

EMERGENCY NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2012-0217-01E
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For use by Office of Administrative Law (OAL) only

2012 FEB 17 AM 11:32
OFFICE OF ADMINISTRATIVE LAW

NOTICE	REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY Food and Agriculture	AGENCY FILE NUMBER (if any) PH12005
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn			NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Oak Mortality Disease Control	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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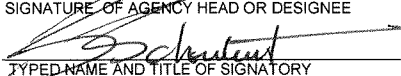
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 3700(c)
TITLE(S) 3	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) March 1, 2012

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			

7. CONTACT PERSON Stephen S. Brown	TELEPHONE NUMBER (916) 654-1017	FAX NUMBER (Optional) (916) 654-1018	E-MAIL ADDRESS (Optional) sbrown@cdfa.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.		For use by Office of Administrative Law (OAL) only
SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 2/16/12	
TYPED NAME AND TITLE OF SIGNATORY Sandra Schubert, Undersecretary		

In Title 3, Division 4, Chapter 4, amend Section 3700 Subsection (c) to read:

Section 3700. Oak Mortality Disease Control.

(c) Articles and Commodities Covered. The following are declared to be hosts or potential carriers of the pest:

(1) Plants and plant parts (except acorns or seed and a * includes the bole) of:

Acer macrophyllum (bigleaf maple)

Acer pseudoplatanus (planetree maple)*

Adiantum aleuticum (Western maidenhair fern)

Adiantum jordanii (California maidenhair fern)

Aesculus californica (California buckeye)

Aesculus hippocastanum (horse chestnut)*

Arbutus menziesii (madrone)

Arctostaphylos manzanita (manzanita)

Calluna vulgaris (Scotch heather)

Camellia spp. (includes all species, hybrids and cultivars)

Castanea sativa (sweet chestnut)

Cinnamomum camphora (camphor tree)

Fagus sylvatica (European beech)*

Frangula californica (= *Rhamnus californica*) (California coffeeberry)

Frangula purshiana (= *Rhamnus purshiana*) (cascara)

Fraxinus excelsior (European ash)*

Griselinia littoralis (Griselinia)

Hamamelis virginiana (witch hazel)

Heteromeles arbutifolia (Toyon or Christmas berry)

Kalmia spp. (includes all species, hybrids and cultivars)

Laurus nobilis (bay laurel)

Lithocarpus densiflorus (tanoak)*

Lonicera hispidula (California honeysuckle)

Magnolia doltsopa (= *Michelia doltsopa*) (Michelia)

Maianthemum racemosum (= *Smilacina racemosa*, false
Solomon's seal)

Parrotia persica (Persian ironwood)

Photinia fraseri (red tip or Fraser's photinia)

Pieris spp. (includes all species, hybrids and cultivars)

Pseudotsuga menziesii var. *menziesii* and all nursery grown *P.*
menziesii (Douglas-fir)

Quercus agrifolia (coast live oak)*

Quercus cerris (European turkey oak)*

Quercus chrysolepis (canyon live oak)*

Quercus falcata (Southern red oak)*

Quercus ilex (Holm oak)

Quercus kelloggii (California black oak)*

Quercus parvula var. *shrevei* and all nursery grown *Q. parvula*
(Shreve's oak)*

Rhododendron species (azaleas and rhododendrons)

Rosa gymnocarpa (wood rose)

Salix caprea (goat willow)

Sequoia sempervirens (coast redwood)

Syringa vulgaris (lilac)

Taxus baccata (European yew)

Trientalis latifolia (Western star flower)

Umbellularia californica (California bay laurel)

Vaccinium ovatum (huckleberry)

Viburnum spp. (All species of viburnum);

(2) Associated articles (nursery stock) of the following plants:

Abies concolor (white fir)

Abies grandis (grand fir)

Abies magnifica (red fir)

Acer circinatum (vine maple)
Acer davidii (striped bark maple)
Acer laevigatum (evergreen maple)
Arbutus unedo (strawberry tree)
Arctostaphylos columbiana (manzanita)
Arctostaphylos uva-ursi (Kinnikinnick)
Ardisia japonica (Ardisia)
Berberis diversifolia (= *Mahonia aquifolium*) (Oregon grape)
Calycanthus occidentalis (spicebush)
Castanopsis orthacantha (Castanopsis)
Ceanothus thyrsiflorus (blue blossom)
Cercis chinensis (Chinese redbud)
Choisya ternate (Mexican orange)
~~*Cinnamomum camphora* (camphor tree)~~
Clintonia andrewsiana (Andrew's clintonia bead lily)
Cornus kousa (Kousa dogwood)
Cornus kousa x *Cornus capitata* (Cornus Norman Haddon)
Corylopsis spicata (spike winter hazel)
Corylus cornuta (California hazelnut)
Daphniphyllum glaucescens
Distylium myricoides (myrtle-leaved distylium)
Drimys winteri (Winter's bark)
Dryopteris arguta (California wood fern)
Eucalyptus haemastoma (Scribbly gum)
Euonymus kiautschovicus (spreading euonymus)
Fraxinus latifolia (Oregon ash)
Garrya elliptica (silk tassel tree, coast silk tassel)
Gaultheria shallon (salal, Oregon wintergreen)
Hamamelis x *intermedia* [(*H. mollis* and *H. japonica*) (hybrid -
witchhazel)]

Hamamelis mollis (Chinese witch-hazel)
Ilex aquifolium (European holly)
Ilex cornuta (Buford holly, Chinese holly, horned holly)
Ilex purpurea (Oriental holly)
Illicium parviflorum (yellow anise)
Kalmia angustifolia (sheep laurel)
Larix kaempferi (Japanese larch)
Leucothoe axillaries (fetter-bush, dog hobble)
Leucothoe fontanesiana (drooping leucothoe)
Lithocarpus glaber (Japanese oak)
Loropetalum chinense (Loropetalum)
Magnolia cavaleri (Michelia)
Magnolia denudata (lily tree)
Magnolia denudata x *salicifolia* (magnolia)
Magnolia ernestii (= *Michelia wilsonii*) (Michelia)
Magnolia figo (banana shrub)
Magnolia foveolata (Michelia)
Magnolia grandiflora (Southern magnolia)
Magnolia kobus (kobus magnolia)
Magnolia liliiflora (= *M. quinquepetala*) (purple magnolia)
Magnolia maudiae (= *Michelia maudiae*) (Michelia)
Magnolia salicifolia (= *M. proctoriana*) (anise magnolia)
Magnolia stellata (star magnolia)
Magnolia x *loebneri* (Loebner magnolia)
Magnolia x *soulangeana* (saucer magnolia)
Magnolia x *thompsoniana* (*M. tripetala* and *M. virginiana*)
(magnolia)
Mahonia nervosa (creeping Oregon grape)
Manglietia insignis (red lotus tree)
Molinadendron sinaloense

Nerium oleander (oleander)
Nothofagus obliqua (Roble beech)
Osmorhiza berteroi (sweet Cicely)
Osmanthus delavayi (Delavay Osmanthus)
Osmanthus decorus [(=*Phillyrea decora*; =*P. vilmoriniana*)
(Osmanthus)]
Osmanthus fragrans (sweet olive)
Osmanthus heterophyllus (holly olive)
Parakmeria lotungensis (Eastern joy lotus tree)
Physocarpus opulifolius (ninebark)
Pittosporum undulatum (Victorian box)
Prunus laurocerasus (English laurel)
Prunus lusitanica (Portuguese laurel cherry)
Pyracantha koidzumii (Formosa firethorn)
Quercus acuta (Japanese evergreen oak)
Quercus petraea (Sessile oak)
Quercus rubra (Northern red oak)
Ribes laurifolium (bayleaf currant)
Rosa -cultivars: Royal Bonica (tagged: "MEImodac"), Pink
Meidiland (tagged: "MEIpoque"), Pink Sevillana (tagged:
"MEIgeroka")
Rosa rugosa (rugosa rose)
Rubus spectabilis (salmonberry)
Schima wallichii (Chinese guger tree)
Taxus brevifolia (Pacific yew)
Taxus x media (Yew)
Torreya californica (California nutmeg)
Toxicodendron diversilobum (poison oak)
Trachelospermum jasminoides (star jasmine, Confederate
jasmine)

Vaccinium myrtillus (bilberry)

Vaccinium vitis-idaea (cowberry, lingon berry, mountain cherry)

Vancouveria planipetala (Redwood ivy)

Veronica spicata, syn. *Pseudolysimachion spicatum*

(spiked speedwell)

(3) Unprocessed wood and wood products (including but not limited to bark chips, mulch and firewood- except when completely free of bark) of the plants listed in paragraph (c)(1) as bole hosts and plant products of the plants in paragraph (c)(1), including but not limited to dried or preserved wreaths;

(4) Any other product, article or means of conveyance when it is determined by the secretary, based upon generally accepted scientific principles, that it presents a risk of spreading the pest because it is a host or potential carrier of the pest.

continued

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

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

February 10, 2012

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.