

## FINDING OF EMERGENCY

### Readoption

The Secretary of the Department of Food and Agriculture finds that an emergency still exists due to the presence of the Asian Citrus Psyllid (ACP), *Diaphorina citri*, in the San Luis Obispo and Cayucos areas of San Luis Obispo County, California. The foregoing readoption of this regulation is necessary for an immediate action to avoid serious harm to the public peace, health, safety or general welfare, within the meaning of Government Code Section 11342.545 and Public Resources Code Section 21080.

#### Emergency Rulemaking Procedures:

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

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

The information contained within this finding of emergency also meets the requirements of Government Code Sections 11346.1(h) which provides that the Office of Administrative Law may approve up to two readoptions, each for a period not to exceed 90 days if the adopting agency has made substantial progress towards completing the rulemaking process.

“Emergency’ means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.” Public Resources Code Section 21060.3.

Because of its ability to spread HLB, the ACP poses a clear and imminent danger to California's citrus industry.

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

Government Code Section 11346.1(a)(3) provides that if the emergency situation clearly poses such an immediate, serious harm that delaying action to allow public comment would be inconsistent with the public interest, an agency is not required to provide notice pursuant to Government Code Section 11346.1(a)(2). The Secretary believes that this emergency clearly poses such an immediate, serious harm that delaying action to give the notice pursuant to Government Code Section 11346.1(a)(2) would be inconsistent with the public interest, within the meaning of Government Code Section 11349.6(b). The purpose of this quarantine regulation is to prevent the artificial spread of ACP to uninfested areas. Preventing the artificial spread of ACP, especially the long distance artificial spread is a key component in order to control the ACP/HLB complex. The Florida Department of Agriculture and Consumer Services chose not to attempt to control the artificial spread of ACP. Consequently, when HLB was introduced 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 area of Los Angeles County. The confirmed infested tree was removed. However, the HLB disease has a latency period of up to two years prior to being able to detect it through existing laboratory testing procedures. Although the Department has and continues to conduct extensive surveys for HLB without any 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.

However, ACP has the capability of being able to transmit the disease prior to it being able to be detected by existing laboratory techniques. Therefore, controlling ACP is critical

in controlling HLB; even in the apparent absence of the disease's presence. The movement of one ACP infested host plant by an individual or through the movement of infested commercial nursery stock or by a landscaper will result in a new infestation. Each day that this quarantine amendment is not in place increases the odds that artificial spread of ACP will occur unabated and if HLB is in the new area at sub detectable levels, the ACP/HLB complex would be able to begin its devastating destruction in that area.

Providing five days advance notice of an emergency rulemaking to interested parties delays being able to get this 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 ACP, including to other areas of the Central Valley's major citrus production area.

#### Necessity for Readoption

The Department has made substantial progress and proceeded with diligence to complete the rulemaking process for these regulations. However, for Section 3435, it was not possible to complete the rulemaking process within 180 days of the effective date of the emergency for the following reason. Following the emergency adoption, the regulation was noticed October 31, 2014, beginning the 45-day public comment period which ended December 15, 2014. In order to meet the 180-day deadline to complete the rule-making process, the Certificate of Compliance for this emergency action would be due to OAL no later than February 23, 2015. Unfortunately, the notice to be mailed to appropriate agencies was submitted less than the 45 days required. It has now been re-mailed. Since it will not be possible to meet that deadline due to the issuance of the mailing notice to appropriate agencies being delayed and overlapping the Certificate of Compliance deadline, the Department is filing this request for emergency readoption of Section 3435.

The specific facts and information relied upon which originally established this emergency action have not changed and the emergency still exists. This readoption is necessary to avoid economic losses to agriculture and losses in the State's revenue.

The Secretary amended these regulations pursuant to the authority in Food and Agricultural Code (FAC) Section 407, “the director may adopt such regulations as are reasonably necessary to carry out the provisions of this code which he is directed or authorized to administer or enforce,” , FAC Section 6946, “the secretary may adopt regulations and issue orders as authorized by this article, and FAC Section 5322, “the director may establish, maintain, and enforce quarantine, eradication, and such other regulations as are in his or her opinion necessary to circumscribe and exterminate or prevent the spread of any pest which is described in FAC Section 5321.”

Additionally, FAC Section 401.5 states, “the department shall seek to protect the general welfare and economy of the state and seek to maintain the economic well-being of agriculturally dependent rural communities in this state” and Section 403 states, “the department shall prevent the spread of injurious insect pests.”

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

Adding to the urgency is the presence of the ACP in California, the presence of both ACP and HLB in Mexico, and the fact that in July of 2009 ACP larvae on an intercepted plant shipment tested positive for HLB.

The first find of ACP in California was in San Diego County on August 27, 2008. That and subsequent finds have led to the establishment of quarantines in Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, Tulare and Ventura counties. Currently, 51,282 square miles of the State are under quarantine for this pest.

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.

By itself, ACP causes feeding damage to citrus trees. However, when it becomes infected with Huanglongbing (HLB or citrus greening), it becomes a carrier for the disease and can transmit the HLB-associated bacteria from the fourth nymphal instar through the adult stage with a latency period as short as one day or as long as 25 days. HLB was first identified in China in 1919 and is considered to be the most devastating of all citrus diseases. Once infected, there is no cure for HLB infected citrus trees, which decline and die within a few years. Additionally, the fruit produced by infected trees is not suitable for either the fresh market or juice processing due to the significant increase in acidity and bitter taste.

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

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.

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

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

On August 2, 2014 (PDR # SA0P06168909), one adult ACP was identified from the San Luis Obispo area of San Luis Obispo County. On August 7, 2014 (PDR #'s FR0P06197461, FR0P06197462, FR0P06197463, FR0P06197464), 27 adults and 10 nymphs were identified from the San Luis Obispo area. On August 8, 2014 (PDR #'s FR0P06316767, FR0P06316768, FR0P06316867, FR0P06316868), a total of 5 adults and 32 nymphs were identified from the same area. These detections meet the State and federal regulatory protocols for creating a quarantine area in this area of San Luis Obispo County. The Department uses a minimum of a five mile radius surrounding each find site as the quarantine buffer. On August 12, 2014, the Agricultural Commissioner of San Luis Obispo County requested that a quarantine be established and expanded when ACP is detected in this area.

On August 13, 2014, (PDR # SA0P06168910), one adult ACP was identified from the Cayucos area of San Luis Obispo. This detection meets the State and federal regulatory protocols for creating a quarantine area in this area of San Luis Obispo County. On August 19, 2014, the Agricultural Commissioner of San Luis Obispo County requested that a quarantine be established and expanded when ACP is detected in this 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 their 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 this regulation would limit the artificial spread of ACP while keeping more onerous federal requirements at the minimum level necessary.

Therefore, it is necessary to readopt this emergency regulation by adding these portions of San Luis Obispo County to the regulation as an emergency action to avoid serious harm to the public peace, health, safety, or general welfare of the State of California by preventing a time lapse in the quarantine.

#### California Environmental Quality Act

A Statewide Plant Pest Prevention and Management Environmental 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 ACP.

The PEIR may be accessed at the following website:

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

### Project Description:

This readoption of this proposed emergency action will maintain a quarantine area for ACP in the San Luis Obispo area of approximately 97 square miles. This readoption of this proposed action will also maintain a quarantine area for ACP in the Cayucos area of approximately 61 square miles. The proposed boundary lines were drawn jointly by the USDA, the CDFA, and the affected county agricultural commissioner. The criterion 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.

The entire counties of Imperial, Los Angeles, Orange, San Bernardino, San Diego, Santa Barbara, Riverside and Ventura and a portion of Fresno, Kern and Tulare counties are already under quarantine for ACP. When the emergency regulation area was originally adopted, the quarantine area was approximately 46,702 square miles. The current quarantine area is approximately 51, 282 square miles. The Department relied upon, and is incorporating by reference, the following documents for this proposed rulemaking file and all documents therein:

OAL File No. 2014-0822-01 E.

### Authority and Reference Citations:

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

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### Informative Digest

Existing law provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this state and determine the probability of its spread and the feasibility of its control or eradication (FAC Section 5321).

Existing law also provides that the Secretary may establish, maintain and enforce quarantine, eradication and other such regulations as he deems necessary to protect

the agricultural industry from the introduction and spread of pests (Food and Agricultural Code, Sections 401, 403, 407 and 5322).

#### Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3435 does not impose a mandate on local agencies or school districts, except that an agricultural commissioner of a county under quarantine has a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because the affected county agricultural commissioners requested that these changes to the regulation be made.

#### 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 savings to local agencies or costs or savings to school districts under Section 17561 of the Government Code and no costs or savings in federal funding to the State.