

DEPARTMENT OF FOOD AND AGRICULTURE

Title 3 of the California Code of Regulations

**Notice of Proposed Rulemaking**

**45 – Day Notice**

The Department of Food and Agriculture (Department) amended subsection 3435(b) of the regulations in Title 3 of the California Code of Regulations pertaining to Asian Citrus Psyllid (ACP) Interior Quarantine as an emergency action which was effective on January 1, 2018. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than June 28, 2018.

This notice is being provided to be in compliance with Government Code Section 11346.4.

**PUBLIC HEARING**

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

**WRITTEN COMMENT PERIOD**

Any interested person or his or her authorized representative may submit written comments relevant to the proposed amendment to the Department. Comments may be submitted by mail, facsimile (FAX) at 916.654.0312 or by email to keith.okasaki@cdfa.ca.gov. The written comment period closes at 5:00 p.m. on June 11, 2018. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Keith Okasaki  
Department of Food and Agriculture  
Plant Health and Pest Prevention Services  
1220 N Street Suite 325  
Sacramento, CA 95814  
Keith.Okasaki@cdfa.ca.gov  
916.654.0312  
916.654.1018 (FAX)

Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department, at its own motion, or at the instance of

any interested person, may adopt the proposal substantially as set forth without further notice.

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The specific purpose of Section 3435 is to provide authority to the State to regulate the movement of hosts and possible carriers of Asian citrus psyllid (ACP), *Diaphorina citri*, from and/or within a regional quarantine zone. Under the proposed regulation change, Section 3435 would adopt a change to a regional quarantine with different regional frameworks governing host nursery stock and bulk citrus.

### **ANTICIPATED BENEFITS FROM THIS REGULATORY ACTION**

Existing law, FAC Section 403, provides that the department shall prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds.

Existing law, FAC Section 407, provides that the Secretary may adopt such regulations as are reasonably necessary to carry out the provisions of this code that the Secretary 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 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 that 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 3435, defines the state's interior quarantine area for ACP, 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. This amendment provides the necessary regulatory authority to prevent the artificial spread of a serious insect pest, which is a mandated statutory goal.

The Department considered any other possible related regulations in this area, and we find that these are the only regulations dealing in this subject area, and the only State agency that can implement plant quarantines. As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of this regulation and has determined that it is not inconsistent or incompatible with existing state regulations.

### **AMENDED TEXT**

This emergency rulemaking action created two separate regional quarantine frameworks for different commodities and allowed the Department to regulate ACP host nursery stock and bulk citrus commodities administratively. While both host nursery stock and bulk citrus are hosts of ACP, the vector of Huanglongbing (HLB) disease, the hosts demand independent regional quarantines to be effectively regulated. Unique regional quarantine frameworks have been created and proposed for each group of hosts to benefit both the citrus nursery stock and bulk citrus industries by allowing the Department to effectively and efficiently respond to future detections of ACP and HLB to provide the best possible protection to each industry.

### **DISCLOSURES REGARDING THE PROPOSED ACTION**

*The Department has made the following initial determinations:*

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None

Other nondiscretionary costs to or savings on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or business: Most businesses will not be affected. The Department has determined there are approximately 1,680 citrus production nurseries and 3,958 retail nurseries currently operating under a compliance agreement in a quarantined area. In counties that would become fully quarantined by the proposed regulation, there are an additional 656 production nurseries and 1,652 retail nurseries that would be newly included in the quarantine. However, the business practices of these nurseries is unknown and many may not carry host nursery stock and therefore would not be impacted by the proposed regulation. Additional citrus production nurseries, not currently under quarantine and therefore newly included in the proposed Nursery

Regional Quarantine Zone 2, would be impacted by having to comply with ACP production nursery stock restrictions.

The Department has determined there are approximately 4,787 citrus growers, 231 packers/processors, and 481 citrus transporters operating under a compliance agreement within the existing quarantine areas. Revision and subsequent amendments of Section 3435 would have little adverse economic impact on growers, as a group, if they send fruit to a packing house or processor within the same bulk citrus regional quarantine zone in which the grower is located. According to the Citrus Research Board, there are approximately 81 citrus growers currently outside of an ACP quarantine area that would be impacted by the regulation change and may have to implement a performance standard to ensure hosts are free from ACP. Current mitigation options include: 1) Conduct pre-harvest treatments with a pesticide effective against psyllids while the fruit is still on the trees; 2) Field clean the fruit to remove leaves and stems during the harvest process; 3) Wet wash the citrus fruit; 4) Send the fruit to a packing house within the same bulk citrus regional quarantine zone and have the packer remove the leaves and stems during the packing process; 5) Any other Department approved, validated and efficacious methods of mitigating the risk of spreading ACP. As most packing houses already require such actions, the placement of these performance standards in regulation should affect only a small number of growers shipping relatively small amounts of bulk citrus as the majority of growers currently pack their fruit within the regional quarantine zone in which they would be placed with this proposed regulation. Quantifying the small number of growers who will be impacted by this regulation change is not possible because growers may send their fruit for packing anywhere they choose.

Significant effect on housing costs: None.

#### *Small Business Determination*

The Department has determined that the proposed regulations may have a minor impact on bulk citrus growers who will find that their preferred packer, as a result of the proposed regulation, is located in a different regional quarantine zone from their production area. As noted above, any fruit destined for packing in a different regional quarantine zone will be subject to a pre-harvest treatment, to be practically free of stems and leaves, or to be run through a wet wash process prior to leaving the bulk citrus regional quarantine zone. However, growers who may be impacted by the regulation will have the option to pack their fruit within their regional quarantine zone and therefore be exempt from the pre-harvest treatment or field cleaning mitigations. There are currently 4,787 growers who hold compliance agreements. The Department cannot quantify an estimate of the small number of bulk citrus growers to be impacted by the regulation change, as the data for the number of bulk citrus growers who would ship fruit for packing outside of their regional quarantine zone has not been made available.

## Results of the Economic Impact Analysis

Revision of the regulation will not:

- (1) Create or eliminate jobs within California;
- (2) Create new businesses or eliminate existing businesses within California; or
- (3) Affect the expansion of businesses currently doing business within California.

The Department is not aware of any specific benefits the amendment of this regulation will have on worker safety or the health of California residents. The Department believes the amendment of this regulation benefits the welfare of California residents by protecting the economic health of the entire citrus industry. Citrus growers contribute positively to California's economy and this amendment will allow the Department to continue to provide the necessary protection to the industry. The citrus industry is a needed source of revenue for the State's economic health.

The Department has evaluated and determined that the amendment of this regulation is not inconsistent with existing State regulations. There are no other comparable existing State regulations [Gov. Code sec. 11346.5(a)(3)(D)].

## **ALTERNATIVES CONSIDERED**

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private person and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Notice.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

## **AUTHORITY AND REFERENCE**

Food and Agricultural Code Sections 407, 5301, 5302, and 53221 authorize the Department to adopt this regulation. The proposed revision is to a regulation that interprets and makes specific Sections 401.5, 407, 5301, 5302, 5321, and 5322of the Food and Agricultural Code.

## **CONTACT**

Inquiries concerning the proposed administrative action may be directed to:

Keith Okasaki  
Department of Food and Agriculture  
Plant Health and Pest Prevention Services  
1220 N Street Suite 325

Sacramento, CA 985814  
Keith.Okasaki@cdfa.ca.gov  
916.654.0312  
916.654.1018 (FAX)

In his absence, you may contact Laura Petro at the same phone number.

**INTERNET ACCESS**

The Department has posted the information regarding this proposed regulatory action on its Internet website ([www.cdfa.ca.gov/plant/Regulations.html](http://www.cdfa.ca.gov/plant/Regulations.html)).

**AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Department has prepared an initial statement of reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, when completed, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations adopted by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.