

## FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists due to the issuance of Federal Order on January 25, 2012 pertaining to *Phytophthora ramorum* which will become effective on March 1, 2012. The USDA is adding eight new associated hosts and one new host of this disease. The Secretary of the Department of Food and Agriculture has found that oak mortality disease (sudden oak death) caused by a fungus, *Phytophthora ramorum*, presents a clear and present danger to the native stands of oak and other trees, the nursery industry, other agricultural commodities and plant life (including ornamental plantings) of California. *Phytophthora ramorum* is a serious disease and host material is subject to State regulation for intrastate movement and federal regulation for interstate movement. If a state agency makes a finding that the adoption (or amendment) 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). “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.

### Emergency Rulemaking Procedures

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).

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. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code Section 11349.6.

### California Environmental Quality Act

“Specific actions necessary to prevent or mitigate an emergency” are exempt from the California Environmental Quality Act [CEQA]. Public Resources Code Section 21080(b)(4). “Emergency means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.” Public Resources Code Section 21060.3.

### Statutory Exemption

Title 14, California Code of Regulations Section 15269, subdivision (c) “Specific actions necessary to prevent or mitigate an emergency.”

### Categorical Exemption

Title 14, California Code of Regulations Section 15308, “Class 8 consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment.”

For the reasons set forth in this document, this constitutes a specific act necessary to prevent or mitigate an emergency and is also an action required for the preservation of the environment.

### Evidence of Emergency

The Department has determined that *Phytophthora ramorum* is a serious forest pest for which quarantine control is required to prevent further artificial spread and harm to forests, parks,

commercial and urban landscapes, and watersheds. This disease is known to occur in the environment in 14 California counties. Oak mortality disease is serious due to the fact that it kills tanoak, coast live oak, and black oak trees. The pest has been confirmed as infecting Shreve's oak and non-oak species such as rhododendron, huckleberry, bigleaf maple, California buckeye, California coffeeberry, manzanita, and toyon and other hosts causing foliar and stem disease symptoms. *Phytophthora ramorum* has the capability of causing significant irreparable harm to California's agricultural industry and environment. Through the issuance of this federal order the followings plants will be added to the associated articles list: *Ilex cornuta* (Buford holly, Chinese holly, horned holly), *Illicium parviflorum* (yellow anise), *Larix kaempferi* (Japanese larch), *Magnolia denudate* (lily tree), *Mahonia nervosa* (creeping Oregon grape), *Molinadendron sinaloense*, *Trachelospermum jasminoides* (Star jasmine, Confederate jasmine) and *Veronica spicata* (*syn. Pseudolysimachion spicatum*, spiked speedwell). The following plant will be removed from the associated article list and moved to the host list: *Cinnamomum camphora* (camphor tree). The associated hosts have been determined by the USDA as those which can be artificially inoculated to produce disease symptoms but which have not fully completed "Koch's Postulates." The USDA has determined hosts to be those for which "Koch's Postulates" have been completed or plants which have been found naturally infected in the environment. Without a parallel State regulation for the intrastate movement of associated articles and host material that is substantially the same as the federal domestic quarantine and related federal orders, the USDA cannot regulate less than the entire State. Therefore, to ensure harmonization with the federal order, these plants are also being added to Section 3700(c) as "associated articles" and "hosts."

The Department proposes to amend this regulation because it is necessary to continue to have authority for an established statewide program in order to arrest the artificial spread of the disease to additional areas and harmonize the State's regulation governing the intrastate movement of nursery stock with the latest federal order that governs the interstate movement of California nursery stock. Immediate amendment of this regulation is necessary to mitigate the effects of this disease on the agricultural industry, which includes native tree stands. Additionally, it is necessary to immediately amend this regulation to avoid more stringent federal restrictions being placed against the State to prevent the interstate movement of articles and

commodities that may carry *Phytophthora ramorum*.

#### Project Description

This federal order will specifically affect the interstate movement of nursery stock from several states, including California. Under authority of this federal order, nurseries operating under a compliance agreement may continue to ship “host plants” and “associated plants” including these newly listed plants. Any nurseries containing these newly listed associated plants must be properly inspected, sampled and tested and placed under a Compliance Agreement to be able to move plants interstate. In order to prepare the affected industries, the Department intends to also issue a Phytosanitary Advisory to all county agricultural commissioners concerning the requirements of this upcoming federal order.

#### Background

The Department of Food and Agriculture has found that oak mortality disease (sudden oak death) caused by a fungus, *Phytophthora ramorum*, presents a clear and present danger to the native stands of oak and other trees, the nursery industry, other agricultural commodities and plant life (including ornamental plantings) of California. Section 3700 implements a program to arrest the artificial spread of the disease. Continued action is necessary to contain and minimize the destructive impact of this pest and disease at the earliest possible time. On April 9, 2004, the Administrator of the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Services (APHIS) issued the first emergency order restricting the interstate movement of nursery stock from California nurseries located outside the area regulated under Section 3700. On April 22, 2004, USDA, APHIS issued a new order that replaced that issued on April 9, 2004. On April 23, 2004, USDA, APHIS issued a clarification of its April 22, 2004 order. Through this last federal emergency order and its subsequent clarification, the USDA, APHIS identified additional plant species as regulated associated articles and as such, these associated articles are prohibited interstate movement from all California nurseries unless properly certified under the provision of the federal emergency order.

Since April 2004, the USDA, APHIS has issued a series of federal emergency orders that amended the articles regulated including on: 1) August 5, 2004, 2) December 21, 2004, 3) August 3, 2005, 4) September 14, 2005, 5) November 15, 2005 (effective November 28, 2005),

6) February 10, 2006 (effective February 20, 2006), 7) March 14, 2006 (effective March 31, 2006), 8) July 17, 2006 (effective August 1, 2006), 9) September 21, 2006 (effective October 10, 2006) 10) a federal rule (effective February 27, 2007), a federal order (effective September 7, 2007), a federal order (effective January 1, 2008), a federal order (effective April 1, 2008) and a federal order (effective June 9, 2008). As a result, it was necessary to make emergency amendments to the State's regulation governing the intrastate movement of hosts and associated articles (nursery stock) to be consistent with these federal orders and the federal rule.

#### Information Relied Upon

For Information/Action, DA-2012-03, January 25, 2012, *Phytophthora ramorum* (ramorum blight, dieback, sudden oak death): New Host Plants Added to *P. ramorum* Regulations, Rebecca A. Bech, Deputy Administrator, Plant Protection and Quarantine and its attached federal order.

#### Authority and Reference Citations

Authority: Sections 407, 5321 and 5322, Food and Agricultural Code.

Reference: Sections 24.5, 5321 and 5322, Food and Agricultural Code.

#### Informative Digest

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry in California and prevent the spread of injurious pests (Food and Agricultural Code, Sections 401 and 403). Existing law also provides that the Secretary may establish, maintain, and enforce such regulations as he deems necessary to prevent the spread of pests to protect California's agricultural industry (Food and Agricultural Code, Section 5322).

Section 3700. Oak Mortality Disease Control.

The proposed emergency amendment of Section 3700(c) will establish *Cinnamomum camphora* (camphor tree) as a new host and *Ilex cornuta* (Buford holly, Chinese holly, horned holly), *Illicium parviflorum* (yellow anise), *Larix kaempferi* (Japanese larch), *Magnolia denudata* (lily tree), *Mahonia nervosa* (creeping Oregon grape), *Molinadendron sinaloense*, *Trachelospermum*

*jasminoides* (star jasmine, Confederate jasmine) and *Veronica spicata*, *syn. Pseudolysimachion spicatum* (spiked speedwell) as associated articles under the articles and commodities covered by the regulation. The effect of the changes to the regulation is to provide authority for the State to regulate movement of these new hosts and “associated hosts” from the regulated area to prevent artificial spread of the pest to non-infested areas to protect California's agricultural industry and the environment.

#### Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3700 does not impose a new mandate on local agencies or school districts, except that the agricultural commissioner of a county under regulation has a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because the 14 affected agricultural commissioners requested that they be added to the existing regulation.

#### Cost Estimate

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 proposed action.