

**State of California
Office of Administrative Law**

In re:
Department of Food and Agriculture

Regulatory Action:

Title 03, California Code of Regulations

Adopt sections: 3288

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF CERTIFICATE OF
COMPLIANCE**

**Government Code Sections 11349.1 and
11349.6(d)**

OAL Matter Number: 2022-0421-02

**OAL Matter Type: Certificate of Compliance
(C)**

This certificate of compliance makes permanent an emergency exterior quarantine against the emerald ash borer, including adoption of relevant terms, regulated areas, articles covered, and restrictions.

OAL approves this regulatory action pursuant to section 11349.6(d) of the Government Code.

Date: June 3, 2022



**Mark Storm
Senior Attorney**

**For: Kenneth J. Pogue
Director**

**Original: Karen Ross, Secretary
Copy: Rachel Avila**

NOTICE PUBLICATION/REGULATIONS SUBMISSION

STD. 400 (REV. 10/2019)

CERT

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2022-0421-02	EMERGENCY NUMBER C
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

ENDORSED - FILED
In the office of the Secretary of State
of the State of California

JUN 03 2022

1:52 PM

OFFICE OF ADMIN. LAW
2022 APR 21 AM 11:17

AGENCY WITH RULEMAKING AUTHORITY Department of Food and Agriculture	AGENCY FILE NUMBER (If any)
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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 Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE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) Emerald Ash Borer Exterior Quarantine	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2021-0330-03E, 2022-0118-01EE <i>per agency request 6/3/22</i>
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SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 3288
	AMEND
TITLE(S) 3	REPEAL

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code § 11346)	<input checked="" 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 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 January 1, April 1, July 1, or October 1 (Gov. Code § 11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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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 Rachel Avila	TELEPHONE NUMBER 916-698-2947	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) rachel.avila@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.

SIGNATURE OF AGENCY HEAD OR DESIGNEE Mark A. McLoughlin <small>Digitally signed by Mark A. McLoughlin Date: 2022.04.20 14:56:13 -0700</small>	DATE 4/20/2022
TYPED NAME AND TITLE OF SIGNATORY Mark McLoughlin, Director, Plant Health and Pest Prevention Services Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUN 03 2022

Office of Administrative Law

3 CCR § 3288

§ 3288. Emerald Ash Borer Exterior Quarantine.

A quarantine is established against the following pest, its hosts, and possible carriers:

- a) Pest. Emerald ash borer (*Agrilus planipennis*), a beetle in the Order Coleoptera, Family Buprestidae.
- b) Definitions
 - 1) "Infestation" means an established, reproducing population of emerald ash borer as designated or determined by the Department according to Definition 7, below, or when an area has been reported to be infested by the United States Department of Agriculture or a state plant regulatory agency.
 - 2) "Living Life Stage" means all life stages of the emerald ash borer, including, but not limited to, adults, larvae, pupae, or eggs nymphs, or viable egg masses.
 - 3) "Move; movement" means shipped, received for shipment, carried, transported, or relocated into or through any area of the State/Province of the infested area.
 - 4) "Moving through the quarantined area" means the regulated article, including the vehicle and conveyance, is moved directly through the infested area without stopping (except for refueling or for traffic control devices or conditions) and has been stored, packed, or handled only at locations outside the infested area.
 - 5) 4 "Person" is defined as any individual, partnership, association, corporation, limited liability company, or any organized group of persons whether incorporated or not.
 - 6) 5 "Regulated Article or Articles" means any object covered under subsection d).
 - 7) 6 "Reproducing Population" means presence of ~~multiple life stages present within one year, egg masses, visibly mated females, or early instar nymphs, of the emerald ash borer that indicate successful reproduction in the environment.~~ any of the following when live, which indicates successful reproduction in the environment: a) two or more adult emerald ash borers within one year; b) a single egg, larva, or pupa of emerald ash borer.
- c) Regulated Area. The following areas are designated as quarantined areas: ~~An area shall be designated as under quarantine when an infestation is present, the entire state where an infestation is present in the absence of detailed information regarding the pest's distribution within a state, or the counties in which the infestation is documented if survey data provided by the state plant regulatory agency or the United States Department of Agriculture allows detailed delimitation of the extent of the infestation within a state.~~
 - 1) The entire state where an infestation is present in the absence of detailed information regarding the pest's distribution within a state, or
 - 2) if survey data provided by the state plant regulatory agency or the United States Department of Agriculture allows detailed delimitation of the extent of an infestation within a state, the counties in which the infestation is documented.

The Department shall update the maps of the infested areas as new information arrives and at least once a month to reflect the current quarantine areas. This map is available on a ~~CDFA-PHPPS Pest Exclusion~~ California Department of Food and Agriculture Plant Health and Pest Prevention Services program website.
- d) Articles and Commodities Covered. The following are hereby declared to be the pest quarantined against and its hosts and possible carriers:

- 1) The emerald ash borer, any living life stage;
 - 2) Firewood of ash trees (*Fraxinus* species) and mixed firewood containing hardwood (non-coniferous) species from an infested area.
 - 3) Ash nursery stock, and other ash tree material including green lumber and other woody material living, dead, cut, or fallen, including logs, stumps, roots, branches, and composted and uncomposted chips.
 - 4) Any other article, ~~product, or means of conveyance~~ not listed in subsections d) 1-3 of this section will be designated as a regulated article if ~~an inspector~~ a California State Plant Quarantine Officer determines that it presents a risk of spreading emerald ash borer and notifies the person in possession of the article, ~~product, or means of conveyance~~ that it is subject to the quarantine regulation. When making this determination the California State Plant Quarantine Officer shall consider, amongst other factors, whether the article originated from an infested area and whether it was exposed outdoors at during the period of May 1 through August 31 or when the ambient air temperature is 40 °F or higher.
- e) Restrictions. All articles and commodities covered are prohibited entry into California from the area under quarantine with the following exceptions:
- 1) the articles and commodities are:
 - (A) free of emerald ash borer based on inspection; and
 - (B) ~~an inspector~~ a California State Plant Quarantine Officer determines that the article has been grown, produced, manufactured, or stored, in a manner that prevents the article from presenting a risk of spreading the emerald ash borer; or
 - 2) the articles and commodities are moved by the United States Department of Agriculture for experimental or scientific purposes; or
 - 3) the articles and commodities originate outside the quarantined area and are moved through the quarantined area under the following conditions:
 - (A) the points of origin and destination are indicated on a waybill accompanying the regulated article;
 - (B) the regulated article, if moved through the quarantined area during the period of May 1 through August 31 or when the ambient air temperature is 40 °F or higher, is moved in an enclosed vehicle or is completely covered to prevent access by the emerald ash borer; ~~and (C) "Moving through the quarantined area" means the regulated article, including the vehicle and conveyance, is moved directly through the infested area without stopping (except for refueling or for traffic control devices or conditions) and has been stored, packed, or handled only at locations outside the infested area; and~~
 - (C) ~~(D)~~ the article has not been combined or commingled with other articles so as to lose its individual identity as a commodity regulated herein.

Note: Authority cited: Sections 407, 5301 and 5302, 5311, Food and Agricultural Code.
 Reference: Sections 5024, 5301, 5311, 5701, 6403, 6441, 6442, and 6461 Food and Agricultural Code.