

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Section 3591.33.

Emerald Ash Borer Eradication Area

INITIAL STATEMENT OF REASONS/

POLICY STATEMENT OVERVIEW

The California Department of Food and Agriculture (Department) proposes to adopt Title 3 California Code of Regulations (CCR) Section 3591.33 Emerald Ash Borer Eradication Area. This regulation will allow the Department to create an eradication area for any emerald ash borer (*Agrilus planipennis*) which will help prevent the spread of this pest within California should they be detected within the state.

Description of Public Problem, Administration Requirement, or Other Condition or Circumstance the Regulation is Intended to Address

This regulation is intended to address the obligation of the Department to protect the agricultural industry and environment from the introduction and spread of injurious plant pests within California. Specifically, these regulations are intended to prevent the establishment of emerald ash borer, a pest that is a threat to agriculture, the urban forest, and the environment, into California. The spread of this pest westward from eastern North America in recent years and its establishment in Oregon demonstrate a viable pathway of spread and potential for widespread infestations if established, rendering such regulations necessary.

Background

The emerald ash borer's life cycle depends on members of the olive botanical family (Oleaceae), especially ash trees (*Fraxinus* species). Adult emerald ash borers feed on leaves and lay eggs in the bark of ash trees. Sixteen species of ash are native to the United States, of which five are native to California. In addition, native and non-native ash have been widely planted as street and garden trees for well over a century. Once the eggs hatch in 7 to 10 days, the larvae chews through the outer bark where the eggs were laid and into the inner bark where they feed. This feeding damages and will eventually kill the tree. Larvae emerald ash borer's stay in the tree they hatched in, and adults only fly roughly half a mile after they emerge. In addition, emerald ash

borers have been demonstrated to attack other members of the olive family, including olive (*Olea europaea*) itself.

The pest is primarily spread throughout the country by the movement of its host material, currently most often when ash is transported as firewood or logs.

If the emerald ash borer were allowed to spread and become established, California's ash trees and olive groves would be threatened. An ash tree infested with emerald ash borers may need to be removed, a weakened tree can fall or drop branches, posing a danger to humans and infrastructure, or must be treated to prevent the infestation from growing. Tree removal costs anywhere from \$200-\$30,000 depending on the size of the tree, and treatment for a 14-inch diameter tree would be \$220 every other year. Since 2002 the emerald ash borer has killed over 30 million wild and cultivated ash trees in southern Michigan. Between 2009 and 2019 the estimated cost of treating, removing, and replacing ash is estimated at \$25 billion within North America.

The state's olive groves would be endangered as well. The state of California produces over 90% of the national annual crop of olives. Although the negative impact of emerald ash borer on olive production is unknown, it is highly damaging to its current hosts and is difficult to control. Therefore, emerald ash borer has the potential to become a serious pest of olives if it spreads to California.

Should the Department fail to institute a quarantine against this pest, emerald ash borer could cause direct catastrophic losses to California's affected agricultural industries and its native trees. There could also cause significant harm to the State's economy through cost impacts or prohibitions to interstate commerce and exports of host commodities.

Purpose and Factual Basis

The specific purpose of Section 3591.33 is to allow expeditious action to prevent the establishment of emerald ash borer into California. Emerald ash borer is a wood-boring pest native to Asia that was first found in the United State in 2002. Since the initial find in Michigan the pest has now spread to 30 states, California has suitable hosts and climate for it to become established.

The factual basis for the determination by the Department that adoption of these regulations is necessary is as follows:

A statewide Eradication Area is needed to protect California from emerald ash borer. Known, and likely unknown, host plants for these various species of emerald ash borer are found widely in California. This pest could possibly establish wherever it is introduced. Only certain desert and high mountain regions are unlikely areas of establishment. The known hosts of the emerald ash borer include agriculturally important crops in California, such as olives, which had production value in 2022 of \$63,094,000. Limiting the time period between pest detection and targeted management response is critical to eradicating incipient infestations, as geometric or logarithmic population growth can occur within one life cycle. The risk of establishment increases with each day of delayed response. Rapid responses are necessary to prevent permanent establishment of these pests in California.

Project Description

Section 3591.33(a)

This section establishes that an eradication area is being created against emerald ash borer. This eradication area consists of areas where these pests has been detected or there is an immediate threat of introduction, in this case the entire state of California. The entire state is being declared an eradication area, as there are or will soon be suitable conditions for establishment and widespread hosts throughout the state.

Section 3591.33(b)

Section 3591.33(b) declares the emerald ash borer to be the pest quarantined against and what its hosts and possible carriers are.

Section 3591.33(b)(1) indicates that the eradication area applies to all life stages of the emerald ash borer, .

Section 3591.33(b)(2) states that firewood of ash trees (*Fraxinus* species) and mixed firewood containing hardwood (non-coniferous) species that likely includes ash wood are covered by this

regulation. These species of plants and plant parts can provide shelter and substance for emerald ash borer egg masses, larvae, and adults. Infested is defined, as well as the information required to limit the infested area to only part of the state.

Section 3591.33(b)(3) states that nursery stock, green lumber, and other material living, dead, cut, or fallen, including logs, stumps, roots, branches, and composted and uncomposted chips of ash trees are quarantined against. All of these plants and plant parts can provide shelter and substance for emerald ash borer egg masses, larvae, and adults.

Section 3591.33(c)

This section lists the means and methods that can be used for eradication, control or suppression of emerald ash borer within California.

Section 3591.33(c)(1) allows for the repeated timely application of contact insecticide spray treatments, deployment of bait stations, soil drenches, release of sterile insects, systemic insecticide tree treatments for hosts, and border treatments with insecticides, of hosts and any other articles or things which are infested or exposed to infestation and capable of harboring or spreading emerald ash borer. These actions can destroy the pest and stop an infestation from spreading.

Section 3591.33(c)(2) allows for the removal and destruction of any and all possible carriers, including nursery stock or trees and shrubs if permission is received from the property owner, or if such action is the only practical way of eliminating the infestation of a host or possible carrier to prevent the spread or reinfestation of emerald ash borer. By removing host material, the pest's movement can be limited and the life cycle interrupted, preventing further spread and infestation.

Section 3591.33(c)(3) allows for searching for all stages of emerald ash borer by visual inspection, the use of traps, or any other means anywhere within the said area. Early detection of the pest will lead to faster eradication.

Section 3591.33(c)(4) allows for the removal and destruction of abandoned or unwanted hosts or possible carriers bearing or capable of bearing emerald ash borer. By removing hosts and carriers, the potential areas for this pest to infest will be reduced.

Section 3591.33(c)(5) allows for the importation, rearing, liberation, and fostering of parasites and predators that attack emerald ash borer. This is one of the established techniques currently used to stop or control infestations of many insect pests.

Current Laws & Regulations

Under FAC Sections 407 the Department is authorized to adopt regulations necessary to prevent the spread of injurious insect pests and animal diseases.

The FAC Section 5322, provides that the Secretary may establish, maintain, and enforce quarantine, eradication, and such other regulations as are in their opinion necessary to circumscribe and exterminate or prevent the spread of any pest which is described in FAC Section 5321. The Secretary may make and enforce such regulations as she deems necessary to prevent any plant or thing which is, or is liable to be, infested or infected by, or which might act as a carrier of, any pest, from passing over any quarantine line which is established and proclaimed pursuant to this division

Existing law, FAC section 5761, provides that the Secretary 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.

Existing law, FAC section 5762, provides that any pest with respect to which an eradication area has been proclaimed, and any stages of the pest, its hosts and carriers, and any premises, plants, and things infested or infected or exposed to infestation or infection with such pest or its hosts or carriers, within such area, are public nuisances, which are subject to all laws and remedies which relate to the prevention and abatement of public nuisances.

Existing law, FAC section 5763, provides that the Secretary or the commissioner acting under the supervision and direction of the Secretary, in a summary manner, may disinfect or take such other action, including removal or destruction, with reference to any such public nuisance, which they think is necessary.

The Department is the only agency which can implement pest quarantines. As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of these regulations and has determined that it is not inconsistent or incompatible with existing state regulations.

California Environmental Quality Act

Prior to conducting any action authorized by this regulation, the Department shall comply with the California Environmental Quality Act of 1970 (Public Resources Code Section 21000 et. seq. as amended) and the State CEQA Guidelines (Title 14 California Code of Regulations Section 15000 et. seq.).

Economic Impact Analysis

The prevention of the introduction of emerald ash borer in California through the adoption and implementation of this regulation prevents economic harm too:

- the general public
- policies that maintain street trees
- homeowners and community gardens
- agricultural industry
- the State's general fund.

If emerald ash borer were to become established within California it could greatly affect the general public. Host plants are widely grown in California and include both native plants and agriculturally important crops. By adopting this regulation to prevent infestation, the general public benefits by having a native environment and agriculture safe from this pest.

The adoption of this regulation benefits home gardeners who grow host material for shade and/or ornamentals in various rural and urban landscapes. By preventing infestation and thereby preventing damage to hosts, the regulations eliminate the need for widespread treatment of hosts to mitigate infestations of emerald ash borer.

California is a commercial producer of olives, a host for emerald ash borer. The California, national, and international consumers of California agriculture benefit by having high quality olives available at lower cost. It is assumed that any increase in production costs will ultimately be passed on to the consumer. By preventing an infestation with species of emerald ash borer, these increased production costs will be avoided.

There are economic benefits to the State's general fund from these regulations. The cost of an emerald ash borer infestation is unknown, but tree removal costs anywhere from \$200-\$2000 depending on the size of the tree, and treatment for a 14-inch diameter tree would be \$220 every other year. Preventing a wide-scale infestation in California and maintaining the economic baseline prevents an outcome that could cost the State millions or billions of dollars.

The Creation or Elimination of Jobs within the State

Section 3591.33 creates an eradication area for emerald ash borer, which will help prevent the spread of this pest within California should it be detected within the state. Detection and eradication activities are currently being performed by existing state staff throughout the state by trapping and identifying invasive agricultural pests. No additional staff positions will be created or eliminated by this regulation. Therefore, the Department has determined that this proposal will not have a significant impact on the creation of or elimination of jobs in the state of California.

The Creation or Elimination of Businesses in California

Section 3591.33 creates an eradication area for emerald ash borer, which will help prevent the spread of this pest within California should it be detected within the state. Detection and eradication activities are currently being performed by existing state staff throughout the state by trapping and identifying invasive agricultural pests. No businesses will be created or eliminated as the existing programs will continue. Therefore, the Department has determined that this proposal will not have a significant impact on the creation or elimination of new businesses in the State of California.

The Expansion of Businesses in California

Section 3591.33 creates an eradication area for emerald ash borer, which will help prevent the spread of this pest within California should it be detected within the state. Detection and eradication activities are currently being performed by existing state staff throughout the state by

trapping and identifying invasive agricultural pests. No businesses will be expanded as the existing programs will continue. Therefore, the Department has determined that this proposal will not have a significant impact on the expansion of businesses currently doing business in the State of California.

Worker Safety

These regulations are not expected to have an effect on worker safety.

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

The Department of Food and Agriculture has determined that Section 3591.33 does not impose a mandate on local agencies or school districts. Any future eradication activities shall be conducted by the Department as part of its ongoing actions. Therefore, no reimbursement is required under Section 17561 of the Government Code.

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 adoption of subsection 3591.33.

There are 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 anticipated from the adoption of this regulation.

The Department has determined that the proposed actions will not have a significant adverse economic impact on housing costs or California business, including the ability of California businesses to compete with businesses in other states.

Potential Impact to Homeowners and Community Gardens

The implementation of these regulations will maintain the economic baseline and prevent increased costs to the consumers of California produce and increased pesticide usage by homeowners and others. The host plants attacked by emerald ash borers are enjoyed by the home gardener and community gardens. If an infestation by this pest is not eradicated due to a

delay in eradication efforts, then homeowners and community gardeners would be negatively impacted.

Potential Impacts to General Fund and Welfare

The proposed regulations do not have an immediate or definitive impact to the general fund or general welfare, as it is meant to maintain the economic baseline. It would facilitate a fast and effective response if emerald ash borer are detected in the designated eradication area. Speed of response is key to eradicating an incipient pest infestation. Programmatic delays potentially can lead to expansion of infestations and quarantines, as well as increased production costs and potential job loss. The agricultural industry is one of the economic engines in the State. Negative impacts to agriculture impact the State's economic recovery and the general welfare of the State. Additionally, any job losses in this area would likely be felt by low-skilled workers whose employment options are already limited. The loss of any additional agricultural jobs would likely result in an increase in the State's public assistance obligations which would also negatively impact the State's economic recovery.

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

Assessment

The Department has made an assessment that the adoption of these regulations will help maintain the economic baseline and (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) will have an impact on the health and welfare of California residents, (5) will have an impact on the state's environment, and (6) is not expected to benefit workers' safety.

Health and welfare: The proposed action will benefit the health and welfare of California residents by making it more likely that the Department can react quickly and effectively if an emerald ash borer infestation is detected. Speed of response is key to eradicating an incipient pest infestation. Programmatic delays potentially can lead to larger and more costly 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 making it more likely that the Department can react quickly and effectively if an emerald ash borer infestation is detected. If the Department fails to act quickly and effectively to prevent the spread and eradicate an infestation, this pest could easily spread into the local environment and 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.

Alternatives Considered

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

Information Relied Upon

The Department relied upon the following studies, reports, and documents in the proposed adoption of Section 3591.33:

California Department of Food and Agriculture, California Agriculture Statistics Review 2022-2023, page 69

““Emerald Ash Borer Beetle” USDA, Animal and Plant Health Inspection Service

“Emerald Ash Borer: Biology and Life Cycle” New York Invasive Species Information

“Emerald Ash Borer Impact and Response on The University of Michigan Biological Station Main Campus”, Mitchell Calvin, Joe Hazelton, Jacob Inosencio, Max Miley

“How Much Does Emerald Ash Borer Treatment Cost?” Valley Green Companies; website at <https://valleygreen.net/2019/08/01/how-much-does-emerald-ash-borer-treatment-cost/>

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