

**State of California
Office of Administrative Law**

In re:
Department of Food and Agriculture

Regulatory Action:

Title 03, California Code of Regulations

Adopt sections: 3443

NOTICE OF APPROVAL OF REGULATORY
ACTION

Government Code Section 11349.3

OAL Matter Number: 2023-0522-01

OAL Matter Type: Regular (S)

This action establishes quarantine areas for regulating the movement of hosts and possible carriers of sweet orange scab (SOS).

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 10/1/2023.

Date: July 5, 2023

 FOR

Anna Thomas
Attorney

For: Kenneth J. Pogue
Director

Original: Karen Ross, Secretary
Copy: Keith Okasaki

NOTICE PUBLICATION/REGULATIONS SUBMISSION

STD. 400 (REV. 10/2019)

REGULAR

For use by Secretary of State only

| | | | |
|--|---|---|------------------|
| OAL FILE NUMBERS | NOTICE FILE NUMBER Z-2023-0203-01 | REGULATORY ACTION NUMBER 2023-0522-01 | EMERGENCY NUMBER |
| For use by Office of Administrative Law (OAL) only | | | |
| NOTICE | | REGULATIONS | |

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

JUL 05 2023

11:51 PM

OFFICE OF ADMIN. LAW
2023 MAY 22 AM 11:21

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 Sweet Orange Scab Interior Quarantine | TITLE(S) 3 | FIRST SECTION AFFECTED 3443 | 2. REQUESTED PUBLICATION DATE 2/24/2023 |
| 3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other | 4. AGENCY CONTACT PERSON Keith Okasaki | TELEPHONE NUMBER 916-704-5464 | 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 Disapproved/Withdrawn | NOTICE REGISTER NUMBER 2023, 8-2 | PUBLICATION DATE 2/24/23 | |

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

| | |
|---|--|
| 1a. SUBJECT OF REGULATION(S) Sweet Orange Scab 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 3443 |
| | AMEND |
| TITLE(S) 3 | REPEAL |

PER AGENCY REQUEST ALT 7/3

3. TYPE OF FILING

| | | | |
|---|---|---|---|
| <input checked="" 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 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)

Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) Effective on filing with Secretary of State §100 Changes Without Regulatory Effect Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) (SAM §6660) Fair Political Practices Commission State Fire Marshal

Other (Specify)

| | | | |
|------------------------------------|----------------------------------|-----------------------|--|
| 7. CONTACT PERSON Keith Okasaki | TELEPHONE NUMBER 916-704-5464 | FAX NUMBER (Optional) | E-MAIL ADDRESS (Optional) Keith.Okasaki@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 Arima Kozina <small>Digitally signed by Arima Kozina Date: 2023.05.19 14:10:24 -0700</small> | DATE 5/19/2023 |
| TYPED NAME AND TITLE OF SIGNATORY Administration and Finance Deputy Secretary | |

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUL 05 2023

Office of Administrative Law

Adopt Section 3443 to read:

3 CCR § 3443. Sweet Orange Scab Interior Quarantine.

A quarantine is established against the following pest, its hosts, and possible carriers.

(a) Pest. Sweet orange scab (SOS) (SOS associated fungal pathogen *Elsinoë australis*).

(b) Area Under Quarantine.

(1) An area shall be designated as under quarantine when all the following criteria exist:

(A) Survey results indicate an SOS infestation is present. An infestation of SOS is present when a single host is determined to be positive for *Elsinoë australis*.

(B) The California Department of Food and Agriculture (Department) has defined the infested area. 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 and the boundary line shall be expanded beyond the five-mile radius as necessary, to encompass such host material in its entirety. Wherever possible, known accepted mapping features including, but not limited to, roads, streets, highways, creeks, streams, rivers, canals, and city, county, state, park, and forest boundary lines shall be used. If there are no acceptable features such as those listed, imaginary lines may be used with a beginning and end point given as an intersection of features or as latitude and longitude.

(C) The local California County Agricultural Commissioner(s) (CAC) is notified of the infestation and requests the quarantine area be established.

(2) The Department shall 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 at <https://www.cdfa.ca.gov/Citrus/>. An interested party may go to the listed website and elect to receive automatic notifications of any changes in quarantine areas through the list serve option.

(3) Satellite infestations. A detection of SOS disease within any established quarantine area may be considered a satellite infestation and may be used as the epicenter for an additional five-mile radius surrounding the detection that modifies the border of the quarantine area.

(4) Any interested party or local entity may appeal an area quarantine designation by submitting a written request for review of the designation to the Department. The appeal must be accompanied by clear and convincing evidence that the quarantine area designation does not meet the criteria specified by this section. The appeal must be submitted to the Department's Legal Office at 1220 N Street, Suite 315, Sacramento, CA 95814 or emailed to CDFA.LegalOffice@cdfa.ca.gov no later than ten (10) working days following publication of the notice of designation. The Department must respond with a written decision no later than ten (10) working days following receipt of the appeal. The designation under appeal shall remain in effect while the decision is pending.

(c) Articles and Commodities Covered. The following are declared to be hosts and possible carriers of the fungal pathogen that causes SOS.

(1) All nursery stock, plants, plant parts, including green waste, and plant products capable of propagation of *Citrus* spp. and *Fortunella* spp.

(2) Fruit, except seed, of *Citrus* spp. and *Fortunella* spp.

(3) Articles intended for consumption, apparel or a similar personal accessory, or decorative use made from *Citrus* spp. and *Fortunella* spp.

(4) Any other articles or commodities which are infested or exposed to infestation by SOS.

(5) Possible carriers shall include all appliances used in the harvesting, processing, and hauling of the host plants and plant parts and any green waste residues including, but 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 CAC to present a hazard of spreading SOS and the person in possession thereof has been so notified.

(6) Exemptions. The following articles are exempt from the provisions of this subsection:

(A) Dying or dead plant material (green waste) that has been processed, handled, or treated in a manner approved by the Secretary to eliminate SOS and is moved directly to a city or county sanitary landfill or State licensed compost facility within the quarantine area.

(B) Host fruit commercially cleaned, graded, and packed according to the SOS cleaning and disinfection protocol established by federal order may be moved within and from the quarantine area.

(d) Restrictions.

(1) Articles and commodities covered in subsection (c)(1) are prohibited movement from the area under quarantine except as provided in (A) or (B) below:

(A) Produced and continuously maintained in a departmentally approved structure under the terms of a compliance agreement with the Department or agricultural commissioner's office.

(B) Moved under the terms of a special permit as authorized under Title 3 Section 3154 of the California Code of Regulations.

(2) Regulated nursery stock not maintained within a departmentally approved structure as in accordance with (d)(1)(A) and offered for sale or distribution shall bear a specific tree label issued by the Department stating that it may not be moved outside of the SOS quarantine.

(3) Articles and commodities covered in subsection (c)(1) produced outside the area under quarantine may move within and transit the area under quarantine by direct route and without delay in vehicles or containers which prevent exposure to infestation of the article or commodity to SOS while en route. Nursery stock shall be delivered directly to:

(A) Be planted at the delivery site within 48 hours; or

(B) A structure meeting the requirements of subsections (d)(1)(A).

(4) Host fruit covered in subsection (c)(2) is prohibited movement from or within an area under quarantine except if moved under the terms of a special permit as authorized under Title 3, Section 3154 of the California Code of Regulations.

(5) Articles and commodities covered in subsection (c)(3), (c)(4), and (c)(5) are prohibited movement from the area under quarantine except if cleaned and/or treated in a manner to eliminate SOS to the satisfaction of the Department or CAC.

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

Reference: Sections 5024, 5321, 5322, and 5705 Food and Agricultural Code.