

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED NEW REGULATION
Title 3, California Code of Regulations
Section 3447
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 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 3447 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 citrus yellow vein clearing virus (CYVCV). CYVCV has only been detected in the United States in the California and is of serious concern and threatens California's fresh citrus industry.

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

CYVCV is an emerging disease of citrus that can lead to significant losses to the industry. The disease is transmitted by aphids and a whitefly but is most readily moved on infected budwood and nursery stock. Once infected, there is no cure for CYVCV-infected citrus trees which will continue to be a reservoir for the pathogen. Additionally, studies have shown that CYVCV can reduce fruit yield by as much as 80%. CYVCV is of great concern to California citrus growers and threatens California citrus production, which was valued at over \$2.26 billion in 2022, and comprises 62% of the nation's citrus production and 78% of the nation's citrus value (California Agriculture Statistics Review 2022-2023). CYVCV is known to exist in Pakistan, India, China, Iran, and Turkey. Within China, the virus can be found in nearly all citrus-producing areas and is spreading rapidly.

CYVCV was first detected in California in March 2022, marking the first detection of the virus in the western hemisphere. The initial positive tree was found on a residential property in Tulare County. As a federally actionable plant pest, the Department immediately engaged with the Animal and Plant Health Service (APHIS) of the United States Department of Agriculture (USDA). Following the federal guidelines for a new pest detection, the Department conducted delimitation survey activities around the properties where CYVCV was detected to determine the extent of infestation. A hold notice was issued to each property with a detection to prevent the further spread of the disease. In addition to the delimitation surveys, the Department ensured CYVCV was included in its ongoing statewide multi-pest survey. CYVCV has been detected in Tulare and Los Angeles Counties.

Simultaneously, the Department formed a working group with representatives from California's citrus fruit and nursery industries, Citrus Research Board, Citrus Clonal Protection Program at UC Riverside, APHIS, and CDFA. As the first introduction of the virus in the United States, the charge of the working group was to develop regulatory framework to appropriately and effectively regulate the movement of CYVCCV hosts to prevent any further spread of the disease. The working group considered several options, ultimately proposing the establishment of a state interior quarantine. Establishing and enforcing an APHIS-supported state interior quarantine regulation also prevents APHIS establishing a statewide quarantine in California.

Title 3 CCR 3447 would establish quarantine areas for portions of California where CYVCCV detections have occurred and where the risk of future CYVCCV detections is greatest. The state interior quarantine areas would restrict the possession and movement of CYVCCV-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 3447 is necessary to specify that the Department may create a quarantine area and take related action to regulate the possession and movement of CYVCCV host nursery stock, bulk citrus, and other possible carriers of CYVCCV. The aim of this is to protect California's agricultural industry by preventing the artificial spread of CYVCCV 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 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 assumption that restricting movement within and from quarantine areas established around each CYVCCV detection will prevent the artificial spread of CYVCCV via host nursery stock and bulk citrus.

The factual basis for the Department's determination that Title 3 CCR 3447 is necessary includes the following:

CYVCCV has been detected a total of 919 times since 2022 in Tulare County. In 2023, CYVCCV was first detected in Los Angeles County and has been detected 2 times, including the initial detection in the county. Recent detections heightened the Department's concern about preventing further spread from areas where CYVCCV has been detected. Throughout 2022 and 2023, the Department and the

California Citrus Pest and Disease Prevention Committee (CPDPC) held several meetings to discuss the establishment of an CYVCV 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 CYVCV 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 CYVCV. 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 CYVCV were to spread and become established in fruit production areas, California's citrus industry would suffer 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 CYVCV 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 3447 to ensure trading partners maintain confidence in California's ability to regulate the citrus industry and produce high quality, marketable produce.

Project Description

Section 3447

Section 3447 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 3447(a)

Section 3447(a) identifies citrus yellow vein clearing virus (CYVCV) as the pest for which the quarantine regulation is proposed. This is necessary to allow the public, regulated entities, trading partners, and regulators to identify the specific citrus pest that is the subject of the quarantine restrictions.

Section 3447(b)

Section 3447(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 3447(b)(1)(A) specifies the first criteria for establishing a CYVCV quarantine area: survey results indicate a CYVCV infestation is present. The proposed regulation specifies that a CYVCV infestation is present when a single host plant tests positive for the virus. This is necessary to specify that regulatory action can only be taken upon survey of host plants and subsequent positive identification of CYVCV.

Section 3447(b)(1)(B) specifies the second criteria for establishing a CYVCV 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 one-half mile radius surrounding the site of the CYVCV-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 CYVCV 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 3447(b)(1)(C) specifies the third criteria for establishing a CYVCV 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 3447(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 3447(b)(3) defines satellite infestations. A CYVCV 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 one-half mile radius that may modify the border of the quarantine area. The Department will review each new detection and one-half 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 3447(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 3447(c)

Section 3447(c) specifies the articles and commodities declared to be hosts and possible carriers of CYVCV. This is necessary to identify which commodities are subject to this regulation.

Section 3447(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 CYVCV.

Section 3447(c)(2) identifies fruit, except seed, of *Citrus* spp. and *Fortunella* spp. as covered by the regulation. CYVCV has not shown to be transmissible by seed. This is necessary to ensure regulatory action may be taken on these items which are known to be vehicles for the spread of CYVCV.

Section 3447(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 CYVCV, but which are not encompassed under the categories for which citrus is more widely known.

Section 3447(c)(4) establishes that any other articles or commodities which are infested or exposed to infestation by CYVCV 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 CYVCV.

Section 3447(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 county agricultural commissioner to present a hazard of spreading CYVCV. 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 CYVCV and transmit the disease to other host material.

Section 3447(c)(6) exempts commodities from the previous provisions of subsection 3447(c). This is necessary to ensure that the regulated articles and commodities are limited to those which pose an actual risk of transmitting CYVCV and causing new infestations outside the quarantine area. The proposed section eliminates unnecessary regulation of articles and commodities which do not pose a risk for spreading CYVCV outside of the quarantine area.

Section 3447(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 CYVCV. 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 CYVCV outside of the quarantine area.

Section 3447(c)(6)(B) provides an exemption for host fruit that has been commercially cleaned, graded, and packed. Host fruit that has been handled 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 CYVCV.

Section 3447(c)(6)(C) provides an exemption for less than 25 pounds of non-commercially cleaned host fruit for personal consumption to be moved within and from a quarantine. This material is exempted because it has been determined to be very low risk of spreading CYVCV.

Section 3447(d)

Section 3447(d) would prohibit the movement of articles and commodities from the area under quarantine.

Section 3447(d)(1) would prohibit the possession and movement of articles and commodities covered in subsection (c)(1) from being possessed in, or moved 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 CYVCV from being spread on infected regulated articles and commodities.

Section 3447(d)(2) would require host nursery stock covered in subsection (c)(1) offered for sale or distribution in the quarantine area to be cleaned and/or treated in a manner to eliminate all live life stages of insect vectors of CYVCV. This is necessary to maintain host nursery stock free from insect vectors.

Section 3447(d)(3) would allow regulated articles and commodities to transit or be moved into the quarantine area if originating in an area where CYVCV is not known to exist.

Section 3447(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 CYVCV.

Section 3447(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 CYVCV to the satisfaction of the Department or CAC. This is necessary to ensure that CYVCV host commodities and possible carriers of CYVCV originating from the quarantine area are adequately mitigated to reduce the risk of spreading the virus.

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 plant pathogen as per FAC 407.

Anticipated Benefits from This Regulatory Action

The Californian, national, and international consumers of California CYVCV 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 CYVCV, significantly increasing consumer cost.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture 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 CYVCV 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 CYVCV 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 of Food and Agriculture 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 also has 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 agency 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 of new businesses or elimination of businesses within the State of California, and (3) will have no impact on the expansion of businesses within the State of California.

The Department is not aware of any specific benefits this regulation will have on worker safety or the health of California residents. The Department believes 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 proposed action has no environmental impact or benefit, as it focuses on controlling the spread and movement of CYVCV within the agricultural industry, which is unrelated to environmental concerns.

Alternatives Considered

The Department must determine that no reasonable alternative 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 California Citrus Pest and Disease Prevention Committee (CCPDPC) 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 option is as follows:

Take no action and do not establish a state interior quarantine. USDA would declare all of California quarantined for CYVCV and regulate areas of the state where CYVCV does not exist. A statewide quarantine would require more than 500 citrus nurseries to construct approved-insect resistant structures to continue business operations, 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 3447:

1. "California Agricultural Statistics Review, 2022-2023," California Department of Food and Agriculture.
2. Minutes, dated 2/21/2024, CCPDPC.
3. CDFA Secretary Signed Motions, dated 2/21/2024, CCPDPC.
4. Initial Quarantine Map, Tulare County, Visalia.
5. Initial Quarantine Map, Tulare County, Tulare.
6. Initial Quarantine Map, Los Angeles County, Hacienda Heights.
7. Pest and Damage Record (PDR) for latest detection resulting in a CYVCV quarantine area.

<u>County, Area</u>	<u>PDR Number</u>
Tulare, Visalia	VS0P06671701
Tulare, Tulare	VS0P06584531
Los Angeles, Hacienda Heights	CE8P80001729