

# EMERGENCY

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW

## NOTICE PUBLICATION/REGULATIONS SUBMISSION

See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2016-0616-04E
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For use by Office of Administrative Law (OAL) only

2016 JUN 16 P 3: 25  
OFFICE OF ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY  
Department of Food and Agriculture

AGENCY FILE NUMBER (if any)

### A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER
FAX NUMBER (Optional)		OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER
PUBLICATION DATE				

### B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Asian Citrus Psyllid Interior Quarantine		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT		
	AMEND	3435(b)	
TITLE(S) 3	REPEAL		
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify) _____		
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Sara Khalid		TELEPHONE NUMBER 916-403-6625	FAX NUMBER (Optional) E-MAIL ADDRESS (Optional) Sara.Khalid@cdfa.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 6/15/16
TYPED NAME AND TITLE OF SIGNATORY Robert Wynn, Statewide Coordinator, Pierce's Disease Control Program	

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Amend the following section:

**Section 3435. Asian Citrus Psyllid Interior Quarantine.**

....

(b) Area Under Quarantine:

....

(12) In Merced County, in the Merced area: Beginning at the intersection of Eucalyptus Avenue and N Buhach Road; then, starting northerly along said road to its intersection with Fisher Road; then, easterly along said road to its intersection with Oakdale Road; then, southeasterly along said road to its intersection with Amsterdam Road; then, northeasterly along said road to its intersection with Kenney Avenue; then, easterly along said avenue to its intersection with an Imaginary Line at the end of said avenue; then, easterly along said line to its intersection with Snelling Road and Parkinson Creek; then, southeasterly along said creek to its intersection with Snelling Road; then, southerly along said road to its intersection with La Paloma Road; then, northeasterly along La Paloma Road to its intersection with an Imaginary Line at 37.416949 latitude and -120.399150 longitude; then, southeasterly along said line to its intersection with Applegate Lateral Canal and N Arboleda Drive; then, southerly along said drive to its intersection with E Yosemite Avenue; then, westerly along said avenue to its intersection with Kibby Road; then, southerly along said road to its intersection with E State Highway 140; then, westerly along said highway to its intersection with Carol Avenue; then, southerly along said avenue to its intersection with E Childs Avenue; then, westerly along said avenue to its intersection with Tyler Road; then, southerly along said road to its intersection with E Mission Avenue; then, westerly along said avenue to its intersection with W Dickenson Ferry Road; then, westerly along said road to its intersection with S Gurr Road; then, northerly along said road to its intersection with McSwain Road; then, westerly along said road to intersection with N Buhach Road; then, northerly along said road to its intersection with Landram Avenue; then, westerly along said avenue to its intersection with Station Avenue; then, northerly along said avenue to its intersection with Mulberry Avenue; then, westerly along said avenue to its intersection with Clydesdale Avenue; then, northeasterly along said avenue to its intersection with Fleming Road; then, northwesterly along said road to its intersection

with Giannini Road; then, northeasterly along said road to its intersection with Commerce Avenue; then, northerly along an Imaginary Line to its intersection with Atwater Boulevard and Shaffer Road; then, northerly along Shaffer Road to its intersection with Eucalyptus Avenue; then, easterly along said avenue to the point of beginning.

....

Note: Authority cited: Sections 407, 5301, 5302 and 5322, Food and Agricultural Code.

Reference: Sections 407, 5301, 5302 and 5322, Food and Agricultural Code.

## FINDING OF EMERGENCY

The Secretary of the California Department of Food and Agriculture (Department) determined that an emergency exists; an infestation of the Asian citrus psyllid (ACP), *Diaphorina citri* was detected in the Merced area of Merced County. One adult psyllid was identified on May 31, 2016 from a trap in the Merced area. The Department is proposing an emergency amendment of the regulation to establish the quarantine in the Merced area of Merced County.

### Emergency Defined

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

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

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

Government Code Section 11346.1(a)(3) provides that if the emergency situation clearly poses such an immediate, serious harm that delaying action to allow public comment would be inconsistent with the public interest, an agency is not required to provide notice pursuant to Government Code Section 11346.1(a)(2). The Secretary believes that this emergency clearly poses such an immediate, serious harm that delaying action to give the notice pursuant to

Government Code Section 11346.1(a)(2) would be inconsistent with the public interest, within the meaning of Government Code Section 11349.6(b).

The purpose of 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 and San Gabriel areas of Los Angeles County. The confirmed infested trees were 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.

### 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/>.

### Background

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. Additionally, on July 9, 2015, the USDA confirmed the presence of HLB in the San Gabriel area of Los Angeles County.

The Department expanded the HLB Interior Quarantine by approximately 87 square miles surrounding the find site to a total quarantine area of 180 square miles, which it still maintains.

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.

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 25487). 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 economic activity, California must do everything possible to exclude both HLB-associated pathogens and ACP from the state.

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 May 31, 2016 (PDR #SA0P06568435) one adult ACP was identified from the Merced area of Merced County. This detection meets the state and federal regulatory protocols for expanding the quarantine in the Merced area of Merced County. The Department uses a minimum of a five mile radius surrounding each find site as the quarantine buffer. On June 6, 2016, the Agricultural Commissioner of Merced County requested that the quarantine be established in the Merced 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 amend this regulation by establishing the Merced area of Merced County as an emergency action.

#### Project Description

This proposed emergency action will establish the quarantine for ACP of approximately 106 square miles in the Merced area of Merced County. 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, Tulare and Ventura and portions of Fresno, Kern, Madera, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Clara, Alameda, Stanislaus, and Kings are already under quarantine for ACP.

The Department also relied upon the following information:

“Pest and Damage Record # SA0P06568435”, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

Letter dated June 6, 2016 from David A. Robinson, Merced County Agricultural

Commissioner, to Secretary Karen Ross.

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.

Authority and Reference Citations:

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

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

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).

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 which she is directed or authorized to administer or enforce.

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

Existing law, FAC section 5322, provides that the Secretary may establish, maintain, and enforce quarantine, eradication, and such other regulations as are in her opinion necessary to circumscribe and exterminate or prevent the spread of any pest which is described in FAC section 5321.

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, fruit for domestic use and exports, citrus packing facilities) and the environment (urban landscapes) by having a quarantine program to prevent the artificial spread of ACP over long distances. Most all of the commercial citrus fruit and nursery stock production is located outside this proposed quarantine boundary area.

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

FAC Section 401.5 states, "the department shall seek to protect the general welfare and economy of the state and seek to maintain the economic well-being of agriculturally dependent rural communities in this state." The amendment of this regulation is preventing the artificial spread of ACP to uninfested areas of the State. HLB is generally distributed in Florida due to ACP being generally distributed there. The University of Florida Institute of Food and Agricultural Services Extension calculated and compared the impact of having and not having HLB present in Florida and concluded HLB had a total impact of \$3.64 billion and eliminated seven percent of

the total Florida workforce. The overall California economy benefits by the amendment of this regulation which is intended to prevent ACP from becoming generally distributed in California and resulting in a similar affect on our economy as to what happened in Florida. This is now critical as HLB has been introduced into California.

The California, national and international consumers of California citrus benefit by having high quality fruit available at lower cost. It is assumed that any increases in production costs will ultimately be passed on the consumer.

The amendment of this regulation benefits homeowners who grow citrus for consumption and host material which is planted as ornamentals in various rural and urban landscapes by preventing damage to these hosts and the need for them to be treated to mitigate infestations of ACP.

The Department is the only agency which can implement plant quarantines. As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of this regulation and has determined that it is not inconsistent or incompatible with existing state regulations.

#### Section 3435. Asian Citrus Psyllid Interior Quarantine.

This proposed emergency action will establish the quarantine for ACP of approximately 106 square miles in the Merced area of Merced County. The effect of the amendment of this regulation is to provide authority for the State to perform quarantine activities against ACP within this additional area. The total area which would be under regulation would be approximately 54,766 square miles.

#### 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 cost to any local agency or school district requiring reimbursement pursuant to Government Code 17500 et seq. and no costs or savings in federal funding to the State.