

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

Notice of Proposed Rulemaking

45 – Day Notice

The Department of Food and Agriculture (Department) proposes to adopt section 3288 title 3 of the California Code of Regulations (CCR) pertaining to the Emerald ash borer Exterior Quarantine that was adopted as an emergency regulation on 4/9/2021 and readopted on 1/27/2022.

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 his or her authorized representative may submit written comments relevant to the proposed regulation to the Department. Comments may be submitted by USPS, FAX or email. The written comment period closes on April 4th, 2022. The Department will consider only comments received at the Department offices by that date or postmarked no later than April 4th, 2022. Submit comments to:

Dean Kelch
Department of Food and Agriculture
Plant Health and Pest Prevention Services
2800 Gateway Oaks Dr, Suite #200
Sacramento, CA 95833
dean.kelch@cdfa.ca.gov
916.403.6650
916.651.2900 (FAX)

In Mr. Kelch's absence, you may contact Erin Lovig at (916) 654-1017 or erin.lovig@cdfa.ca.gov, FAX number (916) 651-2900.

Following the public hearing, if one is requested, or following the written comment period if none is requested, the Department, at its own motion, or at the instance of any interested person, may adopt the proposal as set forth without further notice if there are no substantial changes prior to the adoption.

AUTHORITY

The Department proposes to adopt CCR Section 3288 pursuant to the authority vested by Section 5301 of the Food and Agricultural Code of California.

REFERENCE

The Department proposes this action to implement, interpret and make specific sections 5301 and 5302 of the Food and Agricultural Code.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

The proposed regulation will establish an exterior quarantine against emerald ash borer. The area regulated is any area where an infestation is present, as determined by the Department. Maps will be made available of the areas infested on the Department's website and updated monthly. Currently 30 states are infested with this pest and there is potential for further spread. This regulation will allow the Department to update the areas under quarantine which will help protect the state from new infections around the country.

The articles and commodities covered by this quarantine are:

- emerald ash borer (*Agrilus planipennis*),, any living stage
- firewood from its primary host ash trees (*Fraxinus* species), and mixed firewood that includes hardwood that may contain ash,
- Nursery stock, green lumber, and other material living, dead, cut, or fallen, including logs, stumps, roots, branches, and composted and uncomposted chips from its primary host, ash trees,
- Any other article, product, or means of conveyance that a California State Plant Quarantine Officer 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, stored, or treated in a manner that prevents the article from presenting a risk of spreading the emerald ash borer.
- are moved by the United States Department of Agriculture for experimental or scientific purposes

Alternatively, if the regulated articles originate outside the quarantined area and is moved through the quarantined area they can be allowed in California under the following conditions if:

- they 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, 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
- 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.

The details of this quarantine are similar to the federal domestic quarantine requirements for emerald ash borer that ended in January 2021.

ANTICIPATED BENEFITS FROM THIS REGULATORY ACTION

The adoption of this regulation benefits homeowners who possess 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.

EVALUATION OF INCONSISTENCY / INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

The Department considered any other possible related regulations in this area and finds that these are the only regulations dealing in this subject area, and the Department is the only State agency that can implement this proposed regulation. As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of this proposed regulation and has determined that it is not inconsistent or incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None and no nondiscretionary costs or savings to local agencies or school districts.

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 private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.

Significant effect on housing costs: None.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The Department has concluded that this section 3288 (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) is not expected to have a direct effect on the health and welfare of California residents and (5) is not expected to have a direct impact on the state's environment.

Small business determination: The adoption of section 3288 will provide authority for the Department to conduct exterior quarantine against emerald ash borer activities and there are no known private sector cost impacts.

The Department has determined the adoption of this regulation would benefit:

- the general public
- homeowners and community gardens
- agricultural industry
- the State's general fund
- the environment

There are no known specific benefits to worker safety or the health of California residents.

EXISTING LAWS & REGULATIONS

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 (Food and Agricultural Code (FAC) Section 5321).

Existing law allows the Secretary to adopt quarantine regulations as necessary to protect the California agricultural industry from pests and prevent the spread of injurious insect pests and animal diseases (Food and Agricultural Code (FAC) sections 407, 5301, and 5302).

This adoption of Section 3288 will create an exterior quarantine for the emerald ash borer. The effect of this regulation will be to provide authority for the State to prevent spread of

the emerald ash borer to non-infested areas in order to protect California's agricultural industry and environment.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

A preliminary review pursuant to title 14 CCR section 15060(c) indicates that adoption of this regulation will not cause either a direct physical change to the environment or a reasonably foreseeable indirect physical change to the environment.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or 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 than the proposal described in this Notice.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed is:

Dean Kelch
California Department of Food and Agriculture
Plant Health and Pest Prevention Services
2800 Gateway Oaks Dr, Suite #200
Sacramento, CA 95833
dean.kelch@cdfa.ca.gov
916.403.6650
916.651.2900 (FAX)

The backup contact person for these inquiries is:

Erin Lovig
California Department of Food and Agriculture
Plant Health and Pest Prevention Services
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Sacramento, CA 95833
erin.lovig@cdfa.ca.gov
916.654.1017
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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, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. 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.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website (www.cdfa.ca.gov/plant/Regulations.html). Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through at this website.