

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE  
PROPOSED NEW REGULATION  
Title 3, California Code of Regulations  
Section 3443  
INITIAL STATEMENT OF REASONS/  
PLAIN ENGLISH POLICY STATEMENT OVERVIEW

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

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

Specific Purpose and Factual Basis

The purpose of Section 3443 of Title 3 of the California Code of Regulations (CCR) is to establish quarantine areas for regulating the movement of hosts and possible carriers of sweet orange scab (SOS). SOS is a plant disease of serious concern caused by the fungal pathogen *Elsinoë australis* and threatens California's fresh citrus industry.

The factual basis for the Department's determination that establishing this regulation is necessary is as follows:

Sweet orange scab (SOS) is a plant disease caused by the fungal pathogen *Elsinoë australis*. SOS is primarily water dispersed but is also spread to new areas when infected plants and fruit are moved. Once infected, there is no cure for SOS-infected citrus trees which will continue to be a reservoir for the fungal pathogen. Additionally, SOS-infected fruit can be severely blemished, rendering the fruit unfit for sale in the commercial fresh produce market. SOS is of great concern to California citrus growers and threatens California citrus production, which was valued at over \$2.12 billion in 2020, and comprises 52 percent of the nation's citrus production and 63 percent of the nation's citrus value (California Agriculture Statistics Review 2019-2020). SOS is already established in Alabama, Arizona, Florida, Louisiana, Mississippi, Texas, and Puerto Rico.

On December 22, 2010, the Animal and Plant Health Service (APHIS) of the United States Department of Agriculture (USDA) issued a Federal Order to protect other citrus-producing states and trade partners from the pathogen by imposing restrictions on the interstate movement of SOS host material from Louisiana, Mississippi, and Texas. APHIS has subsequently issued numerous Federal Orders adding Arizona and Florida as regulated states. On September 6, 2016, APHIS issued an updated Federal Order, DA-2016-55, to amend the requirements for cleaning and packing SOS-regulated fruit and to add portions of California to the quarantine due to recent detections.

The Federal Order prohibits the interstate movement of outdoor grown host nursery stock from an SOS-regulated area to any other citrus-producing state. Host nursery stock shipped to citrus-producing states must meet specific requirements to be eligible

for shipment. Additionally, all host fruit from a quarantined area must be cleaned, washed, disinfected, and packed at an approved packing facility per federal requirements to be eligible for interstate shipment.

SOS was first detected in California in September 2013 in Imperial, Los Angeles, and Riverside Counties. The Department conducted delimitation surveys around each find site and subsequently detected SOS in seven nearby locations. Using regulatory authority delegated to the Department by USDA, the Department locally enforced federal regulations according to the Federal Order and regulated SOS host material grown and moved within and from California to prevent the artificial spread of the fungal plant pathogen. SOS subsequently has been detected in 2016, 2020, and 2021. Following each detection, the Department conducted delimitation surveys to determine the extent of the infestation.

Federal Order DA-2016-55 established that less than a full state may be regulated for SOS provided the state adopts an interior quarantine regulation. USDA previously acknowledged CDFA's SOS survey, regulatory, and detection response activities as sufficient in the absence of a state interior quarantine. In June 2021, USDA notified CDFA that without a state interior quarantine, USDA may impose a statewide SOS quarantine in California. Such drastic measures would adversely impact California's citrus fruit and nursery industries. The Title 3 CCR 3443 would establish quarantine areas for portions of California where SOS detections are known to occur and where the risk of future SOS detections are greatest. The state interior quarantine areas would restrict the movement of SOS-host nursery stock and bulk citrus within and from quarantine areas on a localized scale relative to a statewide quarantine.

Food and Agricultural Code (FAC) sections 403, 407, 5301, 5302, and 5322 authorize the Department to adopt regulations necessary to prevent the spread of injurious insect pests and animal diseases. The Title 3 CCR 3443 is necessary to specify that the Department may create a quarantine area and take related action to regulate the movement of SOS host nursery stock, bulk citrus, and other possible carriers of SOS. The aim of this is to protect California's agricultural industry by preventing the artificial spread of SOS to non-infested areas of California.

FAC section 5821 authorizes the Secretary to promote and protect California's agricultural industry by inspecting plants and the premises upon or near where they are growing and its associated records. The Secretary may, upon the basis of information thus determined, maintain registries of plants that are found not to be infested or infected with pests, and registries of plants that are liable to become infested or infected (FAC section 5821). Existing law also provides that the Secretary may establish and enforce regulations that are necessary to carry out the purposes of the registries' provisions (FAC section 5823).

The scientific basis for the regulation is the expectation that restricting movement within and from quarantine areas established around each SOS detection will prevent the artificial spread of SOS via host nursery stock and bulk citrus.

The factual basis for the Department's determination that Title 3 CCR 3443 is necessary includes the following:

SOS has been detected a total of 28 times since 2013 in Imperial, Los Angeles, Orange, and Riverside counties. In 2021, SOS was detected in California a total of 15 times in Riverside and Orange counties. Recent detections heightened the Department's concern about preventing further spread from areas where SOS has been detected. Throughout 2021, the Department and the California Citrus Pest and Disease Prevention Committee (CPDPC) held several meetings to discuss the establishment of an SOS quarantine. Among issues discussed were the need for an interior or statewide quarantine, the appropriate quarantine radius from each detection, and regulatory requirements placed on the industry.

The Department concluded that establishing an interior SOS quarantine is the most effective and efficient responsive approach to prevent the adverse impacts to California's citrus industry that would result from artificial spread of SOS. The purpose of this proposed adoption is to accomplish this in a transparent manner which can be more easily understood by those who may be affected by this regulation.

If SOS were to spread and become established in fruit production areas, California's citrus industry would suffer financial losses due to decreased production of marketable fruit and loss of markets if USDA, other states, or countries enact quarantines against California citrus.

The introduction of destructive plant diseases such as SOS is always the subject of trade discussions which occur between USDA and domestic and international trading partners. The implementation of quarantines is a key to ensure qualifying host commodities produced in or packed anywhere in California may continue to move through commerce. Therefore, it is necessary to adopt Title 3 CCR 3443 to ensure trading partners maintain confidence in California's ability to regulate the citrus industry and produce high quality, marketable produce.

## **Project Description**

### **Section 3443**

Section 3443 would establish a quarantine against a citrus pest, its hosts, and possible carriers. This section is necessary to protect California's citrus industry from harmful pests and diseases.

### **Section 3443(a)**

Section 3443(a) identifies sweet orange scab (SOS), and *Elsinoë australis* as the pest and associated fungal pathogen for which the quarantine regulation is proposed. This is necessary to identify to the public, regulated entities, trading partners, and regulators the specific citrus pest that is the subject of the quarantine restrictions.

### **Section 3443(b)**

Section 3443(b)(1) outlines the criteria that, if present, would require the Department to designate an area as under quarantine. The proposed section clarifies the specific action required of the Department.

Section 3443(b)(1)(A) specifies the first criteria for establishing an SOS quarantine area: survey results indicate an SOS infestation is present. The proposed regulation specifies that an SOS infestation is present when a single host plant tests positive for *Elsinoë australis*. This is necessary to specify that regulatory action can only be taken upon survey of host plants and subsequent positive identification of the fungal pathogen that causes SOS.

Section 3443(b)(1)(B) specifies the second criteria for establishing an SOS quarantine area: the Department has defined the infested area. The proposed regulation specifies that the initial area under quarantine shall be a minimum of a five-mile radius surrounding the site of the SOS-positive plant. Commercial host properties shall not be split by the quarantine boundary line. Boundary lines will be expanded and developed to encompass the range of SOS host material in its entirety. This is necessary to make clear to the California County Agricultural Commissioner(s) (CAC(s)), the public, and other interested parties how the Department determines the geographic size and boundary line of a quarantine. This section is necessary for consistency with mapping conventions employed when creating quarantine boundaries for other invasive pests and diseases.

Section 3443(b)(1)(C) specifies the third criteria for establishing an SOS quarantine area: the local CAC must be by the Department notified of the infestation and request the quarantine area be established. This is necessary for consistency with FAC section 5251, which requires the Department to immediately report the discovery of a pest to the local CAC.

Section 3443(b)(2) requires the Department to provide electronic and/or written notification of the area designation(s) to other CACs and other interested or affected parties and post the area description to its website. This section specifies that interested parties may subscribe to the list serve to receive automatic updates. This is necessary to provide access to current and immediate updates on changes to the quarantine area.

Section 3443(b)(3) defines satellite infestations. An SOS detection is considered a satellite infestation when it occurs within any established quarantine area. If a satellite infestation is present, it may be used as the epicenter for an additional five-mile radius that may modify the border of the quarantine area. The Department will review each new detection and five-mile buffer but may not expand the quarantine if the expanded area does not include any regulated entity, such as in mountainous areas or waterbodies.

Section 3443(b)(4) allows any interested party to appeal a quarantine area designation by submitting an appeal with clear and convincing supporting evidence that the quarantine designation criteria does not exist to the Department's Legal Office. The subsection establishes the Department's obligation to respond in writing within ten (10) working days following receipt of the appeal and asserts that the designation of a county or portion of a county shall remain in effect during the appeal. This section is necessary to provide an opportunity for appeal of the Department's quarantine determination(s). This section is consistent with the legislative intent of the Administrative Procedure Act to allow public input into public policy changes.

### **Section 3443(c)**

Section 3443(c) specifies the articles and commodities declared to be hosts and possible carriers of the fungal pathogen that causes SOS. This is necessary to identify which commodities are subject to this regulation.

Section 3443(c)(1) identifies all nursery stock, plants, plant parts, including green waste, and plant products capable of propagation of *Citrus* spp. and *Fortunella* spp. as covered by the regulation. This is necessary to ensure regulatory action may be taken on these items which are known to be the primary vehicles for the spread of SOS.

Section 3443(c)(2) identifies fruit, except for seed, of *Citrus* spp. and *Fortunella* spp. as covered by the regulation. This is necessary to ensure regulatory action may be taken on these items which are known to be vehicles for the spread of SOS. Seed is excluded as a regulated commodity because the fungal pathogen that causes SOS is not known to be transmitted via seed.

Section 3443(c)(3) identifies articles intended for consumption, apparel or a similar person accessory, or decorative use made from *Citrus* spp. and *Fortunella* spp. as covered by the regulation. This is necessary to ensure regulatory action may be taken upon commercial items which may spread SOS, but which are not encompassed under the categories for which citrus is more widely known.

Section 3443(c)(4) establishes that any other articles or commodities which are infested or exposed to infestation by SOS are covered by the regulation. This is necessary to ensure regulatory action may be taken on commodities not previously identified but which nonetheless may spread SOS.

Section 3443(c)(5) identifies any appliances used in the harvesting, processing, and hauling of host plants, plant parts, and any green waste as covered by the regulation. This includes, but is not limited to, pallet boxes, field boxes, field bins, vehicles transporting field boxes, tractors, tarpaulins, trailers, trucks, picking and pruning equipment, and processing machinery and any other article, thing, or means of conveyance when it is determined by the Secretary or the CAC to present a hazard of spreading SOS. This is necessary because appliances used in the harvesting, processing, and hauling of host plants, plant parts, and any green waste may be

infested with the fungal pathogen that causes SOS and transmit the disease to other host material.

Section 3443(c)(6) exempts commodities from the previous provisions of subsection 3443(c). This is necessary to ensure that the regulated articles and commodities are limited to those which pose an actual risk of transmitting *Elsinoë australis* and causing SOS infestations outside the quarantine area. The proposed section eliminates unnecessary regulation of articles and commodities which do not pose a risk for spreading SOS outside of the quarantine area.

Section 3443(c)(6)(A) provides an exemption for dying or dead host plant material (green waste) that has been processed or handled or treated in a manner approved by the Secretary to eliminate SOS. This material must be moved directly to a city or county sanitary landfill or state licensed compost facility within the quarantine area. This material is exempted because it has been determined to not be a risk for spreading SOS outside of the quarantine area.

Section 3443(c)(6)(B) provides an exemption for host fruit that has been commercially cleaned, graded, and packed according to the SOS cleaning and disinfection protocol established by federal order. Host fruit that has been treated in this manner may move within and from the quarantine area without restriction. This material is exempted because it has been determined to not be a risk for spreading SOS.

#### **Section 3443(d)**

Section 3443 (d) would prohibit the movement of articles and commodities from the area under quarantine.

Section 3443(d)(1) would prohibit the movement of articles and commodities covered in subsection (c)(1) from moving from the quarantine area unless produced and continuously maintained within an approved structure that would protect the regulated articles from infestation. This is necessary to prevent the SOS from being spread on infected regulated articles and commodities.

Section 3443(d)(2) would require host nursery stock covered in subsection (c)(1) offered for sale or distribution within the quarantine area to bear a specific tree label stating that it may not be moved outside of the quarantine area. This is necessary to inform consumers of quarantine restrictions and that the plants may not be moved outside of the quarantine area, helping to prevent the artificial spread of SOS on host nursery stock.

Section 3443(d)(3) would allow regulated articles and commodities to transit or be moved into the quarantine area if originating in an area where SOS is not known to exist.

Section 3443(d)(4) would prohibit host fruit covered in subsection (c)(2) from being moved from or within the area under quarantine. This is necessary to ensure that host commodities originating from the quarantine area do not spread the fungal pathogen.

Section 3443(d)(5) would prohibit the movement of any articles and commodities covered in subsections (c)(3), (c)(4), and (c)(5) from movement out of the quarantine area except if cleaned and/or treated in a manner to eliminate SOS to the satisfaction of the Department or CAC. This is necessary to ensure that SOS host commodities and possible carriers of SOS originating from the quarantine area are adequately mitigated to reduce the risk of spreading the fungal pathogen.

### **Current Laws & Regulations**

Food and Agricultural Code (FAC) section 403 provides the Department with the authority and responsibility to prevent the spread of injurious insect or animal pests, plant diseases, and noxious weeds.

FAC sections 407, 5301, and 5302 authorizes the Department to establish, maintain, and enforce quarantine regulations to protect California's agricultural industries from harmful pests and diseases. Regulations may establish a quarantine at the boundaries of the state or elsewhere within the state.

FAC section 5024 requires the Department to inspect any plant or thing that is, or is liable to be, infested or infected by, or which might act as a carrier of, any pest.

FAC section 5321 requires the Secretary 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 5322 authorizes the Secretary to establish, maintain, and enforce quarantine, eradication, and 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 Secretary may make and enforce such regulations as she deems necessary to prevent any plant or thing which is, or is liable to be, infested or infected by, or which might act as a carrier of, any pest, from passing over any quarantine line which is established and proclaimed pursuant to this division.

The Department has determined it is necessary to take these steps to protect California agriculture from this injurious fungal pathogen as per FAC 407.

### **Anticipated Benefits from This Regulatory Action**

The Californian, national, and international consumers of California SOS host materials benefit by having high quality citrus fruit and healthy host nursery stock at lower cost. Implementing this regulation allows both domestic and international trade pathways to remain open. Without this regulatory action, USDA would implement a statewide quarantine for SOS, significantly increasing consumer cost.

#### Mandate on Local Agencies or School Districts

The Department has determined that this regulation does not impose a mandate on local agencies or school districts.

#### **Economic Impact Analysis (Government Code 11346.3(b))**

Regulating and preventing the artificial spread of SOS in California through the adoption and implementation of this regulation has the following economic impacts:

##### The Creation or Elimination of Jobs within the State

The adoption of this regulation is designed to prevent the spread of SOS within and from California. Inspection activities are currently being performed by existing state and county staff throughout California. The Department does not expect that additional review of compliance agreements would require significantly greater staff time. Therefore, the Department has determined that this regulatory proposal will have no significant impact on the creation or elimination of jobs in California.

##### The Creation of New Businesses or the Elimination of Existing Businesses within the State

The adoption requires entities to have a compliance agreement if handling regulated articles in or from an infested area. There are no new vendors that will be formed to provide this service nor current vendors that will be eliminated. Therefore, the Department has determined that this regulatory proposal will not have an impact on the creation of new businesses in California.

##### The Expansion of Businesses Currently Doing Business within the State

The adoption requires persons to have compliance agreement if growing or handling regulated articles from an infested area. There will be no businesses expanded to provide these services. Therefore, the Department has determined that this regulatory proposal does not have an impact on the expansion of businesses in California.

##### Worker Safety

This regulation is not expected to have an effect on worker safety.

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

The Department has determined that this regulation does not impose a mandate on local agencies or school districts and no reimbursement is required under Section 17561 of the Government Code.

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



The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The Department has determined that the proposed actions will not have a significant adverse economic impact on housing costs or California business, including the ability of California businesses to compete with businesses in other states. The Department's determination that the action will not have a significant statewide adverse economic impact on business was based on the following:

Actions based on this regulation taken by the State or local entities likely would result in net savings to the agricultural industry due to reduced agricultural loss.

#### Potential Impact to Homeowners and Community Gardens

There are no potential impacts to homeowners or community gardens

#### Potential Impacts to General Fund and Welfare

The proposed amendment of this regulation will not affect the General Fund and Welfare.

As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of these regulations and has determined that it is not inconsistent or incompatible with existing state regulations.

#### Assessment

Based upon the Economic Impact Analysis, the Department has concluded that the adoption of the regulation will (1) will have no significant impact on the creation or elimination of jobs in the State of California, (2) will have no impact on the creation or elimination of businesses within the State of California, (3) will have no impact on the expansion of businesses within the State of California, (4) will have no impact on the health and welfare of California residents, (5) will have no impact on California's environment, and; (6) is not expected to benefit workers' safety.

#### Alternatives Considered

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

The Department has presented to the CPDPC one alternative to the proposed state interior quarantine. This alternative was not selected because the state interior quarantine, as recommended by the committee and approved by the Secretary, was determined to be the most effective and least impactful way to protect California's citrus industry. The presented and non-selected option is as follows:

Take no action and do not establish a state interior quarantine. USDA would declare all of California quarantined for SOS and regulate areas of the state where SOS does not exist. A statewide quarantine would require more than 85 packinghouses to follow Federal cleaning procedures, thus adding unnecessary cost and burden to the industry.

Information Relied Upon

The Department relied upon the following studies, reports, and documents in the proposed adoption of Title 3 CCR 3443:

1. "California Agricultural Statistics Review, 2019-2020," California Department of Food and Agriculture.
2. Minutes, dated 11/10/2021, CCPDPC.
3. CDFA Secretary Signed Motions, dated 11/10/2021, CCPDPC.
4. Federal Order DA 2016-55.
5. Maps of Current Regulated Areas
6. Initial Quarantine Map, Imperial County, Calipatria.
7. Initial Quarantine Map, Imperial County, Winterhaven.
8. Initial Quarantine Map, Los Angeles County, Pomona.
9. Initial Quarantine Map, Orange County, Tustin.
10. Initial Quarantine Map, Riverside County, Blythe.
11. Initial Quarantine Map, Riverside County, Riverside.
12. Pest and Damage Record (PDR) for latest detection resulting in an SOS quarantine area.

<u>County, Area</u>	<u>PDR Number</u>
Imperial, Calipatria	RSAP06160641
Imperial, Calipatria	RSAP06160636
Imperial, Winterhaven	RSAP06160085
Imperial, Winterhaven	RSAP06160086
Los Angeles, Pomona	VN0P06190060

Orange, Santa Ana	CS8P06936899
Riverside, Blythe	RIAP06069715
Riverside, Blythe	RSOP50033710
Riverside, Riverside	RS8P70001149