FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture (Department) finds that an emergency exists due to the unexpected detection of *Phytophthora ramorumin* in the environment of Del Norte County. 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 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. The Department is proposing emergency re-adoption of the amendment to Title 3 California Code of Regulations (CCR) Section 3700 the effect of which maintains Del Norte County as a regulated area against this pest.

Emergency Defined

"'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. 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, per Government Code Section 11346.1(b)(1).

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.

The specific purpose of Section 3700 is to provide authority for the State to mitigate the effects of oak mortality disease (sudden oak death) on the agricultural industry, which includes native tree stands, by establishing a program to arrest the artificial spread of the disease to additional 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.

California Environmental Quality Act

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 sudden oak death.

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

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 currently known to occur in in 15 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.

The United States Department of Agriculture (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. 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 does not have a standard for declaring less than a county as a quarantine area. 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. Additionally, the State has to add a regulated area to its regulation first before the USDA can add it to their regulation or federal order. Therefore, Del Norte County must be added to section 3700(b) through emergency rulemaking in order to avoid the entire state being treated as a quarantine area by the USDA.

Background

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 applicable federal requirements that govern the interstate movement of California nursery stock and other host material. Immediate amendment of this regulation is necessary to mitigate the effects of this disease on the agricultural industry, which includes native tree stands.

Preventing the artificial spread of this pathogen through the movement of hosts and associated hosts from Del Norte County to other uninfested counties within California also prevents unnecessary damage to oak woodlands, timberland, hazards from falling trees, potential increases in fire danger, loss of heritage and shade trees, loss of soil stability, loss or habitat and food for wildlife, other ecological changes in impacted areas, aesthetic losses, increased use of pesticides, and cultural losses to indigenous tribes.

The sudden oak death (SOD) pathogen's behavior may be unpredictable if it infests a new unregulated county. The Sonoma County Department of Emergency Services and the University of California Cooperative Extension prepared a Sonoma County Sudden Oak Death Strategic Response Plan in January 2008. It stated, that over the last three years, 7.5% of the land (75,000 acres) in Sonoma County had been affected by new SOD mortality. This was

twice as many acres of new mortality than any other regulated county in California. The report highlighted the following threats due to SOD: hazards from falling trees, potential increase in fire danger, loss of heritage and shade trees, loss of soil stability, loss or habitat and food for wildlife, aesthetic losses, and economic losses due to the spread to new areas within the county.

The California State Board of Forestry and Fire Protection approved the establishment of a Zone of Infestation for SOD which covers all counties listed under this regulation. Each Notice of Timber Operations must identify and list feasible measures to mitigate the adverse infestation or infection impacts of SOD from the timber operations within the regulated area. Additionally, those completing the timber harvest plans must complete a formal SOD survey at least once a year and are responsible for reporting any SOD infestations. By preventing the artificial spread of the SOD pathogen to new forested areas, this extra work does not have to be performed by those in the timber industry. The Department does not have any way to monetarily quantify these savings.

The USDA's Forest Service recognizes the SOD pathogen as a serious pest threat to California's and the nation's forests. Over the past ten years the USDA's Forest Service has distributed approximately $11.5 million dollars to various scientists for research on the epidemiology and impacts of SOD in forests (http://www.fs.fed.us/psw/partnerships/sod/).

The SOD pathogen changes the forest's ecology. The pathogen attacks plants in both the over and understory. The disease is lethal to black oaks, coast live oaks, Shreve oaks and tanoaks. The disease also attacks Douglas-fir, grand fir, red fir, white fir and coast redwoods, California bay laurel and others.

California's total oak woodlands contain about 5 billion cubic feet of wood valued at over $275 million and the total California timberlands contain 5.8 billion cubic feet of oaks, which are worth over $500 million for forest products alone. In SOD regulated and unregulated areas of the state, oak products exported from California from 1996- 2000 averaged almost $50 million per year:

(https://www.aphis.usda.gov/plant_health/plant_pest_info/pram/downloads/pdf_files/pra-cphst-08.pdf)

Studies have shown that predominantly coast live oak forests may lose from 15 percent (in a low infestation area) to 69 percent (in a high infestation area) of their basal area (meters squared over hectare). These stands generally have California bay laurel present in them. There is evidence that the California bay laurel is increasing its dominance in these stands which may impact understory light levels and the ecology of existing understory shrubs and other plants. This forest dieback of coast live oak can result in changes in insect populations, impacting insectivorous birds by forcing them to switch prey, change foraging substrates or increase foraging time. This may lead to changes in the survivorship of nestlings. Studies suggest that oak-dependent birds may decline in species richness and diversity by five to 15 percent. The changes in forest ecology will also lead to changes in the populations of small mammals, snakes and amphibians.

Tanoaks suffer the highest mortality rates and scientists are concerned about being able to preserve adequate germplasm and ecosystems. The destruction of large tanoak stands by the SOD pathogen could contribute to increased sediment input which is harmful to salmon, steelhead and sea run cutthroat populations, preventing them from being able to lay their eggs in suitable gravel beds. Additionally, this could also lead to bank failures along the river. Tanoak acorns are an important mast crop (having bumper years). In low mast years bears are known to cause increased damage to conifers by stripping the bark for food.

There is evidence that widespread tree mortality due to the SOD pathogen reduces biodome production and carbon uptake and increases future carbon emissions from decaying and burning of the course woody debris and dead trees.

Necessity for Readoption

The Department has made substantial progress and proceeded with diligence to complete the regular rulemaking process for these regulations. However, the Department was obligated to make several revisions to the economic impact analysis in the Initial Statement of Reasons based on the Department of Finance's (DOF's) review. To accommodate DOF's requests,

additional time will be needed to allow for review of the amended ISOR.

Project Description

This amendment will add Del Norte County to the regulated areas listed in 3700(b). This regulatory change will affect the intrastate movement of hosts and associated hosts from Del Norte County to the unregulated portions of the State. The hosts and associated hosts will have to be certified that they are free from the SOD pathogen.

Information Relied Upon

Email from Carolyn Lambert to Rachel Avila, dated 9/24/2020

For Information/Action, DA-2013-41, October 23, 2013, *Phytophthora ramorum* (ramorum blight, dieback, sudden oak death): Listing and Regulation of a Plant Species Reported to be Associated with *P. ramorum,* Osama El-Lissy, Deputy Administrator, Plant Protection and Quarantine and its attached federal order.

The University of California Cooperative Extension, Sonoma County and the Sonoma County Department of Emergency Services Sonoma County Sudden Oak Death Strategic Response Plan, January 2008

USDA, Risk Analysis for *Phytophthora ramorum* Werres, de Cock & Man in't Veld, Causal Agent of Sudden Oak Death, Ramorum Leaf Blight, and Ramorum Dieback, January 25, 2008 https://www.aphis.usda.gov/plant_health/plant_pest_info/pram/downloads/pdf_files/pra-cphst-08.pdf

US Forest Service, Research Partnerships, Sudden Oak Death Research - *Phytophthora ramorum*
https://www.fs.fed.us/psw/partnerships/sod/

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 they deem 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(b) will establish Del Norte County as a regulated area. The effect of the change to the regulation is to provide authority for the State to regulate the movement of hosts and associated articles (nursery stock) from the regulated area to prevent artificial spread of the pest to non-infested areas in order 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, as the agricultural commissioner of a county under regulation uses their discretion to approve the quarantine in their county and consents to enforce it. No reimbursement is required under Section 17561 of the Government Code because the 15 affected agricultural commissioners requested that they be added to the existing regulation.

Economic Impact Analysis

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 related to staff time, laboratory supplies, etc. 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 dedicated to the promulgation of any regulation change, is used to sustain this program. If the Department fails to amend this regulation, this source of future funding would likely be lost, as the USDA would likely regulate the entire State. However, the Department's and counties' workloads would increase. The Department and counties would still be obligated to provide certification for host material moving interstate or internationally. Rather than having to provide certification for interstate and international shippers located in the 15 current regulated counties, certification would be necessary throughout the State and would lack reimbursement through federal funds.

Anticipated Benefits from This Regulatory Action

Preventing the artificial spread of the SOD pathogen 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.

Assessment

The Department has made an assessment that the adoption of the regulation would not 1) create or eliminate jobs within California; 2) create new business or eliminate existing businesses with California; or 3) affect the expansion of businesses currently doing business with California.

Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

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.

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.