Department of Food and Agriculture
Proposed Changes in the Regulations
Title 3, California Code of Regulations
Sections 3701, 3701.1, 3701.2, 3701.3 3701.4, 3701.5, 3701.6, 3701.7 and 3701.8, Citrus Nursery Stock Pest Cleanliness Program, Sections 3000, 3001, 3002, 3003, 3004, 3005 and 3006, Registration and Certification of Citrus Trees, and Section 3407, Citrus Tristeza Virus Interior Quarantine
Initial Statement of Reasons/Policy Statement Overview

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

These regulations are intended to address the obligation of the Department of Food and Agriculture to establish a mandatory disease testing program to protect citrus nursery source propagative trees from harmful diseases, pests and other risks and threats (Food and Agricultural Code Sections 6940, 6941, 6942, 6943, 6944, 6945 and 6946).

Specific Purpose and Factual Basis

The specific purpose of Sections 3701, 3701.1, 3701.2, 3701.3 3701.4, 3701.5, 3701.6, 3701.7, 3701.8 is to establish a Citrus Nursery Stock Pest Cleanliness Program under which citrus nursery source propagative trees are tested for certain diseases and eventually maintained in insect-resistant structures to protect against insect disease vectors.

The specific purpose of Sections 3000, 3001, 3002, 3003 and 3004 is to establish a voluntary program under which citrus nursery stock would be produced, maintained and tested for important diseases and registered and/or certified as being true to type and tested for important diseases.

The specific purpose of Section 3407 is to establish a state interior quarantine against the citrus Tristeza virus and its hosts and to establish the conditions of propagation and movement for these hosts.

The factual basis for the determination by the Department that the adoption of Sections 3701, et. seq., the repeal of Sections 3000, et. seq., and the amendment of Section 3407 is necessary is as follows:

Senate Bill 140 (SB 140), chaptered November 2, 2009, required the California Department of Food and Agriculture (Department) to establish a mandatory 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. Adding to the urgency of establishing the CNSPCP is the presence of the Asian citrus psyllid (ACP), *Diaphorina citri*, in California, the presence of both ACP and Huanglongbing (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.

Huanglongbing, 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.

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. 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.

Commercial citrus fruit producers appealed successfully to the legislature to establish a California Citrus Pest and Disease Prevention Committee and to adopt an assessment on sales of citrus fruit. The Committee is to oversee the expenditure of this assessment to develop, subject to the approval of the secretary, a statewide citrus specific pest and disease work plan that includes informational programs to educate and train residential owners of citrus fruit, local communities, groups, and individuals on the prevention of pests, and diseases and their vectors, specific to citrus and programs for surveying, detecting, analyzing, and treating citrus pests and diseases.

Although California has had a voluntary citrus nursery stock disease testing program in place since 1962, citrus nursery stock producers were moving towards adopting a mandatory citrus-disease testing program prior to the first finds of ACP in California because they recognized that a clean nursery stock program is the foundation of a robust fruit production industry. Realizing that Florida was at a loss of ample supplies of HLB-free citrus stock when the pathogen was detected in 2005, they laid plans for expanding 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. Additionally, citrus nursery stock producers held a series of meetings amongst themselves to develop a mandatory program. Following these

meetings, they approached Senator Corbett, requesting that she author a bill to provide for a mandatory citrus-disease testing program. Senator Corbett introduced SB 140 on February 2, 2009. After the bill was introduced, the Department scheduled three meetings with citrus nursery stock producers and commercial fruit producers to discuss elements to be included in the proposed disease testing program. The first meeting was held in San Marcos, San Diego County on April 23, 2009. The second meeting was held in Tulare on May 12, 2009. At these two meetings, Department staff discussed the current citrus nursery disease testing program and received input from the industry and scientists on diseases, testing methods and frequency of testing to be included in the new program. A summary meeting was held on the second day of an ACP workshop in Riverside on June 11 and 12, 2009. Day one of the workshop consisted of presentations by the following:

1. FundeCitrus (a research institute funded by Brazilian farmers and the juice industry) staff describing the devastating impact of HLB in Brazil. HLB was present in one grove in 30 in 2004 but spread to one in five by 2008. FundeCitrus and the citrus industry lobbied successfully for a federal law which, since 2005, makes it an offense to leave a HLB-infected orange tree planted once laboratory tests have diagnosed the disease. Subsequent data showed less than one percent of trees were infected.

2. AVASA (the national certification program in Spain) staff describing the Spanish citrus certification program which, since 1996, has required 100 percent of citrus propagative source materials to be produced under screen.

3. A Florida citrus nurseryman describing the impact of ACP, HLB and citrus canker on the Florida citrus industry and resulting regulations. Two counties were known to be infected with HLB in 2005. By 2008, HLB had been identified in 32 counties. Florida hopes to manage HLB by a three pronged approach: starting with disease-free nursery trees (all citrus nursery stock and the propagative sources of the stock must be maintained in insect-resistant structures), scouting for and removing infected trees and controlling the ACP.

4. A description by USDA staff of the Citrus Health Response Plan, and

5. Presentations by construction industry and banking representatives regarding greenhouse/screenhouse design, construction costs and financing options. It was noted that

nurseries must obtain building permits and financing prior to initiating construction of protective structures – a process that can take several months to a year.

The Department's summary of the proposed program was scheduled for the second day of the workshop. Originally, Department staff had developed a two-pronged approach. One approach would have allowed propagative source trees to be maintained in the field and resulted in common nursery stock. The second method would have required that all propagative source trees, except seed trees, be maintained inside insect-resistant screenhouses and resulted in certified nursery stock. However, based on the information presented by representatives from other areas already impacted by HLB, staff revised the proposal to require all mother trees be maintained in insect-resistant structures beginning January 1, 2012 and the same for all increase trees beginning January 1, 2013. These dates were chosen to both provide for the protection of citrus propagative sources as soon as feasible and to allow nurserymen adequate time for the process of constructing the required structures. Because nurseries must obtain building permits and financing prior to initiating construction, it may take up to a year before construction can commence. The proposals regarding insect-resistant structures met with no opposition at the meeting. The remainder of the discussion centered on performance standards for protective structures, disease tests that would be included in the new program and testing frequency.

During the summer of 2009 Department staff began drafting proposed regulations under the assumption that SB 140 would take affect without substantial alteration. However, the bill was significantly amended prior to passage, necessitating discussions both internally with Departmental legal staff and externally with the author of the bill to determine the exact scope and authority of the bill. Following these discussions, the Department adopted Sections 3701 - 3701.8; repealed Sections 3000-3004, Registration and Certification of Citrus Trees (the voluntary disease-testing and registration program for citrus); and amended Section 3407, Citrus Triseza Virus Interior Quarantine to delete those parts which would be duplicative with the enactment of Section 3701, et. seq. All of these were done as an emergency action that became effective May 17, 2010.

The Department then held two scoping meetings (June 15, 2010 in Tulare, California and June 29, 2010 in Riverside, California) with industry to discuss the changes in the regulations which had originated from the revisions of SB 140. Based on the discussions at these meetings, the Department has revised the regulations for the Citrus Nursery Stock Pest Cleanliness Program.

Section 3701 Definitions

The purpose of Section 3701 is to ensure that relevant terms are defined and can be clearly understood by those persons directly affected by them, as provided by Food and Agricultural Code (FAC) Section 6941(c)(4).

This section has been revised as follows:

- The definition of "breach" has been revised to clarify the exact size of an opening allowed in an insect-resistant structure.
- At the request of industry, the category of "registered increase tree lot" has been deleted since this type of planting is not used by citrus nurseries. All of the definitions following this deletion have been renumbered.

Section 3701.1 General Provisions

FAC Section 6940 states that the article only applies to *citrus nursery source propagative trees* while Section 6941(c)(1) states that the program shall require that any person who, by any method of propagation, produces any *citrus nursery stock* shall comply with all the program requirements as outlined in the article. The purpose of Section 3701.1(a) is to clarify that participation in and compliance with the program is mandatory for all producers (with the exception of the Citrus Clonal Protection Program) of citrus nursery stock propagative material, i.e., material that is generated from citrus nursery source propagative trees and used in the production of citrus nursery stock.

FAC Section 6945 states that the article shall be construed liberally to effectuate the Legislature's intent that an effective citrus nursery stock pest cleanliness program be established. A necessary component of an effective nursery stock cleanliness program is a provision for dealing with material

not meeting the requirements of the program. The purpose of Section 3701.1(b) is to ensure that producers of citrus nursery propagative material are aware that any propagative materials produced out of compliance with the program may be subject to destruction.

FAC Section 6941(c)(5) requires that participants comply with the requirements of Section 3069 of Title 3 of the California Code of Regulations. Since the proposed mandatory program is replacing a voluntary program, the purpose of Section 3701.1(c) is to ensure that participants are aware that the requirement is being carried over to the mandatory program.

The purpose of Section 3701.1(d) is to list the administrative duties for which the Department is responsible as provided in FAC Section 6941(a).

This section has been revised to clarify that all administrative elements of the program, except disease and pathogen diagnostic testing, are the responsibility of the Department. Disease and pathogen diagnostic testing may be performed by the Department or its authorized agents. The reference to certification has been deleted since the program does not provide for certification of nursery stock.

Section 3701.2 Program Responsibilities

The purpose of Section 3701.2 is to establish the responsibilities of the program participants and the Department. FAC Section 6945 states that the article shall be construed liberally to effectuate the Legislature's intent that an effective citrus nursery stock pest cleanliness program be established. In order to have an effective program, the roles of participants and the Department must be clearly defined. Participants will be responsible for maintaining fairly exhaustive records for material in the program to enable trace back or trace forward in case a disease of concern is detected in either the source of the nursery stock propagative trees, the nursery stock propagative trees themselves or in the propagative materials or nursery stock produced from them. Some of these recordkeeping requirements were included in Section 3407, Citrus Tristeza Virus Interior Quarantine. The Department filed an amendment to repeal the duplicative portions of Section 3407 as an emergency action concurrently with the emergency adoption of these regulations. At

the request of industry, trees infected with the citrus variant of the Hop Stunt Viroid (HSVd), citrus viroid IIA, are eligible for registration provided that the participant notifies the Department and any buyer of the tree of the presence of that disease. HSVd is considered to impart some desirable characteristics to certain citrus varieties while not affecting the life-span or fruit producing capabilities of the tree.

This section has been revised as follows:

- Subsection (a)(9)(B) has been revised to restrict the recordkeeping requirements for propagative material to vegetative propagative material only. Per industry input, seed is not subject to the requirement since seed production and collecting methods do not allow for this type of recordkeeping.
- All references to increase tree lots have been deleted since this is not a type of planting used by citrus nurseries, including the deletion of subsection (a)(9)(D).All record-keeping requirements for increase trees are now listed in subsection (a)(9)(C).
- Since increase tree lots have been deleted from the regulations, the record-keeping requirement in subsection (b)(1) has also been deleted.
- The reference to off-type in subsection (b)(6) has been deleted. SB 140 provided authority for a disease-testing program, only, and trueness-to-type is not a disease-related issue. The references to 3700.6 have been revised to 3701.6 to correct typographical errors.

<u>Section 3701.3 Eligibility Requirements</u>

FAC Section 6941(c)(1) requires that a person producing citrus nursery stock comply with all eligibility requirements but does not specify the requirements. The purpose of Section 3701.3 is to establish eligibility requirements for the trees entered in the program and the eligibility requirements of the source material used in the production of these trees.

This section has been revised as follows:

- At the request of industry, subsection (a)(2) has been added to provide for a one-time allowance to enter new trees into the program under less rigorous testing requirements.

Subsequent subsections have been renumbered.

- At the request of industry, the eligibility requirements in subsection (a)(3) have been revised to allow the indefinite use of grandfathered-in mother trees as propagative sources of new mother trees.
- The reference to topworking for registered scion mother trees has been deleted from subsection (b)(2) as that was already allowed under subsection (a)(4).
- At the request of industry, the reference to “increase tree lot” has been deleted from subsection (b)(3) since this is not a type of planting used by citrus nurseries.
- Subsection (b)(4) has been revised to delete the reference to “increase tree lot” and to limit the use period for increase trees to a total of five years.
- At the request of industry, the regulations have been revised to allow nursery stock to be maintained in the same structures with registered mother and/or increase trees. Although nursery stock itself is exempt from the requirements of SB 140, if the stock is maintained within the same structure as registered stock and is infected, it could serve as a source of infection and threaten the disease cleanliness of the registered trees. The purpose of adding subsection (b)(5) is to address this potential threat by requiring Tristeza and HLB testing at least every three years for nursery stock that is commingled with registered material.

At one of the June 2010 scoping meetings an individual requested that provisions be made in the regulations for propagative material produced by micro-propagation techniques. The proposed regulations do not address propagative methods in any form, thus allowing participants the option to choose the propagative method(s) (including micro-propagation) best suited to the practices of their respective nurseries.

Section 3701.4 Planting Location and Maintenance Requirements

FAC Section 6941(a) requires the Department to develop a program that will protect citrus nursery source propagative trees from harmful diseases, pests, and other risks and threats and Section 6941(c)(3) states that the program shall specify phase-in periods for various requirements. Because

of the twin threats of ACP and HLB, the Department has determined that citrus nursery source propagative trees will be best protected if grown in insect-resistant structures. The purpose of Section 3701.4 is to establish protective measures regarding planting and maintenance requirements for trees in the program, including phase-in periods for maintaining scion mother, rootstock and increase trees in insect resistant structures.

Producing plants in insect-resistant structures is only one part of a pest-cleanliness program. The structure must also be maintained and utilized properly. Recognizing that nurseries operate in many different ways, the Department developed a performance standard for properly operating and maintaining an insect-resistant structure and will rely on the participant nurseries to develop their own methods for meeting this standard. The adoption of Section 3701.4 will establish that participants maintaining insect-resistant structures will be required to develop and sign a compliance agreement that includes a plan for how they will meet the maintenance and utilization performance standard outlined in the section.

This section has been revised as follows:

- The requirement in subsection (a)(2) for seed trees to be maintained in insect-resistant structures has been deleted for two reasons: nursery operators advised the Department that it would be impossible for them to comply with this requirement and the evidence for HLB seed-transmission has not been clearly established.
- Industry members noted that field-grown rootstocks are susceptible to the same insect vectors and diseases as scion material, and should require the same protective measures. Therefore, subsection (a)(2) has been added to require rootstocks to be maintained in insect-resistant structures beginning January 1, 2012.
- Nursery operators noted that no allowance had been made for moving material in the program from one structure to another. Therefore, a new subsection (b) has been added to

allow for the movement of plants from one structure to another, and to require that plants moved during daylight hours must be protected from insect vectors. Since neither aphids (Tristeza vectors) nor psyllids (HLB vectors) fly at night, this requirement is only for daylight hours. Subsequent subsections have been renumbered.

- Maintenance requirements have been moved to subsection (c). At the request of industry this subsection has been revised to allow all eligible material, including citrus nursery stock derived from eligible sources, to be maintained within the same insect-resistant structure. Previously, only registered material was allowed which made no provision for moving new plants into the structure before registering the plant(s) with the Department, nor did it allow an operator to commingle nursery stock with registered material. With the revision, eligible material may be moved into a structure and the operator can apply for registration at a later date. The only nursery stock that will be allowed must have been derived from eligible sources and, after January 1, 2013, only nursery stock that has been propagated and continuously maintained within an insect-resistant structure will be allowed in the same structure as other plants in the program. This is to prevent nursery stock from being moved in and out of structures, thus providing a vehicle for insect-vector travel and disease spread.
- The elements of the compliance agreement in subsection (c)(3) have been revised. Since industry members noted that some insect-resistant structures may not have double-door entryways, subsection (c)(3)(A) was revised to require that participants ensure proper utilization of entryways. In order to make the requirements for preventing entrance and/or spread of diseases and/or vectors more encompassing, subsection (c)(3)(B) has been revised. Previously, this subsection only applied when "introducing/removing material into/from insect resistant structures" and did not address methods to be used within the structure. With the revision, the compliance standard developed by the participant must address methods they will use at all times to prevent spread of diseases and/or vectors, including, but not limited to, such elements as tool-sterilization methods, having dedicated tools for each

structure, and methods of introducing/removing material into/from a structure. Subsections (c)(3)(D) and (c)(3)(G) have been revised to reflect that participants must have plans in place (not implemented) to respond to a breach and major structural maintenance or replacement.

Section 3701.5 Insect-Resistant Structures Performance Standard

FAC Section 6941(a) requires the Department to develop a program that will protect citrus nursery source propagative trees from harmful diseases, pests, and other risks and threats. Because of the twin threats of ACP and HLB, the Department has determined that citrus nursery source propagative trees will be best protected if grown in insect-resistant structures and has developed a performance standard for the construction of such a structure which will allow participant nurseries to construct a structure that meets both the protective standard and their operating needs. The purpose of the adoption of Section 3701.5 is to establish the performance standard that insect-resistant structures must meet.

This section has been revised as follows:

- Industry members noted that the requirement for double-door entryways was a prescriptive, not a performance standard, and operators may want or need to choose other, equally effective, methods to prevent the entrance of insects. Subsection (b)(1) has been accordingly revised.
- Subsection (b)(2), requiring enclosed vestibules has been deleted for the same reasons.
- In the new subsection (b)(2), the maximum opening permissible in an insect-resistant structure has been revised to provide clarity for this requirement.

Section 3701.6 Inspection and Testing Procedures

The purpose of the adoption of sub-sections 3701.6(a) and (b) is to list the entities designated to perform disease and pathogen diagnostic testing and analysis and to provide for their designation as authorized by FAC Section 6943(a).

The purpose of the adoption of sub-sections 3701.6(c) and (d) is to establish the approved testing methods, frequency of testing and the diseases for which testing will be required as authorized in FAC Sections 6940(c) and 6941(c)(2).

The purpose of the adoption of 3701.6(g) is to establish the frequency and types of inspections to which a participant will be subject as authorized by FAC Section 6941(c)(2).

This section has been revised as follows:

- Subsection (a) has been revised to clarify that the intent is to allow samples to be tested at facilities accredited by the United States Department of Agriculture.
- The intent of subsection (d)(1)(B)1. was to allow trees newly planted in an insect-resistant structure to remain in the structure for up to three years before any testing would be required. However, as originally written, trees would have been allowed to remain indefinitely without testing as long as they were not used as propagative sources. This subsection has been revised to meet the original intent. Further, at the request of industry and as a cost-saving measure to them, this subsection was revised to allow trees to skip up to two years of CTV and HLB testing (if not used as propagative sources).
- At the request of industry, subsection (d)(1)(B)3. has been added to increase the viroid testing period from once every three years to once every six years in those facilities in which no viroids have been detected. Industry representatives questioned the frequency of viroid

testing in regulation but plant pathologists have advised the Department that human-aided spread of viroids is a serious concern. Therefore, if viroids are later detected in any plant within the structure, the viroid-testing schedule will revert to once every three years for scion-mother trees until all of them have been tested twice and found negative.

- At the request of industry and as a cost-saving measure to them, subsection (d)(1)(C) was also revised to allow trees to skip up to two years of CTV and HLB testing (if not used as propagative sources).
- Subsection (d)(1)(D) has been amended to clarify that this category of trees is subject to the same testing requirements as other registered trees.
- Since the requirement for maintaining seed trees in insect-resistant structures has been deleted, subsections (d)(2), (A) and (B) were combined into subsection (d)(2)(A).
- The testing schedule for increase trees in subsection (d)(3) was based on a statistically based, hierarchical sampling of an increase tree "lot." However, the category of increase tree "lot" has been deleted since this is not a type of planting used by citrus nurseries. This means that there is no longer a valid lot size on which to base a hierarchical sampling schedule and that each increase tree that will be used as a propagative source longer than 36 months from date of propagation must be sampled for Tristeza and Huanglongbing.

<u>Section 3701.7 Refusal, Suspension or Cancellation of Registration</u>

FAC Section 6945 states that the article shall be construed liberally to effectuate the Legislature's intent that an effective citrus nursery stock pest cleanliness program be established. A necessary component of an effective nursery stock cleanliness program is a provision for dealing with material not meeting the requirements of the program. The purpose of the adoption of Section 3701.7 is to establish the criteria used as the basis for suspension or cancellation of registration. The criteria for suspension versus cancellation are very similar and the final decision would be based on the severity of the disease threat and/or infraction. Factors to consider in making the final decision could include:

- disease detected inside the structure (How many trees are infected, with what type of disease and how long since previously tested?),
- insect detection(s) inside the structure (How many insects and are the insects vectors of citrus diseases?), and/or
- breach in the structure (How large and how long was it present before detection and repair? Is the structure located in an area in which disease vectors are known to be present?).

There are enough variables that developing a strict set of rules for suspension vs. cancellation is virtually impossible. This section also sets time limits for the removal of trees no longer eligible to be in the program. Trees that are ineligible due to reasons other than testing positive for a disease of concern must be removed within one month of the participant receiving notification from the Department. However, trees testing positive for any of the diseases of concern must be removed within 48 hours of the participant being notified by the Department since they pose a threat of infection to all other trees in the same structure.

Section 3701.8 Application and Fees

FAC 6941(c)(1) requires that participants comply with all eligibility requirements issued by the secretary, one of which will be that each participant must complete and submit an annual application to participate in the program. The purpose of the adoption of 3701.8(a) is to ensure that participants are aware of the kinds of information they will be required to submit to the Department annually.

The purpose of the adoption of 3701.8(b) is to establish the fees for which participants are responsible and that the fees are to be used solely to reimburse the Department for the costs of administering the program as authorized by FAC 6944. The regulations also stipulate that

participants will be subject to an additional fee equal to the amount charged by the laboratory selected to do the analyses. Since laboratory fees may vary from year to year or from facility to

facility, this provision is necessary to allow the Department flexibility in choosing which of the approved laboratories will be selected without having to continually amend the regulations.

This section has been revised as follows:

- Per industry input, the references to increase tree lots have been deleted.
- Additional information will be required on the application form. The participant will be required to submit more information about his or her insect-resistant structure(s), and to list the number of trees for which testing is requested.
- In subsection (b), the statement referring to waiving fees if costs are covered by an assessment has been deleted. At one time, SB 140 included provisions for an assessment to defray costs of the program. This provision was deleted prior to adoption of the bill.
- Subsection (b)(4) has been revised to clarify that the fee schedule is applicable when participants supply the labor to collect samples (as required in subsection 3701.2(a)(2)).
- The fee schedule for sampling increase trees in subsection (b)(4)(B) has been revised. The earlier fee was based on a statistical sampling of increase tree lots. Since increase tree lots have been deleted from the regulations, there is now no "lot" on which to base a statistical sample. The annual application fee for these lots has been deleted and replaced with a new fee assessed on a cost per increase tree tested.
- At industry request, nursery stock will be allowed to commingle with other material in insect-resistant structures. However, to protect other material in the program, it was necessary to add a requirement for testing of this stock. Subsection (b)(4)(B) has been revised to add a fee for this testing.

The effect of the adoption of these regulations is to provide authority for the State to establish and administer a Citrus Nursery Stock Pest Cleanliness Program in order to provide a source of protected, disease-tested citrus nursery stock to the citrus industry.

<u>Sections 3000-3006 Registration and Certification of Citrus Trees</u>

The effect of the repeal of Sections 3000-3006 will be to rescind this voluntary program as much of it is duplicative of and will be replaced by the adoption of Sections 3701, et. seq. At the

scoping meetings held in June of 2010, industry members requested that the Department establish a voluntary certification program for citrus nursery stock. The Department agreed but advised the industry that that would be a separate rulemaking process. The Department will schedule scoping meetings with industry members in 2010 to begin the process.

Section 3407, Citrus Tristeza Virus Interior Quarantine

The effect of the amendment of Section 3407 is to rescind those requirements that will be duplicative once Sections 3701 – 3701.8 take affect. Specifically, propagative material from source trees maintained inside insect-resistant structures will be exempt from the moving permits requirements in this section.

This section has been revised as follows:

- Subsequent to the emergency amendment of this section, the Department discovered an error in the revised regulations. The intent of the revision was to exempt citrus propagative parts that met the requirements of Section 3701, et. seq., from the requirements of the quarantine. However, all citrus propagative parts were erroneously exempted from the quarantine. Section 3407 has been amended to correct this error.
- Industry members requested that Section 3407 be amended to allow citrus nursery stock that was produced from propagative sources meeting the requirements of Section 3701, et. seq., and that has itself been propagated and continuously maintained in insect-resistant structures, to be moved within the State under the same conditions as allowed for citrus propagative parts. Subsection (f)(1)(C) has been added to allow the movement of citrus nursery stock within the State. However, since citrus nursery stock is expressly exempt from the provisions (including recordkeeping) of Section 3701, et. seq., additional recordkeeping requirements for nursery stock were included with this amendment. It is necessary for nurseries to maintain these records to enable the Department to conduct trace-backs and trace-forwards in case a disease is detected in the stock.

Reasonable Alternatives to the Regulations and the Department's Reasons for Rejecting Those Alternatives

No reasonable alternatives were rejected. Since SB 140 compels the Department to develop a mandatory citrus nursery stock pest cleanliness program, the "no action" alternative is not an option in this case. Additionally, the only alternative method to insect-resistant structures that would provide some protection to citrus nursery stock from disease vectors would be the continuous application of pesticides, which could have deleterious environmental impacts and would not be sufficient to meet federal or state quarantine standards.

Reasonable Alternatives to the Proposed Regulatory Actions That Would Lessen Any Adverse Economic Impact on Small Businesses

The Department has not identified any alternatives that would lessen any adverse impact on small businesses. The Department adopted a performance, instead of a prescriptive, standard for the construction of insect-resistant structures and has made extensive revisions to the regulations based on industry input. A performance standard allows members of the affected industry flexibility in constructing a structure that best suits their needs, and should offer some cost savings.

The Department has determined that the adoption of Sections 3701, et. seq., the repeal of Sections 3000, et. seq., and the amendment of Section 3407 may have a significant statewide adverse economic impact directly affecting citrus nursery businesses.

Reference Material:

Email from Dan Howard to Sean Dayyani, dated July 12, 2010.

Federal Register, Vol. 75, no. 116, June 17, 2010, pages 34322-34336.

National Quarantine Citrus Greening and Asian Citrus Psyllid, dated December 7, 2009, United States Department of Agriculture.

Pest and Damage Record #1557491, dated July 13, 2009, California Department of Food and Agriculture.

Agenda for Asian Citrus Psyllid Workshop June 11-12, 2009, and its attachments.

Attendance Sheet for Asian Citrus Psyllid Workshop June 11-12, 2009.

Agenda for Citrus Nursery Stock Pest Cleanliness Program scoping meeting May 12, 2009 and its attachments.

Attendance Sheet for Citrus Nursery Stock Pest Cleanliness Program scoping meeting May 12, 2009.

Agenda for Citrus Nursery Stock Pest Cleanliness Program scoping meeting April 23, 2009 and its attachments.

Letter from Susan McCarthy to California Citrus Nurseries and Commercial Citrus Producers, dated April 1, 2009.

Citrus Health Response Plan State of Florida, 2006-2007.