FINDING OF EMERGENCY

The Secretary of the California Department of Food and Agriculture (Department) determined that an emergency exists; suspect citrus tissue samples for Huanglongbing (HLB) disease (HLB associated bacteria *Candidatus* Liberibacter asiaticus) were collected in the Pico Rivera area of Los Angeles County. These suspect samples were confirmed to be HLB on November 9th, 2017 from the citrus tissue samples in the Pico Rivera area of Los Angeles County. The Department is proposing an emergency amendment of Code of California Regulations (CCR) Section 3439, the effect of which will be to expand the quarantine in the Pico Rivera area of Los Angeles County.

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 CCR Section 3439 is to prevent the artificial spread of HLB to uninfested areas. Preventing the artificial spread of HLB, especially long-distance artificial spread, is a key component of controlling the ACP/HLB complex. For example, the Florida Department of Agriculture and Consumer Services chose not to attempt to control the artificial spread of ACP. Consequently, when huanglongbing (HLB) was introduced in Florida, it swept through the state wherever ACP was present, which was essentially the entire state. In California, we have only confirmed HLB in the Hacienda Heights and San Gabriel areas of Los Angeles County and the Cerritos area of Los Angeles and Orange counties. The confirmed infested trees were removed. However, the HLB disease has a latency period of up to two years, during which existing laboratory testing procedures are unable to detect the disease. Although the Department has and continues to conduct extensive surveys for HLB without any further detections, the disease may still be present in California. If the disease is present and the vector (ACP) has been successfully eradicated in that area, the infested host will not be able to further spread the disease.

Each day that this quarantine amendment is not in place increases the odds that artificial spread of HLB will occur unabated and if HLB is in the new area at undetectable levels, then the ACP/HLB complex will 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 quarantine regulation 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 HLB, including to any other area in the state, such as our major citrus production areas.

The information contained within this finding of emergency also meets the requirements of Government Code Sections 11346.1 and 11346.5.

The Secretary is proposing to amend CCR Section 3439 pursuant to the authority in Food and Agricultural Code (FAC) Section 403 ("the department shall prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds"), 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), and 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 Section 5321").

Additionally, FAC Section 401.5 states: "The department shall also seek to enhance, protect, and perpetuate the ability of the private sector to produce food and fiber in a way that benefits the general welfare and economy of the state."

California Environmental Quality Act

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

The PEIR may be accessed at the following website:
http://www.cdfa.ca.gov/plant/peir/.

Evidence of an Emergency

By itself, ACP causes only minor cosmetic damage to citrus trees. However, when ACP 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 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 2012, HLB was confirmed in the Rio Grande Valley in Texas. Additionally, in July 2009, ACP nymphs were intercepted in a plant shipment from India sent to the Fresno area, and the nymphs 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. On December 29, 2016, the USDA confirmed the presence of additional HLB in the Cerritos area of Los Angeles and Orange counties.

The Department has expanded the HLB Interior Quarantine to its present total quarantine area of 601 square miles.

It is imperative that the Department prevent the artificial spread of HLB 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 in Florida, HLB had a total negative impact of $3.64 billion and eliminated 0.08 percent of the total Florida workforce.

California is the number one economic citrus state in the nation. The California Agricultural Statistics Review for 2015-16 puts the value of citrus (Grapefruit and Oranges) at $823,744,000.00 (California Agricultural Statistics Review, 2015-16; pg 60). A 2002 report by the Arizona State University School of Business indicates that there is at least $825.6 million of direct economic output from citrus 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 exclude both HLB-associated pathogens and ACP from the state.

On November 9, 2017 (PDR # CE2P06796164 and CEAP06702062), HLB was identified from the Pico Rivera area of Los Angeles County. This detection meets the state and federal regulatory protocols for expanding the quarantine in the Pico Rivera area of Los Angeles County. The Department uses a minimum of a five mile radius surrounding each find site as the quarantine buffer.

The Department uses Geographic Information Systems (GIS) mapping programs to plot locations of all the detections of HLB. As a result of the November 9th, 2017 detection and based upon the criteria contained in the USDA regulatory protocol, the Department determined that there are new infestations of HLB requiring the expansion of the Los Angeles quarantine area.

On November 14th, 2017, the Agricultural Commissioner of Los Angeles County requested that the quarantine be expanded in the Pico Rivera area.

The USDA cannot regulate less than an entire state unless the state has a quarantine regulation which is substantially the same as what the existing federal rule requires for interstate movement. The Department needs to have the immediate authority to prevent host material from being shipped intrastate outside the proposed quarantine area. This in turn will enable the USDA to amend its federal regulation or order. If the Department fails to implement 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 CCR Section 3439 would limit the artificial spread of HLB while keeping more onerous federal requirements at the minimum level necessary.

Therefore, it is necessary to amend CCR Section 3439 by establishing/expanding the quarantined Pico Rivera area of Los Angeles County as an emergency action.

Background

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. In addition, a public relations firm has been hired to determine the most effective and efficient methods to educate the general public and make them feel as though they are part of the solution. 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.

California citrus industry leaders recognized that Florida lacked supplies of HLB-free citrus stock when the pathogen was detected in 2005. As a result, plans are underway to expand 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. Other alternatives are being considered to protect valuable citrus propagation sources, germplasm, and breeding material such as isolated and/or protected locations and tissue culture. For long-term survey and management, the industry may pursue the formation of pest control districts.

Senate Bill 140 (SB 140), chaptered November 2, 2009, required the 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. One of the diseases of primary concern was HLB. 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. Furthermore, 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. 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 Citrus Nursery Stock Pest Cleanliness Program describes 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 trees 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.

The implementation of biological control methods (the use of beneficial organisms to attack pest populations) will be an important component of an integrated pest management program to reduce populations of the ACP. As there are no known native psyllids that occur on California citrus, exotic natural enemies from the pest's area of origin may need to be imported into the United States or from Florida under strict quarantine protocols. There may be some generalist predators such as the coccinellid beetles that will come into citrus from other habitats but to what extent these would be effective is not known at this time. Natural enemies obtained from commercial sources or mass reared by government or industry personnel can be periodically released into field situations once the psyllid becomes established.

Populations of ACP in Florida are fed upon by many generalist arthropod predators such as spiders, lacewings, hover flies or syrphids, and minute pirate bugs, and are attacked by a number of parasites. The coccinellids exert the greatest amount of control. Two lady beetles, *Olla v-nigrum*, which is native to California and *Harmonia axyridis*, are the most important

predators of ACP nymphal stages in Florida. *Harmonia axyridis* was imported from Japan to control the pecan aphid and is established in parts of California. Two tiny parasitic wasps have been imported and released in Florida. *Tamarixia radiata* was imported from Taiwan and Vietnam, and *Diaphorencyrtus aligarhensis* was imported from Taiwan. *Tamarixia radiata* has already been imported into California and releases of this parasitoid have occurred.

Project Description

This proposed emergency action will establish/expand the quarantine for HLB by approximately four (4) square miles in the Pico Rivera area of Los Angeles County. The proposed boundary lines were drawn jointly by the USDA, the CDFA, and the affected county agricultural commissioner. The criteria for determining quarantine boundaries around an epicenter was based upon the information obtained from the USDA and CDFA. Any quarantine actions undertaken by the Department will be in cooperation and coordination with the USDA and the affected county agricultural commissioners.

A critical component of the quarantine project strategy is to prevent the movement of "exposed" host nursery stock within and from the area. HLB infected ACP can introduce HLB into the host material through one feeding. With the exception of the symptomless carrier curry plants, all other host material will die. However, it may take up to two years before the infested plants show signs of HLB infection and the titer level of the HLB is high enough where it can be sampled and confirmed positive through existing laboratory testing methods. The movement of such unprotected stock in Florida is believed to have been another key factor in the rapid spread of HLB throughout the state. Therefore, the movement of any exposed host nursery stock is prohibited under the proposed quarantine restrictions.

The effect of the amendment of this regulation will be to implement the State's authority to perform quarantine activities against HLB in the Pico Rivera area of Los Angeles counties. Any quarantine actions undertaken by the Department will be in cooperation and coordination with the USDA and the affected county agricultural commissioners. It is immediately necessary to implement quarantine actions in order to prevent the artificial spread of HLB.

The Department also relied upon the following information:

"Pest and Damage Record # CE2P06796164," California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

"Pest and Damage Record # CEAP06702062," California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

Letter dated January 5, 2017 from Kurt Floren, Los Angeles County Agricultural Commissioner, to Secretary Karen Ross.

Email dated November 14, 2017 from Kurt Floren, Los Angeles County Agricultural Commissioner, to Keith Okasaki.

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 Psyllid; 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 407 and 5322, Food and Agricultural Code.
Reference: Sections 407 and 5322, Food and Agricultural Code (FAC).

Informative Digest

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.

Existing law, CCR Section 3439, defines the state's interior quarantine area for HLB, articles and commodities covered by the quarantine, restrictions, and exemptions.

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 CCR 3439 benefits the citrus industries (nursery, fruit for domestic use and exports, citrus packing facilities) and the environment (urban landscapes) by establishing a quarantine program to prevent the artificial spread of HLB over long distances.

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 CCR Section 3439 is preventing the artificial spread of HLB to uninfested areas of 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 0.08 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 negatively impacting California’s economy as happened in Florida. It is critical to adopt this regulation at the current juncture because HLB has been introduced into California.

The California, national, and international consumers of California will benefit by having high quality fruit available at lower cost. Confining the HLB infestation to the smallest area possible ensures citrus fruits and other host fruits are available for consumption and at reasonable prices.

The amendment of CCR Section 3439 benefits homeowners who grow citrus for consumption and grow host materials ornamentals in various rural and urban landscapes because the regulation prevents damage to these hosts and the need for them to be treated to mitigate infestations of HLB.

The USDA must regulate the entire state if California does not establish a parallel interior quarantine which is substantially the same as the federal domestic regulation. In the absence of a parallel interior quarantine, the USDA may quarantine all of California in order to immediately prevent the affected host material from shipping interstate. The proposed emergency amendment of CCR Section 3439 would keep more onerous federal requirements at the minimum level necessary.

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 3439. Huanglongbing Disease Interior Quarantine.

This proposed emergency action will expand an additional four (4) square miles in the Pico Rivera area of Los Angeles County. The effect of the amendment of this regulation is to provide authority for the State to perform quarantine activities against HLB within this additional area under quarantine. The total area which would be under regulation would be approximately 601 square miles.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3439 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 affected county agricultural commissioners requested that this regulation be adopted.

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 costs 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.