

**EMERGENCY RULE**

Arkansas State Plant Board  
Plant Industry Division

REGULATIONS FOR SUDDEN OAK DEATH

Pursuant to Arkansas Code Ann. §§ 2-16-201 thru 214 and 2-16-301- through 2-16-310, the Arkansas State Plant Board, Plant Industry Division, Plant Inspection and Quarantine Section is promulgating the following rules to stop the movement of certain varieties of nursery stock into the state of Arkansas which are derived from the state of California. These rules are necessary for the board to fulfill its charge to protect the agricultural, horticultural and silvicultural interests of the State of Arkansas. Arkansas Code Annotated Section 2-16-207 authorizes the Plant Board to prevent introduction of an identified pest into the state.

There is an immediate threat to the health of our nurseries and hardwood forests due to the possible distribution of plant material that may be contaminated with the plant pathogen *Phytophthora ramorum*, better known as Sudden Oak Death, from the state of California. In order to protect the health of uninfected plants and trees within Arkansas and to negate or minimize the potential adverse economic implications to Arkansas's nursery industry and timber industry, the following rules are proposed:

A. NURSERY STOCK RESTRICTIONS FOR SUDDEN OAK DEATH (SOD)

Under authority of A.C. A. §§ 2-16-201 through 2-16-214 and 2-16-301 through 2-16-310, the Plant Board establishes the following regulations to minimize the risk of introducing SOD into Arkansas.

- (1) Until such time as the State of California and the United States Department of Agriculture (USDA) develops an expanded quarantine area to account for all new detections of *Phytophthora ramourm* (Sudden Oak Death) and until the California Department of Agriculture declares suspect California nursery stock free of the pathogen, the following prohibitions for nursery stock listed by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection Quarantine as "Regulated and Associated Plants for *Phytophthora ramourm*" (Sudden Oak Death, APHIS 3/2/2004, Attachment 1 to this rule) shall remain in effect:
  - (a) All nursery stock identified in section (1) originating and/or shipped from the State of California shall not enter into the State of Arkansas.
  - (b) Nurseries and plant dealers within Arkansas who have received shipments of nursery stock identified in section (1) from the State of

California are hereby prohibited from selling, moving, or transporting this nursery stock until released by the Plant Board.

- (c) Nursery stock meeting the description in section (1) that is to be used for experimental or scientific purposes may be exempted from this regulation with the possession of a valid USDA-APHIS-PPQ Plant Pest permit. This material is subject of examination and release by the Plant Board.
- (2) Upon the completion of the requirements stipulated in Section (1), all nursery stock listed by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection Quarantine as “Regulated and Associated Plants for *Phytophthora ramourm*” (Sudden Oak Death, APHIS 3/22/2004, Attachment 1 to this rule, must be accompanied by a Phytosanitary Certificate issued by the State of California. Such Phytosanitary Certificate must provide an additional declaration that, “The plant material in this consignment has been produced in a production site free of sudden oak death disease, *Phytophthora ramorum*, and conforms to the USDA SOD-Free Nursery Stock Program.”
- (3) Any plants found to have been transported or moved in violation of these regulations shall be destroyed under the direction of the Plant Board. Failure to comply with this emergency rule may result in the assessment of a civil penalty for each plant in violation of this quarantine and/or suspension or revocation of plant dealer and nursery certificates issued by the department to persons responsible for the movement or sale in violation. Violations may result in criminal prosecution as provided in Ark. Code Ann. §§ 2-16-203 and 2-16-304.

For questions and further information contact Terry Walker, Director-Plant Industry Division, Arkansas State Plant Board, P.O. Box 1069, Little Rock, AR 72203, 501-225-1598.

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George Tidwell, Chairman  
Arkansas State Plant Board

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS**  
**WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE**

DEPARTMENT/AGENCY State Plant Board  
DIVISION Plant Industry  
DIVISION DIRECTOR Terry Walker  
CONTACT PERSON Terry Walker  
ADDRESS PO Box 1069, Little Rock, AR 72203  
PHONE NO. 501-225-1598 FAX NO. 501-219-1697 E-MAIL terry.walker@aspb.state.ar.us

**INSTRUCTIONS**

- A. Please make copies of this form for future use.
- B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

**Donna K. Davis**  
**Subcommittee on Administrative Rules and Regulations**  
**Arkansas Legislative Council**  
**Bureau of Legislative Research**  
**Room 315, State Capitol**  
**Little Rock, AR 72201**

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- 1. What is the short title of this rule? **REGULATIONS FOR SUDDEN OAK DEATH**
- 2. What is the subject of the proposed rule? **Preventing the introduction of Sudden Oak Death into Arkansas.**
- 3. Is this rule required to comply with federal statute or regulations? Yes \_\_\_\_\_ No **X** \_\_\_\_\_  
If yes, please provide the federal regulation and/or statute citation.
- 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?  
Yes **X** \_\_\_\_\_ No \_\_\_\_\_  
If yes, what is the effective date of the emergency rule? March 25, 2004  
When does the emergency rule expire? July 26, 2004  
Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes \_\_\_\_\_ No **X** \_\_\_\_\_

5. Is this a new rule? Yes  No \_\_\_\_\_ If yes, please provide a brief summary explaining the regulation. (See Attached.)

Does this repeal an existing rule? Yes \_\_\_\_\_ No  If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes \_\_\_\_\_ No  If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes.  
**Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give Arkansas Code citation. **A.C.A. §§2-16-201 through 2-16-214 and 2-16-301 through 2-16-310.**

7. What is the purpose of this proposed rule? Why is it necessary? To prevent the spread of Sudden Oak Death into Arkansas. The rule is necessary due to the grave danger posed by this disease to the native forest environments and to nursery operations in the state.

8. Will a public hearing be held on this proposed rule? Yes \_\_\_\_\_ No

If yes, please complete the following:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: \_\_\_\_\_

9. When does the public comment period expire for permanent promulgation? (Must provide a date.)

10. What is the proposed effective date of this proposed rule? (Must provide a date.)  
**March 25, 2004**

11. Do you expect this rule to be controversial? Yes \_\_\_\_\_ No  If yes, please explain.

12. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

**Arkansas Forestry Commission (favorable)**

**Arkansas Green Industry Association (favorable)**

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT:** State Plant Board  
**DIVISION:** Plant Industry  
**PERSON COMPLETING THIS STATEMENT** Terry Walker  
**TELEPHONE NO.** 501-225-1598 **FAX NO.** 501-219-1697 **E-MAIL:** terry.walker@aspb.state.ar.us

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

**SHORT TITLE OF THIS RULE:   REGULATIONS FOR SUDDEN OAK DEATH**

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1. Does this proposed, amended, or repealed rule or regulation have a financial impact?  
Yes   X      No
  
2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain. The amount of potentially infected material received and in transit is unknown and will not be known for an extended time period.
  
3. If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation. Please indicate if the cost provided is the cost of the program.      N/A

**Current Fiscal Year**

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

Total \_\_\_\_\_

4. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule or regulation? Identify the party subject to the proposed regulation, and explain how they are affected.

**Current Fiscal Year**

**Next Fiscal Year**

\$   Unknown  

\$   Unknown  

5. What is the total estimated cost by fiscal year to the agency to implement this regulation?

**Current Fiscal Year**

**Next Fiscal Year**

\$   0  

\$   0