

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

Section 3591.33.

Emerald Ash Borer Eradication Area

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

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 emerald ash borer which will help prevent the spread of these pests within California should it be detected within the state.

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 their 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 July 28, 2025. The Department will consider only comments received at the Department offices by that date or postmarked no later than July 28, 2025. 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
916.654.1017
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.

AUTHORITY

The Department proposes to amend Section 3591.33 pursuant to the authority vested by Sections 407 and 5322 of the Food and Agricultural Code (FAC).

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 5761, 5762, and 5763 of the FAC.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This regulation will allow the Department to create an eradication area for emerald ash borer which will help prevent the spread of this pest within California should they be detected within the state.

EXISTING LAWS & REGULATIONS

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 that the Secretary is directed or authorized to administer or enforce.

Existing law, 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 that is described in FAC Section 5321.

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 the Secretary may proclaim 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 director, in a summary manner, may disinfect or take such other action, including removal or destruction, with reference to any such public nuisance, which he thinks is necessary.

ANTICIPATED BENEFITS OF THE PROPOSED AMENDMENT

This regulatory action will allow the Department to eradicate and prevent the spread of emerald ash borer in California through the implementation of this regulation, which economically benefits:

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

There are no existing, comparable federal regulations or statutes.

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 3591.33 and has determined that they are not inconsistent or incompatible with existing state regulations.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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.).

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

Cost to any local agency or school district requiring reimbursement pursuant to Gov.

Code sec. 17500 et seq. (Gov. Code sec. 11346.5(a)(6).): 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 none and 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 this action only provides authority for state quarantine activities and does not require reporting, recordkeeping, or compliance by businesses.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS / ASSESSMENT

The adoption of this regulation is designed to create an eradication area for emerald ash borer which will help prevent the spread of this pest within California should they be detected within the state.

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 of new businesses or elimination of existing 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.

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). 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.