance notice of an emergency rulemaking to interested parties delays being able to get this regulation amendment in place by an additional eight to ten days. This delay increases the chances of the Department's inability to prevent long distance artificial spread of ACP, including to other areas of the Central Valley's major citrus production area.

#### California Environmental Quality Act

A Statewide Plant Pest Prevention and Management Program Environmental Impact Report (PEIR) was prepared by the Department as the lead agency under the California Environmental Quality Act. The PEIR addresses the potential impacts and mitigations when implementing the

Statewide Plant Pest Prevention and Management Program activities related to ACP. It states in that “an interior quarantine may be established in some areas. Quarantine regulations restrict the movement of hosts and possible carriers of pests from and within quarantine areas so as to prevent the spread of the infestation. Hosts and possible carriers of ACP include (1) nursery stock, plants, and part parts of a number of different types of fruit (e.g. orange, grapefruit, lemon).”

The PEIR may be accessed at the following website:

<http://www.cdffa.ca.gov/plant/peir/>.

### Background

By itself, ACP causes feeding damage to citrus trees. However, when it becomes infected with Huanglongbing (HLB or citrus greening), 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. HLB was first identified in China in 1919 and 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.

Both ACP and HLB are federal action quarantine pests subject to interstate and international quarantine restrictions by the United States Department of Agriculture (USDA). Both ACP and HLB now occur in Mexico and HLB has continued to spread to the north and now occurs south of the State of Sonora. In mid-January of 2012, HLB was confirmed in the Rio Grande Valley of Texas. Additionally, in July of 2009 ACP nymphs were intercepted in a plant shipment from India sent to the Fresno area which tested positive for HLB. On March 30, 2012, the USDA confirmed the presence of HLB in the Hacienda Heights area of Los Angeles County and the only known infected tree was removed. However, the Department established a HLB Interior Quarantine of approximately 93 square miles surrounding the find site. Additionally, on July 9, 2015, the USDA confirmed the presence of HLB in the San Gabriel area of Los Angeles County. The Department expanded the HLB Interior Quarantine by approximately 87 square miles surrounding the find

site to a total quarantine area of 180 square miles, a quarantine that it still maintains.

It is imperative that the Department prevent the artificial spread of ACP wherever possible to ensure the devastating damage caused by HLB is limited to the smallest area possible. An economic analysis study by the University of Florida IFAS Extension concluded that after its introduction there, HLB had a total negative impact of \$3.64 billion and eliminated seven percent of the total Florida workforce.

California is the number one economic citrus state in the nation. The California Agricultural Statistics Review for 2014-15 puts the value of citrus (Grapefruit, Oranges, and Navels) at \$1,922,166.00 (California Agricultural Statistics Review, 2014-15; pg 59). 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 economic activity, California must do everything possible to prevent the spread of HLB-associated pathogens and ACP within the state.

On November 17, 2016 a policy briefing paper prepared by Neil McRoberts of UC Davis, Carla Thomas of UC Davis, Beth Grafton-Cardwell of UC Riverside, and Matt Daugherty of UC Riverside was distributed reevaluating the effectiveness of best management practices to meet the performance standard of no ACP/HLB dispersal via bulk citrus movement from and within quarantined areas. Their conclusion was that the current official standards are failing to prevent the spread of ACP via road transport of citrus fruit within the quarantine area. In order to reduce the risk of further spread along transportation corridors, they recommend containment of bulk citrus shipments within quarantine areas.

Using evidence from California ACP finds along transport corridors such as Route 99 (e.g., PDRs SA0P06618088, VS0P06605509, VS0P06606397 from Kern County and PDRs SA0P06618104, SA0P06617744, SA0P06617727 from Tulare County), as well as evidence from Florida, the authors concluded that passive transport on bulk citrus fruit loads massively increases the rate of spread of ACP across the landscape under current conditions. The authors proposed a plan for stopping the spread of ACP via this pathway. In order to prevent the spread

of ACP and HLB, immediate emergency action must be implemented to ensure consistent compliance with new performance measures to prevent the escape of pests by those transporting bulk citrus within the quarantine area by containment of bulk citrus shipments.

Under this Emergency Action, all bulk citrus movement from or within quarantine areas must be done under a special permit issued by CFDA. By modifying the compliance agreements associated with this special permit, California can implement performance measures, such as tarping or enclosing all bulk citrus loads, that prevent the continued spread of ACP along citrus transport corridors within the quarantine areas. In addition, the harmonization of permitted practices for bulk citrus movement both from and within quarantine areas will improve the ability to enforce standards; current standards are problematic to enforce, as there are differing conditions specified for bulk citrus shipments within and from quarantine areas. Furthermore, with the new harvest season approaching, the movement of bulk citrus is imminent. Because of the failure of current practices to meet the performance standard of no ACP transport via bulk citrus shipment, this change in the regulation must be promulgated as an Emergency Action to protect the citrus industry and consumers of California.

On November 2, 2016, the Secretary of Agriculture signed a memorandum approving the motions of the California Citrus Pest and Disease Prevention Committee, including a recommendation of requiring mandatory tarping of all bulk citrus movement within quarantine areas. This illustrates industry support for recommendations of the briefing paper of how to stop the escape of ACP by regulating the movement of bulk citrus fruit within the quarantine area under the conditions of the special permit.

The USDA cannot regulate less than an entire state unless the state has a regulation amendment which is substantially the same as what the existing federal rule requires for interstate movement. The Department needs to have the immediate authority to regulate host fruit material from being shipped intrastate outside the proposed quarantine area. In addition, the spread of ACP within quarantine areas will speed the spread of ACP to new areas within the quarantine area and increase the chances of the spread of HLB. Therefore, the Department needs to have the immediate authority to regulate host fruit material being shipped intrastate

within the proposed quarantine area. If the Department fails to support a quarantine on an emergency basis, the USDA may consider quarantining all of California in order to immediately prevent the affected host material from shipping interstate. The proposed emergency amendment of this regulation would limit the artificial spread of ACP while keeping more onerous federal requirements at the minimum level necessary.

Therefore, it is necessary to amend this regulation by requiring that all bulk citrus fruit within the quarantine areas be moved under specially permitted conditions.

### Project Description

This proposed emergency action will prohibit the movement of bulk citrus fruit within the area of quarantine, except if the commodity is moved under the terms of a special permit. This will prevent the spread of ACP and HLB within the quarantine areas.

The Department also relied upon the following information:

A policy briefing paper titled Evidence supporting a change in regulation to suppress transport of Asian Citrus Psyllid and Candidatus Liberibacter asiaticus. by N. McRoberts, C. Thomas, B. Grafton-Cardwell, and M. Daugherty dated 11/17/16.

“Pest and Damage Record # SA0P06618088”, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record # VS0P06605509”, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record # VS0P06606397”, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record # SA0P06618104”, California Department of Food and

Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record # SA0P06617744”, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record # SA0P06617727”, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

Memorandum dated September 16, 2016 from Director Nick Condos regarding California Citrus Pest and Disease Prevention Committee Motions, to Secretary Karen Ross. Signed 9/27/16.

Memorandum dated October 7, 2016 from Director Nick Condos regarding California Citrus Pest and Disease Prevention Committee Recommendations, to Secretary Karen Ross. Signed 10/7/16.

Memorandum dated October 21, 2016 from Director Nick Condos regarding California Citrus Pest and Disease Prevention Committee Motions, to Secretary Karen Ross. Signed 11/2/16.

Draft Agenda dated September 14, 2016, California Citrus Pest and Disease Prevention Committee Meeting.

Draft Agenda dated October 20, 2016, California Citrus Pest and Disease Prevention Committee Meeting.

Minutes dated October 20, 2016, California Citrus Pest and Disease Prevention Committee Meeting.

Economic Impacts of Citrus Greening (HLB) in Florida, 2006/07-2010/11, University of Florida IFAS Extension.

Federal Register, Vol. 76, No. 81, dated April 27, 2011, Docket No. APHIS-2010-0048, Citrus Canker, Citrus Greening and Asian Citrus Pysllid; Interstate Movement of Regulated Nursery Stock.

“New Pest Response Guidelines, Citrus Greening Disease,” dated June 2, 2008, United States Department of Agriculture, Animal and Plant Health Inspection Service.

#### Authority and Reference Citations:

Authority: Sections 401.5, 407, 5321 and 5322, Food and Agricultural Code.

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#### Informative Digest

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 (Food and Agricultural Code, 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 the Secretary 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. The amendment of this regulation benefits the citrus industries (nursery, fruit for domestic use and exports, citrus packing facilities) and the environment (urban landscapes) by supporting a quarantine program to prevent the artificial spread of ACP/HLB.

This amendment provides the necessary regulatory authority to prevent the artificial spread of a serious insect pest which is a mandated statutory goal.

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 and HLB within the State. HLB is generally distributed in Florida due to ACP being generally distributed there. The University of Florida Institute of Food and Agricultural Services 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.

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 by preventing damage to these hosts and the need for them to be treated to mitigate infestations of ACP.

The Department is the only 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.

#### Section 3435. Asian Citrus Psyllid Interior Quarantine.

This proposed emergency action will prohibit the movement of bulk host fruit within the area of quarantine, except if the commodity is moved under the terms of a special permit.

#### Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3435 does not impose a mandate on local agencies or school districts, except that an agricultural commissioner of a county under quarantine has a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code, because the change will make easier any enforcement carried out by agricultural commissioners.

#### 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 cost to any local agency or school district requiring reimbursement pursuant to Government Code 17500 et seq. and no costs or savings in federal funding to the State.

