

DEPARTMENT OF FOOD AND AGRICULTURE
Title 3 of the California Code of Regulations Section 3700 (b)

Notice of Proposed Rulemaking
45 – Day Notice

The Department of Food and Agriculture (Department) proposes to revise title 3 of the California Code of Regulations (CCR) Section 3700, subsection (b) pertaining to Oak Mortality Disease Control (Sudden Oak Death or “SOD”).

PUBLIC HEARING

A public hearing is not scheduled. However, a public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed regulation to the Department. Comments may be submitted by USPS, FAX or email. The written comment period closes on May 24, 2021. The Department will consider only comments received at the Department offices by that date or postmarked no later than May 24, 2021. Submit comments to:

Erin Lovig
Department of Food and Agriculture
Plant Health and Pest Prevention Services
2800 Gateway Oaks Dr, Suite #200
Sacramento, CA 95833
erin.lovig@cdfa.ca.gov
916.403.6682
916.651.2900 (FAX)

Unless there are substantial changes to the proposed regulation prior to adoption, the Department of Food and Agriculture may adopt the proposal as set forth in this notice without further notice to the public. Following the public hearing, if one is requested, or following the written comment period if none is requested, the Department of Food and Agriculture, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

AUTHORITY

The Department proposes to amend Section 3700 pursuant to the authority vested by Sections 407 and 5321 and 5322 of the Food and Agricultural Code (FAC) of California.

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 24.5, 5321 and 5322 of the FAC.

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

The California Department of Food and Agriculture (Department) adopted Section 3700 to provide authority for the State to mitigate the effects of SOD on the agricultural industry and native tree stands, by establishing a program to arrest the artificial spread of the disease to unregulated areas, and thereby protect California’s agricultural industry and environment. Subsection (b) lists

the counties within the state of California that are regulated against the pest, its hosts, and possible carriers. This regulation amends the list in Section 3700 (b) to add Del Norte county to the list of regulated areas. The list was amended on November 3, 2020 on an emergency basis.

EXISTING LAWS & REGULATIONS

Existing law, 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.”

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 the Secretary 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 the Secretary’s opinion necessary to circumscribe and exterminate or prevent the spread of any pest which is described in FAC section 5321.

Existing law, FAC Section 5761, provides that regulations adopted pursuant to FAC Section 5322 may proclaim any portion of the state to be an eradication area with respect to the pest, prescribe the boundaries of such area, and name the pest and the hosts of the pest which are known to exist within the area, together with the means or methods which are to be used in the eradication or control of such pest.

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

ANTICIPATED BENEFITS OF THE PROPOSED AMENDMENTS

Preventing the artificial spread of the SOD economically benefits all Californians and businesses involved in the production or sale of host material located outside the infested regulated area. Tourism in the unregulated area isn't negatively impacted by restrictions on access to parks and forests that would be necessary either to prevent disease spread or to ensure protection from hazardous trees, or due to loss of the host trees that would affect parks’ and forests’ visual aesthetic. Local governments do not face unexpected costs when they must remove infected dead or hazardous trees in parks, parkways, along roadsides or adjacent to public buildings. Homeowners do not have to use protective sprays to protect their specimen oaks or face costs for the removal of hazardous trees and loss of their property values.

EVALUATION OF INCONSISTENCY / INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

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.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

A Statewide Plant Pest Prevention and Management 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 environmental impacts and mitigation when implementing the Statewide Plant Pest Prevention and Management Program activities related to SOD.

The EIR may be accessed at the following website: <http://www.cdfa.ca.gov/plant/peir/>.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandates on local agencies or school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: None

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: The Department's operational program costs for the implementation of the entire control program for fiscal year 2020/2021 is \$1,505,591. These funds comprise federal funding obtained by the Department under contract with the USDA in the Department's continued effort to prevent the artificial spread of the disease. The Department's program costs, including that which is related to staff time and laboratory supplies, is derived from this source of funding. Additionally, the remaining federal funding is then dispersed by the Department to participating California county agricultural commissioners through cooperative agreements with each county. This money funds the commissioners to conduct required surveys and certification activities. No State General Fund money, other than staff costs dedicated to the adoption of any regulatory change, is used to sustain this program. If the Department fails to permanently adopt this regulation, the funds supplied to the state from the USDA contract to prevent artificial spread of SOD within the state would likely be lost, as the USDA would likely regulate the entire State. However, the Department and counties would still be obligated to provide certification for host material moving interstate or internationally, and thus, the Department's and counties' workloads would increase. Rather than having to provide certification for interstate and international shippers located in the 16 current regulated counties, certification would be necessary throughout the State and would lack reimbursement through federal funds.

Cost impacts on a representative private person or business: 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.

Significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states: None.

The Department does not anticipate that these amendments will affect small businesses. Businesses, such as nurseries, that are in an infected area are subjected to federal rules under the federal domestic quarantine for *Phytophthora ramorum*. The proposed amendment is a parallel State regulation for the intrastate movement of associated articles and host material. Its

implementation will avoid disruption to small business activities in the quarantine area. Any associated costs are expected to be minimal.

Significant effect on housing costs: None

RESULTS OF THE ECONOMIC IMPACT ANALYSIS / ASSESSMENT

The Department has concluded that this Section 3700 amendment (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, and (3) will have no impact on the expansion of businesses within the State of California. As stated above under 'Anticipated Benefits of the Proposed Amendments,' the prevention of the artificial spread of the SOD would economically benefit the health and welfare of California residents and the state's environment by protecting trees in public parks and on private property. Public parks would avoid the loss of the host trees that would affect parks' and forests' visual aesthetic and potentially harm tourism. Homeowners would avoid the costs of protective sprays to protect their specimen oaks or the costs for the removal of hazardous trees and loss of their property values.

Small business determination: The amendment of Section 3700 will provide authority for the Department to regulate against the pest causing SOD in Del Norte County and there are no known private sector cost impacts.

CONSIDERATION OF ALTERNATIVES

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

The Department invites interested persons to present statements or alternatives during the written comment period.

CONTACT PERSONS

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed is:

Erin Lovig
California Department of Food and Agriculture
Plant Health and Pest Prevention Services
2800 Gateway Oaks Dr, Suite #200
Sacramento, CA 95833
erin.lovig@cdfa.ca.gov
916.654.1017
916.651.2900 (FAX)

In her absence, you may contact Karen Olmstead at (916) 403-6879. Questions regarding the substance of the proposed regulation should be directed to Erin Lovig.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website (www.cdfa.ca.gov/plant/Regulations.html). Copies of the Notice of Proposed

Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed at this website.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department has prepared an initial statement of reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the comment period and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the agency officer (contact) named herein.