

DEPARTMENT OF FOOD AND AGRICULTURE  
Title 3 of the California Code of Regulations

Section 3700 Oak Mortality Disease Control

**Notice of Proposed Rulemaking  
45 – Day Notice**

The Department of Food and Agriculture (Department) proposes to amend Title 3 of the California Code of Regulations (CCR) 3700 Oak Mortality Disease Control.

**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 regulations to the Department. Comments may be submitted by USPS, FAX or email. The written comment period closes on December 12, 2023. The Department will consider only comments received at the Department offices by that date or postmarked no later than December 12, 2023. Submit comments to:

Erin Lovig, Senior Environmental Scientist Supervisor  
California Department of Food and Agriculture Plant Health and  
Pest Prevention Services  
1220 N St,  
Sacramento, CA 95814  
916.403.6650  
Permits@cdfa.ca.gov

Questions regarding the substance of the proposed regulation should be directed to Erin Lovig. In her absence, you may contact Rachel Avila at (916) 698-2947 or [rachel.avila@cdfa.ca.gov](mailto:rachel.avila@cdfa.ca.gov).

Unless there are substantial changes to the proposed regulations prior to amendment, 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, 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, 5321, and 5322 of the Food and Agricultural Code (FAC).

## **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 specific purpose of the proposed amendment of the regulation 3700 is to revise and update the known host list for *Phytophthora ramorum*, a fungus which causes oak mortality disease (sudden oak death), in California regulation to coincide with the official *Phytophthora ramorum* host list promulgated on October 31, 2022 by the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS).

By pairing the California host list with the USDA host list, the Department will be able to enact any quarantine needed against the *Phytophthora ramorum* using the federal standards.

## **EXISTING LAWS & REGULATIONS**

Existing law, FAC Section 24.5, states that inasmuch as plants growing in native stands or planted for ornamental purposes contribute to the environmental and public health and welfare needs of the people of the state, the Legislature hereby finds and declares that such plants shall be considered as a part of the agricultural industry for the purpose of any law that provides for the protection of the agricultural industry from pests.

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 if the director receives information of the existence of any pest which is not generally distributed within this state, they shall thoroughly investigate the existence and 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 her opinion necessary to circumscribe and exterminate or prevent the spread of any pest which is described in FAC section 5321.

## **ANTICIPATED BENEFITS OF THE PROPOSED AMENDMENT**

Preventing the artificial spread of *Phytophthora ramorum* 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.

There is no existing, comparable federal regulations or statute.

There are no known specific benefits to worker safety or the health of California residents.

### **EVALUATION OF INCONSISTENCY / INCOMPATIBILITY WITH EXISTING STATE REGULATIONS**

As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of Section 3700 and has determined that they are not inconsistent or incompatible with existing State regulations.

### **DISCLOSURES REGARDING THE PROPOSED ACTION**

*The Department has made the following initial determinations:*

Mandate on local agencies or school districts: None.

Cost or savings to any State agency: None

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

Cost or savings in federal funding to the state: None.

Cost impacts on a representative private person or business: The agency is not aware of any cost impacts that a representative 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: The cost impacts are expected to be minimal/non-consequential. The Department makes the initial determination that the proposed action will not have a significant, statewide adverse economic impact.

Significant effect on housing costs: None

Small business determination: The proposed action will not affect small business because compliance activities are currently being performed by existing staff throughout quarantine areas within the state without any impact on small business.

The Department also has determined that 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 and no nondiscretionary costs or savings to local agencies or school districts, will result from the amendment of Section 3700.

## **RESULTS OF THE ECONOMIC IMPACT ANALYSIS / ASSESSMENT**

The Department has concluded that the 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, (3) will have no impact on the expansion of businesses within the State of California, (4) is expected to benefit the health and welfare of California residents, (5) is expected to benefit the state's environment, and (6) is not expected to harm or benefit workers' safety

Health and welfare: The proposed action will benefit the health and welfare of California residents by making it more likely that *Phytophthora ramorum* will be detected before an infestation can happen, and, if there is an infestation, the Department can react quickly and effectively. Speed of response is key to eradicating an incipient pest infestation. Programmatic delays potentially can lead to pest quarantines, as well as increased production costs and potential job loss.

The state's environment: The proposed action will benefit the state's environment by increasing the chance that *Phytophthora ramorum* would be detected before an infestation can happen. If the Department neglected to regulate hosts, this fungus pest could spread into the local environment via the surrounding non-agricultural ecosystems. This could adversely impact private and commercial landscape plantings, local, regional, state and national parks, other recreational sites, open habitats, and wild lands. Affected plants could become less vigorous and may produce fewer seeds. Plants/trees with low propagule output can result in major changes to plant community structure.

## **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 effective in carrying out the purpose for which the action is proposed, would be as effective and 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 other provision of law.

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

**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, and has made available all the information upon which its proposal is based and the express terms of the proposed action. The Department has posted the information regarding this proposed regulatory action on its Internet website ([www.cdfa.ca.gov/plant/Regulations.html](http://www.cdfa.ca.gov/plant/Regulations.html)). 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 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 named herein.