CALIFORNIA DEPARTMENT OF FOOD & AGRICULTURE
A. G. Kawamura, Secretary

March 29, 2011

To: All Interested Parties

Subject: Citrus Nursery Stock Pest Cleanliness Program

Pursuant to Government Code section 11346.1(a)(2), the California Department of Food and Agriculture is providing notice of an emergency action regarding regulations in Title 3, California Code of Regulations, Sections 3701 – 3701.8, Citrus Nursery Stock Pest Cleanliness Program, and Section 3407, Citrus Tristeza Virus Interior Quarantine. The Department plans to file a request for an emergency readoption of the regulations with the Office of Administrative Law (OAL) on April 7, 2011. The Department is required to provide this notice to you at least five working days prior to submitting the regulations to OAL.

This emergency readoption is necessary because the OAL has advised the Department that the changes made to the regulations after the 15-day comment period which ended January 29, 2011, require a second, 15-day comment period.

If you wish to comment on the emergency regulations, you must submit your comment(s) directly to OAL within five **calendar** days of when OAL posts the proposed emergency regulations on their web site (http://www.oal.ca.gov/Emergency_Regs.htm). You may submit your comments to the OAL Reference Attorney by mail to 300 Capitol Mall, Suite 1250, Sacramento, California 95814, by fax to 916.323.6826, or by e-mail to staff@oal.ca.gov. In your comments, you must note the regulations on which you are commenting.

OAL will verify that the Department receives all comments submitted in writing during this period and the Department will have the opportunity to respond to OAL on the comments. OAL has a maximum of ten calendar days to complete its review. Should OAL approve the emergency regulations, they will be readopted the day they are approved.

After the emergency readoption is approved, you will receive a letter from the Department regarding the second, 15-day comment period and a copy of the regulations showing the changes since the first15-day comment period.

Sincerely,

Susan McCarthy
CPDPC Program Manager

FINDING OF EMERGENCY

Readoption

The Secretary of the Department of Food and Agriculture finds that an emergency still exists due to the presence of the Asian Citrus Psyllid (ACP), *Diaphorina citri*, in California, and the presence of both ACP and Huanglongbing (HLB) in Mexico, 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)(2). The public may submit comments to the Office of Administrative Law (OAL) regarding the proposed emergency regulation for five calendar days after OAL posts the notice of the pending emergency action on the OAL web site, within the meaning of Government Code section 11349.6(b).

Emergency Rulemaking Procedures

"'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).

The information contained within this finding of emergency also meets the requirements of Government Code Sections 11346.1(h) which provides that the Office of Administrative Law

may approve up to two readoptions, each for a period not to exceed 90 days if the adopting agency has made substantial progress towards completing the rulemaking process.

"Specific actions necessary to prevent or mitigate an emergency" are exempt from the California Environmental Quality Act (CEQA). Public Resources Code Section 21080(b)(4). "'Emergency' means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services." Public Resources Code Section 21060.3. Because of its ability to spread HLB, the ACP poses a clear and imminent danger to California's citrus industry.

Evidence of Emergency

Senate Bill 140 (SB 140), chaptered November 2, 2009, required the California Department of Food and Agriculture (Department) to 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 required 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 authorized 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 declared that it was to take effect immediately as an urgency statute.

The Department adopted Sections 3701, et. seq., as an emergency action effective May 17, 2010, to establish a mandatory Citrus Nursery Stock Pest Cleanliness Program; and concurrently amended Section 3407, Citrus Tristeza Virus Interior Quarantine, to revise the requirements for moving permits for certain kinds of citrus propagative parts and trees. The Department also repealed Sections 3000 et. seq., as part of the same emergency action since parts of these regulations would be duplicative.

Necessity for Readoption

The Department has made substantial progress and proceeded with diligence to complete the rulemaking process for these regulations. However, for Section 3701, et. seq., and Section 3407, it was not possible to complete the rulemaking process within 180 days of the effective date of the emergency for the following reasons. Following the emergency adoption, the regulations were noticed July 30, 2010, beginning the 45-day public comment period which ended September 13, 2010. After the close of the public comment period, the Department held two public hearings: September 15, 2010 in Tulare and September 17, 2010 in Coachella. Because of comments received regarding Sections 3701, et. seq., and Section 3407 during the 45-day comment period and the two public hearings, the Department determined that further consultation with the affected industry was necessary, and filed for an emergency readoption of the regulations on November 19. The readoption was approved by the Office of Administrative Law (OAL) on November 24, 2010. The Department met with industry on December 1, 2010. Following that meeting, Sections 3701, et. seq., and Section 3407 were noticed for a 15-day comment period, after which the Department made further revisions to the regulations and submitted the certification package to the OAL on February 22, 2011. Upon review, the OAL advised the Department that the changes made to the regulations subsequent to the 15-day comment period were substantive and required posting the regulations for a second 15-day comment period. Therefore, the Department is filing this request for emergency readoption of Sections 3701, 3701.1, 3701.2, 3701.3, 3701.4, 3701.5, 3701.6, 3701.7 and 3701.8 and Section 3407, following which the regulations will be made available to affected parties for the required comment period.

The specific facts and information relied upon which originally established this emergency requesting this emergency readoption to avoid severe economic losses to agriculture and losses in the State's revenue.

The Secretary amended these regulations pursuant to the authority in Food and Agricultural Code (FAC) Section 407, "the director may adopt such regulations as are reasonably necessary

to carry out the provisions of this code which he is directed or authorized to administer or enforce," , FAC Section 6946, "the secretary may adopt regulations and issue orders as authorized by this article, and FAC Section 5322, "the director may establish, maintain, and enforce quarantine, eradication, and such other regulations as are in his or her opinion necessary to circumscribe and exterminate or prevent the spread of any pest which is described in FAC Section 5321."

Additionally, 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" and Section 403 states, "the department shall prevent the spread of injurious insect pests."

Under Section 14.5 of the State of California Emergency Plan, dated July 1, 2009, the Department is responsible for coordinating integrated federal, state and local preparedness for response to, recovery from and mitigation of plant diseases and pests and overseeing the control and eradication of outbreaks of harmful or economically significant plant pests and diseases. The Department is also charged with leading the administration of programs to detect, control and eradicate pests affecting plants.

Adding to the urgency of establishing the CNSPCP is the presence of the ACP in California, the presence of both ACP and 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.

HLB, 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.

Project Description

The adoption of Section 3701 et. seq. established 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.

Concurrent with the adoption of Section 3701 et. seq., the Department amended Section 3407, Citrus Tristeza Virus Interior Quarantine as an emergency action to exempt certain propagative materials from the requirements for a moving permit.

The Department relied upon, and is incorporating by reference, the following documents for this proposed rulemaking action:

OAL File Nos. 2010-0506-02E and 2010-1119-02EE

Authority and Reference Citations

Authority: Sections 407, 5301, 5302, 5322 and 6946, Food and Agricultural Code.

Reference: Sections 407, 5301, 5302, 5322, 6940, 6941, 6942, 6943, 6944, and 6945, Food and Agricultural Code.

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 emergency regulation effective May 17, 2010 established 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 5301, 5302 and 5322 provide for a mandatory citrus tristeza virus interior quarantine. The quarantine requires moving permit requirements that will no longer be necessary for certain types of propagative materials once the proposed regulations are in effect.

Section 3407, Citrus Tristeza Virus Interior Quarantine

Concurrent with the previous emergency action, the Department amended 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. and Section 3407 do not impose a mandate on local agencies or school districts.

Cost Estimate

The Department has also determined that the regulations 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.