

## FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture (the Department) finds that an emergency exists, and that the adoption of the foregoing regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare. On 1/14/2021, the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), removed the emerald ash borer (*Agrilus planipennis*) domestic quarantine regulations. This leaves the State of California without means to enforce a quarantine against this pest and thus it is necessary to immediately adopt an exterior quarantine against this pest. This adoption is necessary to avoid the spread of emerald ash borer within California.

### Emergency Defined

“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. 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, per 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.

The information contained within this finding of emergency also meets the requirements of Government Code Sections 11346.1 and 11346.5.

### Evidence of Emergency

Under Section 14.5 of the State of California Emergency Plan, dated July 1, 2009, the Department is responsible for coordinating integrated federal, state and local preparedness for response to, recovery from and mitigation of plant diseases and pests and overseeing the control and eradication of outbreaks of harmful or economically significant plant pests and diseases. The Department is also charged with leading the administration of programs to detect, control and eradicate pests affecting plants.

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 35 states. The emerald ash borers 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, of which 16 varieties are found in the United States. The eggs hatch in 7 to 10 days and 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 borers 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 olive trees.

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. Movement of emerald ash borers and their host material has been, until recently, regulated by the USDA under a federal domestic quarantine. Removal of federal quarantines is occasionally discussed, but often does not come to fruition. Therefore, it is impossible to anticipate the ending of a federal domestic quarantine until the final order is signed. In this case, the quarantine for

emerald ash borer was repealed in January 2021.

On January 14, 2021 the USDA ended its emerald ash borer domestic quarantine. Without this federal quarantine California currently had no specific protections against the artificial spread of emerald ash borer. Although general inspections of firewood at the state border inspection stations continue, such inspections are a highly imperfect method of identifying wood borer infestation. In the past, importation of ash logs (the main pathway of artificial spread of emerald ash borer) into California has been rare. However since the federal quarantine has ended the Department has received multiple serious inquiries as to the feasibility of importing untreated ash woods and firewood containing ash logs into California. The first was on January 19<sup>th</sup>, the USDA requested any information about potential emerald ash borer regulations as they were asked about transiting ash logs through California on the way to China. The second was from the Colorado Department of Agriculture on February 19, they had a shipper who wanted to send a shipment of ash wood into California within a week.

At this time the Department has no regulations to protect the environment from these shipments or any other that the shipper has not enquired about. Therefore there is urgent need to introduce regulatory measures to prevent the artificial spread of emerald ash borer into California.

If the emerald ash borer were allowed to spread and become established, California's ash trees and olive groves would be threatened. There are five native ash species within the state, and they often form a significant component of riparian forests. Altogether these forests comprise millions of individual trees. As emerald ash borer attacks healthy trees and no resistance has been demonstrated, all ash trees in California are at risk. In some areas of infestation, emerald ash borer has killed well over 90% of ash trees present. An ash is a common street tree planted and maintained by cities. A weakened tree can fall or drop branches, which is a danger to humans and infrastructure. Chemical treatment is expensive and is feasible only for important ash specimens. An ash tree infested with emerald ash borers will need to be removed for public safety and to prevent the infestation from growing.

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.

The state's olive groves would be endangered as well. The state of California produces over 90% of the national annual crop of olives. California is the only state in the United States listed as commercially producing olives. In 2014, the bearing acreage for olives was 37,000 acres, yielding 2.54 tons per acre (acreage has remained between 30,000 and 40,000 acres since 1980) with a total of 94,000 tons of olives produced at a value of \$72.9 million dollars. Although the negative economic impacts of emerald ash borer on olive production is unknown, it is highly damaging to its 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. Additional pesticide treatments would likely cost growers several millions of dollars per year. If any loss of trees or production loss occurs, the dollar value losses likely would be many times more.

#### Necessity for Readoption

The Department has made substantial progress and proceeded with diligence to complete the rulemaking process for these regulations. However completing the Notice for the packet has been delayed due to the need for extensive reviews due to covid related delays. To accommodate these reviews additional time will be needed to allow for review of the Notice packet.

#### Project Description

The proposed regulation will establish an exterior quarantine against emerald ash borer. The objects subject to quarantine include the pest and its host plants originating in any area where an infestation is present, as determined by the Department. Maps of the areas infested will be made available on the Department's website and updated monthly. Currently 35 states are infested with this pest and there is potential for further spread. Allowing the department to update the areas under quarantine will help protect the state from new infections around the country.

The articles and commodities covered by this quarantine are:

- emerald ash borer, a harmful pest,
- firewood from emerald ash borer's primary host ash trees (*Fraxinus* species), and mixed firewood that includes hardwood that may contain ash,
- Nursery stock, green lumber, and other woody material living, dead, cut, or fallen, including logs, stumps, roots, branches, and composted and uncomposted chips from emerald ash borer's primary host, ash trees,
- Any other article, product, or means of conveyance that an inspector determines presents a risk of spreading emerald ash borer and notifies the person in possession of it

All articles and commodities listed above are prohibited entry into California from quarantined areas since they have the potential to carry emerald ash borer, except as specified below.

The exceptions to the list above are articles and commodities that are determined to be free of emerald ash borer upon inspection, and the inspector determines that the article has been grown, produced, manufactured, and stored in a manner that prevents the article from presenting a risk of spreading the emerald ash borer.

Articles and commodities otherwise are allowed into California under the following circumstances:

- The regulated article is moved by the United States Department of Agriculture for experimental or scientific purposes
- the regulated articles originate outside the quarantined area and are moved through the quarantined area under the following conditions:
  - The regulated articles are moved through the quarantined area, and points of origin and destination are indicated on a waybill accompanying the regulated article, and

- The regulated article is 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, and is moved in an enclosed vehicle or is completely covered to prevent access by the emerald ash borer, and
- The regulated article is moved directly through the quarantined area without stopping (except for refueling or for traffic conditions, such as traffic lights or stop signs), or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation by emerald ash borer; and
- The article has not been combined or commingled with other articles so as to lose its individual identity after leaving its place of origin.

The requirements of this quarantine are similar to the federal domestic quarantine requirements for emerald ash borer that ended in January 2021. It differs in that, in order to meet the restrictions, commodities must be inspected AND the inspector determines that the article has been grown, produced, manufactured, and stored in a manner that prevents the article from presenting a risk of spreading the emerald ash borer. In the repealed federal domestic quarantine either one OR the other condition had to be met. This change was deemed necessary because inspections alone are a highly imperfect method of identifying wood borer infestation.

The Department relied upon the following documents:

Email to Andrew Cline “CDFA any EAB regs” on January 19, 2021

Email to Dean Kelch “Caller on Ashwood coming into CA” on February 19, 2021

“Emerald Ash Borer” California Department of Food and Agriculture Plant Quarantine Manual, 8/17/2011

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

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

“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/>  
Visited 2/5/2021

“Removal of Emerald Ash Borer Domestic Quarantine Regulations” USDA, Animal and Plant Health Inspection Service Plant Protection and Quarantine, 12/15/2020

#### Authority and Reference Citations

Authority: Sections 403, 407, 5301, 5302 and 5322, Food and Agricultural Code.

Reference: Sections 5301, 5302 , 5321, and 5322, Food and Agricultural Code (FAC).

#### Informative Digest

Existing law provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this state and determine the probability of its spread and the feasibility of its control or eradication (FAC Section 5321).

Existing law also provides that the Secretary may establish, maintain and enforce quarantine, eradication and other such regulations as she deems necessary to protect the agricultural industry from the introduction (FAC 5322).

Existing law, FAC Section 403, provides that the department shall prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds.

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 which she is directed or authorized to administer or enforce.

Existing law, FAC Section 5321, provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this State and determine the probability of its spread, and the feasibility of its control or eradication.

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 which is described in FAC Section 5321. The Secretary may make and enforce such regulations as they 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 (FAC Section 5302).

#### Anticipated Benefits from This Regulatory Action

The existing law obligates the Secretary to investigate and determine the feasibility of controlling or eradicating pests of limited distribution but establishes discretion with regard to the establishment and maintenance of regulations to achieve this goal. The adoption of this regulation benefits industries and other host materials (nursery, firewood, olive trees), the environment, and the nursery industry by providing a quarantine to prevent the artificial spread of emerald ash borer over long distances.

The adoption of this regulation provides the necessary regulatory authority to prevent the artificial spread of a serious insect pest, which is a mandated statutory goal.

FAC Section 401.5 states, “the Department shall seek to protect the general welfare and economy of the state and seek to maintain the economic well-being of agriculturally dependent rural communities in this state.” The adoption of this regulation is preventing the artificial spread of emerald ash borer to uninfested areas of the State. The overall California economy benefits by the adoption of this regulation which is intended to prevent emerald ash borer from becoming generally distributed in California.

The adoption of this regulation benefits the natural environment, as it will prevent the attack and decline or removal of native ash trees and any associated biodiversity. Homeowners who have ash trees and host material which is planted as ornamentals in various rural and urban landscapes by preventing damage to these hosts and the need for them to be treated to mitigate infestations of emerald ash borer.



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

#### Section 3288, Emerald Ash Borer Eradication Area.

This adoption of Section 3288 will create an exterior quarantine against emerald ash borer. The effect of this regulation will be to provide authority for the State to perform inspections on regulated articles to protect California's agricultural industry and environment.

#### Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that this regulation does not impose a mandate on local agencies or school districts.

#### Cost Estimate

The Department also has determined that the regulation will involve no costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, no cost to any local agency or school district requiring reimbursement pursuant to Government Code 17500 et seq., and no costs or savings in federal funding to the state.