Department of Food and Agriculture
Proposed Changes in the Regulations
Title 3, California Code of Regulations
Section 3439
Huanglongbing (HLB) Disease Interior Quarantine
Initial Statement of Reasons/
Policy Statement Overview

Description of Public Problem, Administration Requirement, or Other Condition or Circumstance the Regulation is Intended to Address

This regulation is intended to address the obligation of the Department of Food and Agriculture (Department) to protect the agricultural industry from the movement and spread of injurious plant pests within California.

Specific Purpose and Factual Basis

The specific purpose of Section 3439 is to provide authority to the State to regulate the movement of hosts and possible carriers of Huanglongbing (HLB) disease (HLB-associated bacteria *Candidatus* Liberibacter asiaticus) from the regulated area.

The factual basis for the determination by the Department that the amendment of this regulation is necessary is as follows:

On May 24, 2018, an emergency action that established criteria for designating a quarantine zone became effective. This emergency regulation repealed all existing Title 3 CCR section 3439(b) quarantines. In addition, that regulation established an appeal process for interested parties to challenge inclusion of areas in a quarantine zone, a provision for expanding the zone based on “satellite infestations” within the zone, and a list serve subscription for purposes of receiving updates on changes in quarantine zones. The purpose of the proposed amendment is to extend the effective date of the emergency regulation beyond the statutory 180-day limit for emergency regulations

Background

Infestations of HLB have been detected in multiple counties in California. By itself, Asian citrus psyllid (*Diaphorina citri*) (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 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 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 Los Angeles and Orange counties. On July 25, 2017, samples from the Riverside area of Riverside County were confirmed to contain HLB.. On January 8, 2018, samples from the San Bernardino area of San Bernardino County were confirmed to contain HLB. ACP was first detected in California in 2008 in San Diego and has since spread north as far as Placer County. Note that, in northern California, even counties with only a few ACP detections – for example Santa Clara County – may still have relatively high-risk levels

because of population census data that indicate the background risk of infected citrus in private yards is relatively high.

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 Institute of Food and Agricultural Sciences (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 USDA's Citrus Fruits 2017 Summary puts the value of citrus at $2.26 billion (pg. 8). In 2016, California accounted for over 46 percent of US citrus production and 62 percent on the national value (California Agricultural Statistics Review, 2016-17; pg 54). To protect the source of this economic activity, California must do everything possible to exclude both HLB-associated pathogens and ACP from the state.

On November 22, 2017, University of California (UC) and the USDA provided the Department a briefing paper that provided new scientific evidence and analysis indicating that a statewide emergency exists. The following information from the briefing paper supports the conclusion that there is a clear, imminent, and statewide danger to California's natural environmental, agriculture, and economy due to HLB.

Since 2012, a background risk level for HLB in residential citrus in each square mile of interest has been calculated 2-3 times per year using a risk model developed in Florida and adopted for use in California by Dr. Tim Gottwald. The model uses a range of risk variables including census data, topography, land use, and known incidence of both HLB and ACP to produce a risk value ranging from 0 (extremely low risk) to 1 (very high risk), with intervals based on decimal values between 0 and 1, that applies to each square mile. The risk model is proven to correctly anticipate the presence of HLB, as demonstrated when it indicated high risk in Hacienda Heights and San Gabriel before HLB was

discovered there. The model predicted the emergence of HLB in Riverside County in 2013 – 2014, and an HLB outbreak occurred there in 2017. The model is now indicating a spreading area of high risk in Los Angeles County, but with new foci of high risk that are distant from the original focus in Los Angeles County.

The risk model accurately identifies areas for detection monitoring, as demonstrated by the risk model predicting the emergence of HLB in Riverside County,, assigning it the maximum risk level, and the HLB outbreak that occurred there in 2017. Though the risk model is helpful in showing high risk areas, it did not and could not have predicted the immense increase of HLB detections in the four months leading up to the release of the November 22, 2017 briefing paper.

The level of HLB among ACP is measured via Deoxyribonucleic acid (DNA) analysis with cycle threshold (Ct) values. The Ct values obtained from ACP samples inside the quarantine areas are showing an increase in the infection levels, indicating an intensification of the pathogen population in the local vector population. The appearance of ambiguous infection results outside the existing quarantine areas highlights the risk of ACP spreading the disease and the need for quarantine regulations that apply at a larger scale than the current radius around confirmed HLB-positive trees.

The rate of accumulation of new positive ACP and tree detections was thought to be relatively stable before the release of the November 22, 2017 briefing paper. But between June 2017 and the present time, the risk model demonstrates that there has been a dramatic increase in the rate of new detections of HLB infections in both ACP and citrus trees.

In addition, there has been a recent increase in the number of cities where positive finds have been reported and a sharp increase in the number of ACP nymph detections (indicating a burgeoning population).

These increases among various indicators demonstrate an exponential increase in the intensity of the HLB epidemic at multiple scales. The pathogen is becoming more prevalent in the vector population and in the host tree population. At the same time, the upswing in nymphal detections indicates that the transmission rate is increasing, and the increase in the number of cities with positive detections indicates that the geographic extent of the epidemic is rapidly increasing. The November 22, 2017 briefing paper concluded that, given the very sharp increase in the intensity of the epidemic, a rapid response is needed to implement additional measures to slow the rate of spread of HLB beyond its current range before the opportunity is lost.

The risk level is generally higher in the south than north because of the known presence of HLB and large ACP populations in the southern counties. There are areas of elevated risk of HLB scattered throughout the state.

Once ACP infests an area where HLB infected trees exist, the vector population eventually comes into contact with the infected trees and foci of disease begin to build around them. This is because ACP acquires the pathogen from the infected trees and establishes a recurring cycle of infection and acquisition. Because trees remain asymptomatic for a long period of time, the infection spreads in the absence of detection.

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 and early (i.e., pre-symptomatic) detection methods (i.e., development of a laboratory protocol to detect all known strains and host chemical responses), 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 have been implemented to expand the screenhouse facilities to produce certified pathogen-free nursery stock and budwood. 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. In addition, various approaches are being employed to produce HLB resistant and immune citrus varieties.

Following consultation with internal technical staff, the Department concurs with the conclusions of the November 22, 2017 briefing paper. Therefore, it is necessary to make permanent the amendment of CCR Section 3439 to ensure a more effective, efficient, and responsive approach is in place when needed and can be removed in a consistent and timely matter when unnecessary. The purpose of this amendment is to accomplish this in a transparent manner that can be more easily understood by those who may be affected by this regulation in the future. This amendment specifies the process for adding and removing quarantine areas, establishing the initial size of the area, establishing how the area may be expanded if there are additional detections of HLB within the quarantine area, establishes an appeal process, and a list serve option.

Scientific Purpose and Factual Basis

Under Food and Agricultural Code (FAC) Sections 403, 407, 5301, 5302, and 5322, the Department is authorized to adopt regulations necessary to prevent the spread of injurious insect pests and animal diseases. The purpose of California Code of Regulations (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 disease. For example, the Florida Department of Agriculture and Consumer Services chose not to attempt to control the artificial spread of the vector of HLB when it appeared in 2005. Consequently, when HLB was introduced in Florida, it swept through the state, which led to the infestation of the entire state. The HLB disease has a latency period of up to five 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, the disease is still present in California. If HLB-infested plants and the vector (ACP) are successfully prevented from moving from the area of infestation, then further spread of the disease will be prevented.

The Secretary is proposing to amend CCR Section 3439 pursuant to the authority in 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."

An emergency statewide quarantine for ACP became effective on January 1, 2018, CCR Section 3435. That quarantine provides authority for the State to perform statewide quarantine activities against ACP. To prevent the artificial transmission of ACP, CCR Section 3435 restricts the movement of ACP-host nursery stock between three regional quarantine zones and bulk citrus between seven regional quarantine zones. Amending CCR Section 3439 will allow administrative quarantines of HLB-infested areas that will aid the prevention of the ACP/HLB complex spreading.

Both ACP and HLB are federal action quarantine pests subject to interstate and international quarantine restrictions by the USDA.

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. 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 County. HLB detections, including the detection of HLB-infected ACPs, have increased significantly in some of these areas over the past ten months. HLB can remain at sub-detectable levels in trees for up to five years. Consequently, the level of risk for the artificial movement of HLB within the large contiguous quarantine areas in southern California and between non-contiguous quarantine areas in other parts of the state is higher now than it was in 2008, when ACP was originally detected, due to the uncertain distribution of HLB within the state.

The first known citrus tree infected with the devastating HLB disease was located in an area of the State which has large populations of ACP. ACP adults are the only mobile vector of this disease in California. It was essential to remove this source of HLB as soon as possible to prevent any ACP in the area from feeding on it and transmitting the disease elsewhere, which may have occurred during each day that the HLB-infected tree remained intact.

FAC Section 5762 establishes that any pest with respect to which an eradication area has been proclaimed, and any stages of the pest, its hosts and carriers, and any premises, plants, and things infested or infected or exposed to infestation or infection with such pest or its hosts or carriers, within such area, are public nuisances, which are subject to all laws and remedies which relate to the prevention and abatement of public nuisances. FAC Section 5763 establishes that the Department can take summary abatement actions against a “public nuisance” when it is part of an eradication regulation. FAC Section 3639 establishes that nursery stock regulated under the quarantine that does not meet the quarantine requirements is considered a public nuisance and subject to summary abatement. Otherwise, the Department would have to provide standard due process through notice, hearing and the opportunity to appeal the proposed action. It is essential to remove HLB-infected citrus trees in an appropriate biological time frame to prevent further spread. The Department can only do this by being able to exercise its

summary abatement authority, which is why this regulation was adopted as an emergency action.

However, given the high populations of ACP in the area and that symptoms of the disease may take up to five years to detect, it is necessary to amend this regulation. HLB-infected ACP may already have transmitted the disease to nearby hosts, which are being surveyed for the next two years. Additionally, HLB is a graft transmittable disease, which means it can be transmitted by the common practice of grafting material between citrus trees.

Because there are several diseases and nutritional deficiencies that produce symptoms similar to HLB in its early stages, samples are taken from any host material in the State that shows HLB-like symptoms. These samples are then submitted for laboratory analysis.

The entire State is an eradication area for ACP, the only known vector of HLB. California Code of Regulations, Title 3, Section 3591.21. Now that the disease has been introduced into California, this vector disease complex may occur anywhere in California where host material is grown. Therefore, the entire State is an HLB-eradication area. California Code of Regulations, Title 3, Section 3639.

In California, the estimated cost to replace a tree is from $10 to $20. Using a cost of $15 per tree would push the projected production costs up to $450 to $550 per acre. The estimated citrus acreage in 2008 in California is approximately 290,000 acres. The projected increased citrus production costs in California would be at least $130.5 to $159.5 million if these trees needed to be replaced due to HLB.

California is the number one economic citrus state in the nation. The California Agricultural Statistics Review for 2016-2017 puts the value of citrus (grapefruit and oranges) at $893,958,000.00 (California Agricultural Statistics Review, 2016-2017, pg 57). 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 the citrus industry 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 exclude both HLB-associated pathogens and ACP from the state.

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 continued authority to prevent host material from being shipped intrastate outside the proposed quarantine area. Once the Department amends a quarantine regulation that imposes substantially the same restrictions as a federal quarantine, the USDA is able to amend its federal regulation or order. If the Department fails to implement a quarantine, the USDA may consider quarantining all of California in order to immediately prevent the affected nursery from shipping interstate. The proposed amendment of CCR Section 3439 would limit the artificial spread of HLB while keeping more onerous federal requirements at the minimum level necessary.

Project Description

This proposed amendment specifies the process for adding quarantine areas, establishes the initial size of the area, establishes how the area may be expanded if there are additional detections of HLB within the quarantine area, establishes an appeal process, and describes a list serve option for obtaining information regarding HLB regulation. The list serve will function as a form of active communication providing current and immediate updates on regional quarantines to those stakeholders impacted by the regulation. Any interested party may subscribe to the list serve to receive such updates.

CCR Section 3439 Subsection (b)(1) establishes that a county or portion thereof shall be included in the regional quarantine when:

A) Survey results indicate an HLB infestation is present. An HLB infestation is present when one or more HLB-infected host plants are officially determined. This is determined

by regularly scheduled detection surveys conducted throughout the state in commercial and residential citrus. Areas where HLB has been detected in host plants meet the federal definition of an HLB infestation.

B) The Departments have defined the infested area. The initial area under quarantine has a five-mile radius minimum surrounding the site of the HLB infestation. This quarantine area will not split commercial host properties and will be expanded if needed to include such host material in its entirety. Whenever possible map features will be taken in to account to draw the quarantine area boundaries, when this is not possible latitude and longitude will be used. Using map features allows CDFA Staff, Businesses, and individuals to determine easily whether a particular enitity falls within a quarantine zone and minimizes splitting of properties. It also allows those enforcing the quarantine clear boundaries to travel. A five mile radius is consistent with current USDA citrus greening programs and is the industry stranded for a quarantine area. The program parallels the USDA citrus greening program as HLB is a federally listed plant pest; following the USDA guidelines allows the USDA to recognize a partial state quarantine, rather than quarantining the whole state. By restricting the quarantine to the minimum area justified by pest biology, the Department avoids economic impacts or inconvenience to any business or individual outside the quarantine zone.

C) The local California County Agricultural Commissioner has been notified and requests the quarantine. This complies with FAC Section 5251, which requires the Department to immediately report the discovery of a pest to the local California County Agricultural Commissioner.

CCR Section 3439 Subsection (b)(2) establishes that any individual or local entity may receive notification about changes to the quarantine, including through a list serve subscription. The list serve will function as a form of active communication providing current and immediate updates regarding changes in quarantine. Any Individual or local entity may choose to subscribe to the list serve to receive such updates. This is done to ensure that the public and affected entities have several methods of receiving information.

CCR Section 3439 Subsection (b)(3) Establishes that a satellite infestation is an HLB detection within any established HLB quarantine area. A satellite infestation may be used as an epicenter to establish an additional 5 miles radius that surrounds the satellite detection site and modifies the border of the quarantine area.

CCR Section 3439 Subsection (b)(4) Establishes that any interested party may appeal the quarantine area designation by the Department and the process to do so within ten days following publication. There is a need to provide an opportunity for both local and public input. This section provides that opportunity. However, prior to this proposed amendment, the Secretary would amend CCR Section 3439 as an emergency action. "'Emergency' means a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare," according to Government Code (GC) 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, per GC Section 11346.1(b)(1). It is necessary to continue to recognize the emergency nature in this proposed quarantine regulation. Therefore, it is necessary that any appeal of an area designation be held to a high standard; this is achieved through requiring appeals to contain clear and convincing evidence that the quarantine expansion does not meet the criteria specified in regulation to change the quarantine boundaries. Ten days following publication is sufficient time for the public to consider an appeal to the quarantine boundary change in question; it is a short enough interval that the Department may consider the appeal before eradication activities have progressed.

<u>California Environmental Quality Act</u>

A Statewide Plant Pest Prevention and Management 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 HLB/ACP.

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

Economic Impact Analysis

The referenced study by the University of Florida IFAS Extension calculated and compared the impact of having and not having HLB present in Florida. Their economic analysis concluded HLB had a total impact of $3.64 billion and eliminated 0.8 percent of the total Florida workforce. It is anticipated that HLB would also have a similar devastating impact in California.

The Department has determined that the proposed actions do not impose a mandate on local agencies or school districts and no reimbursement is required under Section 17561 of the Government Code. Each county agricultural commissioner in a county where ACP has been detected has requested that the State implement a state interior quarantine for ACP.

With the adoption of the amendment to CCR Section 3439, the Department cannot predict or estimate the cost to maintain the proposed regulation due to the increased workload in some areas of the state and the decreased workload in other areas. The Department expects no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the GC to local agencies or school districts, and no nondiscretionary costs or savings to local agencies or school districts.

Total Value of the Damage/Loss of Host Material in the Environment within the HLB-Infected Area

The Department does not have a way to assess the potential damage/loss of host material throughout the environment. Most host plants infected with HLB die.

Host Material on Residential Properties

Citrus and its relatives are the most commonly planted trees on residential properties in southern California, with 60 percent of the properties having at least one tree. It is also

popular for planting in common areas and as street trees throughout the rest of California where the climate will support it.

Approximate Total Value of Commercial Host Material in the State

The HLB epidemic jeopardizes an industry that comprises 46 percent of annual U.S. citrus production, and 62 percent of annual U.S. citrus value (California Agricultural Statistics Review 2016 – 2017, pg. 54.) The USDA's Citrus Fruits 2018 Summary (August 2018) puts the value of citrus at $2.4 billion (pg. 8). Per USDA-NASS for 2016-2017, total value of citrus fruit in California: $2,597,763,000

Oranges	$	1,121,566,000
Lemons	$	681,564,000
Tangerines	$	715,761,000
Grapefruit	$	78,872,000

The actual value is known to be higher than the above figures as they do not take into consideration all hosts, just citrus hosts. The Department is not aware of any way to obtain the data for all hosts.

The Department has determined there are 29 citrus nurseries, 43 citrus growers, 3 citrus packers/processors, and 3 citrus transporters operating under a compliance agreement within the current HLB quarantine area.

Since 2012, a total of 29,759 containerized citrus nursery stock plants have been destroyed at nurseries. An additional 408 in ground citrus nursery stock plants have been destroyed at the find sites. The nursery stock plants were destroyed due to the nurseries being unable to build insect resistant structures and being unable to comply with the regulations. Production nurseries not yet in an HLB quarantine area that do not have a USDA approved Exclusionary Facility would experience minimal economic losses based upon where their customers are located.

The Department has determined that the proposed regulations may affect small business. Growers will be minimally impacted if they send their fruit to a packing house or processor within their quarantine region. All loads of bulk citrus must be either field cleaned, pre-harvest or post-harvest treated with an approved product effective against psyllids. There are two quarantine requirement options for these growers: Option (1) or two options from either (2), (3), and (4). 1) Prior to moving out of the HLB quarantine area, the citrus fruit must be run through a wet wash to remove all stems, leaves, and plant debris from the fruit. 2) Field clean the fruit to remove leaves and stems during the harvest process, 3) Spray and harvest the grove with an approved product within 14 days of harvest. 4) Post-harvest treatment option with an approved product. (Information for Citrus Growers/Grove Managers in an Asian Citrus Psyllid (ACP) Bulk Citrus Regional Quarantine Zone or Huanglongbing (HLB) Quarantine Area July 24, 2018)

The estimated cost to apply an approved foliar pesticide is $0.01 per plant. Estimated applicator cost is $1.00 - $4.37 per plant depending upon whether the nursery conducts the application or hires a pesticide applicator. Based upon the following assumptions, the cost to the nursery is $1.01 - $4.62 per plant or $7,258.87 - $33,203.94 per acre per treatment. The cost estimate per acre is based upon citrus-only nursery stock within that acre.

The estimated cost to apply an approved drench pesticide is $0.23 per plant. Estimated applicator cost is $1.00 - $4.37 per plant depending upon whether the nursery conducts the application or hires a pesticide applicator. Based upon the following assumptions, the cost to the nursery is $1.23-$4.84 per plant or $8,840.01-$34,785.08 per acre per treatment. The cost estimate per acre is based upon citrus-only nursery stock within that acre.

Assumptions: On average, in a production nursery, plants to be treated will cover not more than 2/3 of the acreage in a nursery (accounting for walkways, rows, and space between plants).

The Department has determined that the proposed actions will not have a significant adverse economic impact on housing costs or California business, including the ability of California businesses to compete with businesses in other states. The Department's determination that the action will not have a significant statewide adverse economic impact on business was based on the following:

The amendment of CCR Section 3439 provides authority for the Department to conduct quarantine activities against HLB within California; there are no known private sector cost impacts.

Creation or Elimination of Jobs within the State

The regulation is designed to minimize the spread of ACP and HLB to ensure that the devastating damage caused by HLB is limited to the smallest area possible. Compliance activities are currently being performed by existing state staff throughout quarantine areas within the State. The Department has been conducting quarantine actions throughout the State for over 30 years without causing significant creation or elimination of jobs. Therefore, the Department has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs in the State of California.

Creation of New or Elimination of Existing Businesses Within the State

The regulation is designed to minimize the spread of ACP and HLB to ensure that the devastating damage caused by HLB is limited to the smallest area possible. Compliance activities are currently being performed by existing state staff throughout quarantine areas within the State. For several years, many citrus related businesses have been subject to similar quarantines without being eliminated. The Department has been conducting quarantine actions throughout the State for over 30 years without causing significant creation or elimination of businesses. Therefore, the Department has determined that this regulatory proposal will not have a significant impact on the creation of new businesses or the elimination of existing businesses in the State of California.

The Expansion of Businesses Currently Doing Business within the State.

The regulation is designed to minimize the spread of ACP and HLB to ensure that the devastating damage caused by HLB is limited to the smallest area possible. These activities are currently being performed by existing state staff throughout quarantine areas within the State. The Department has been conducting quarantine actions throughout the State for over 30 years without causing significant expansion of businesses. Therefore, the Department has determined that the regulatory proposal will have no significant impact on expansion of businesses in California.

There are no known specific benefits to worker safety or the health of California residents. The Department is not aware of any specific benefits the amendment of this regulation will have to the protection of public safety of California residents or worker safety. Based upon the economic analysis, the Department believes the amendment of this regulation benefits the general welfare of California residents (GC Section 11346.3(b)).

Anticipated Benefits from This Regulatory Action

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 she is directed or authorized to administer or enforce.

Existing law FAC 5301 states that the director may establish, maintain, and enforce such quarantine regulations as she deems necessary to protect the agricultural industry of this state from pests. The regulations may establish a quarantine at the boundaries of this state or elsewhere within the state.

Existing law, FAC Section 5302, states that the director may make and enforce such regulations as she deems necessary to prevent any plant or thing which is, or is liable to be, infested or infected by, or which might act as a carrier of, any pest, from passing over any state quarantine line.

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, FAC Section 5911, declares that HLB is a clear and present danger to California's citrus industry, as well as other commodities and plant life, and that prevention and management of HLB is in the public interest and for the purpose of protecting health, peace, safety, and general welfare of the people of this California.

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 this regulation benefits the citrus industries (nursery and fruit) and the environment 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." This amendment is preventing the artificial spread of HLB to uninfested areas of the State.

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.

All eradication activities are conducted by the Department. Most other host material infected with HLB will die as there is no cure. Homeowners and others will benefit by having this host material removed at no additional cost to them.

The amendment of this regulation benefits the vast majority of the California citrus industry and the environment by having a quarantine program to prevent the spread of HLB, thus confining HLB's devastating impacts to the smallest area possible. Almost all of the State's commercial citrus fruit and nursery stock production is located outside the area known to be infected with HLB.

The California consumers benefit because the fruit from host trees infected with HLB is inedible. Eradicating the existing HLB infestation and implementing a statewide program to detect any new HLB infestations, thereby confining HLB to the smallest area possible, ensures citrus fruits and other host fruits are available for consumption and at reasonable prices.

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

Assessment

Based upon the Economic Impact Analysis above, the Department has made an assessment that the amendment of the regulation would not 1) create or eliminate jobs within California, 2) create new business or eliminate existing businesses within California, or 3) affect the expansion of businesses currently doing business within California. Additionally, the Department has been conducting quarantine actions throughout the State for over 30 years without creating or eliminating businesses.

The Department is the only agency which can implement plant quarantines. As required by GC 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.

Estimated Cost of Savings to Public Agencies or Affected Private Individuals or Entities

The Department has determined that the amendment of CCR Section 3439(b) does not impose a mandate on local agencies or school districts and no reimbursement is required under Section 17561 of the GC. Each county agricultural commissioner in a county where HLB has been detected has requested the State to implement a state interior quarantine for HLB.

The Department also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the GC to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the amendment of Section 3439.

Alternatives Considered

The Department must determine that no reasonable alternative it considered or that has otherwise been identified would be more effective in carrying out the purpose for which the action is proposed. In addition, the Department must determine that no reasonable alternative would be as effective as or less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

One of the Department's statutory mandates is to prevent the spread of harmful pests. The emergency amendment of this regulation was necessary to prevent the further artificial spread of HLB as part of an existing ongoing HLB quarantine project. No other interested party has suggested an alternative to this existing regulation.

Information Relied Upon

Briefing Paper: “Recent changes in the ACP/HLB invasion in California and implications for regional quarantines.” Neil McRoberts, Carla Thomas, Brianna McGuire, Beth Grafton Cardwell, David Bartels, Tim Gottwald. November 22, 2017.

“California Agricultural Statistics Review, 2016-2017,” California Department of Food and Agriculture.

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.

Pest and Damage Record # AM0P06566479, Cerritos area of Los Angeles and Orange counties, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

Pest and Damage Record # CO2P06042444, Los Angeles, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

Pest and Damage Record # RS0P06614898, Riverside, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

Pest and Damage Record # RS0P50000415, San Bernardino County California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

United States Department of Agriculture and National Agricultural Statistics Service “ Citrus Fruits 2018 Summary, August 2018”