

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Section 3280

Japanese Beetle Exterior Quarantine

INITIAL STATEMENT OF REASONS/

POLICY STATEMENT OVERVIEW

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 of Food and Agriculture to protect the agricultural industry and the environment from the movement and spread of an injurious plant pest within California.

Specific Purpose and Factual Basis

Section 3280

The specific purpose of Section 3280 of Title 3, of the California Code of Regulations, is to prevent the introduction of Japanese beetle (*Popillia japonica*) into California.

The Japanese beetle is a highly destructive plant pest that can be very difficult and expensive to control. Feeding on grass roots, Japanese beetle grubs damage lawns, golf courses, and pastures. Japanese beetle adults attack the foliage, flowers, or fruits of more than 300 different ornamental and agricultural plants. This beetle is not established in California and the Department has an active eradication program in place for any outbreaks that occur from Japanese beetle incursions.

Under Food and Agricultural Code (FAC) Sections 407, 5301, and 5302, the Department is authorized to adopt regulations necessary to prevent the spread of injurious insect pests and animal diseases. Under FAC Section 5024, the Department is authorized to inspect any plant or thing that is, or is liable to be, infested or infected by, or which might act as a carrier of, any pest. Under FAC Section 5701 the Secretary or the commissioner is authorized to place a hold on any plant, other hosts, or possible carrier which is, or may be, capable of disseminating or carrying the pest. FAC section 6441, provides that after inspection, if any plant or thing is found

to be infested or infected with a pest, the owner or bailee is required to disinfect the conveyance or place where the plant or thing may have been located. FAC section 6442 requires the inspecting officer to place a hold on of any article which has come in contact with the infested or infected plant or thing until it has been thoroughly disinfected and re-inspected. Under FAC 5310, 5311, and 6461, penalties may be levied against parties violating this division or any regulation adopted pursuant to this division.

The Department is proposing to amend the regulation to clarify the responsible parties cited in section (f) and the appeals process outlined in section (f)(7).

Section 3280 (b)

The Department is proposing to delete section (b)(10). The term “owner” is only referenced in (b)(11) and is not necessary for the clarity of the regulation. The remaining definitions will be renumbered.

Section 3280 (f)(1), (f)(2), and (f)(4)

The Subsection (f) provides that if, after inspection of any conveyance such as an aircraft, truck, or train car by an inspecting officer, a live Japanese beetle is found, the following steps will take place:

1. The conveyance shall be held for treatment.
2. The shipper of the shipment will be notified of the hold and treatment immediately.
3. The conveyance shall be treated at shipment owner expense.
4. The conveyance shall be re-inspected to determine if free from Japanese beetle.
5. Upon the inspector’s determination that the conveyance is beetle free, the shipment shall be released from hold.
6. The secretary or the commissioner may assess a fine of \$2,500 per live Japanese beetle detected pursuant to FAC section 5311.

The Department is proposing to change the language in (f)(1), (f)(2), (f)(4), and (f)(5) to refer to the transporter rather than the shipper. As defined in (b)(13), the transporter, which typically

includes companies such as UPS, FedEx, and DHL, is the responsible party for the movement of the articles and conveyances subject to inspection in section (f). Since the transporter is responsible for the condition of the conveyance and articles shipped, the transporter would be the appropriate party to handle abatement procedures and pay any fines levied by a commissioner or the secretary for a Japanese beetle infestation of the conveyance.

In section (f)(1), the party responsible for abatement of the conveyance will be changed from “shipper” to “transporter”. The transporter will subsequently be notified of any holds directed by the inspecting officer.

In section (f)(2), the party responsible for the costs of abatement will be changed from “shipper” to “transporter”.

In section (f)(4), the party responsible for determination of the abatement of the quarantine violation will be changed from “shipper” to “transporter”.

Section 3280 (f)(5) and (f)(7)

Sections (f)(5) through (f)(7) outline the fines which can be levied for violations of the Japanese beetle quarantine and the appeals process.

Section (f)(5) provides that either the Secretary or the commissioner can assess a fine for violations of the Japanese beetle quarantine by conveyances. The Department proposes changing “shipper” to “transporter”.

Section (f)(7)(A) allows the responsible party to appeal fines levied by the commissioner. The Department is proposing an amendment to clarify that fines levied by the secretary can also be appealed.

Background

A native of Asia, Japanese beetle (*Popillia japonica*) occurs in Japan (Hokkaido, Honshu, Shikoku, and Kyushu) and in at least one of the Kuril Islands (Kunashir, currently part of Russia). Japanese beetle was first found in the United States in 1916 near Riverton, New Jersey. In 1918, the USDA

and New Jersey authorities attempted to exterminate this pest. However, because the infestation was well established, eradication was not achieved. Since its introduction, Japanese beetle has spread throughout much of the eastern United States.

Japanese beetle is a highly destructive pest of a wide variety of plants. For decades, extremely high populations have occurred in infested areas across the eastern United States. Feeding on grass roots, larvae damage lawns, golf courses, and pasturelands. Attacking foliage, flowers, or fruits, the adults feed on more than 300 different ornamental and agricultural plants in 79 botanical families. Where Japanese beetle has become established in the eastern United States, it is so abundant as to cause serious injury to tree fruits as well as many field and vegetable crops on which it feeds. Japanese beetle control by insecticides or biological methods is often expensive due to the labor, equipment, and/or pesticides involved.

There have been occasional Japanese beetle outbreaks in California that the Department has eradicated before the beetle could become established. One of the recent incursions was in May 2014 in Fair Oaks, Sacramento. During the three-year period of 2014 through 2018, the Japanese beetle infestation was eradicated from this area at a cost of nearly \$2.4 million.

Because of its wide adaptability and the threat of artificial spread by aircraft and other conveyances, the Japanese beetle is a major risk to the agriculture and environment of California.

Anticipated Benefits from This Regulatory Action

The implementation of this regulation will clarify the abatement responsibilities of the affected parties and the appeals process outlined in this regulation.

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.

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 the Secretary is directed or authorized to administer or enforce.

Existing law, FAC section 5301, provides that the Secretary may establish, maintain, and enforce such quarantine regulations as he or she deems necessary to protect the agricultural industry of this State from pests. The regulations may establish a quarantine at the boundaries of this State or elsewhere within the State.

Existing law, FAC section 5302, provides that the Secretary may make and enforce such regulations as he or 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 5021, provides that, unless otherwise specified, any treatment which may be required pursuant to this division is at the risk and at the expense of the owner or person in charge or in possession of the property which is treated at the time of treatment.

Existing law, FAC section 5024, provides that the Secretary, during the maintenance of any quarantine established by the secretary pursuant to Article 1 (commencing with Section 5301) of Chapter 5, inspect any plant or thing that is, or is liable to be, infested or infected by, or which might act as a carrier of, any pest. The person who conducts the inspection shall not permit any of those plants or things to pass over the quarantine line during the inspection, except pursuant to a certificate of inspection and release that is signed by that person.

Existing law, FAC section 5102, provides that each county agricultural commissioner and each of their qualified representatives are state plant quarantine officers for the purposes of:

- a) certifying to the pest condition or pest treatment of shipments, if certification as a condition of movement or entry is officially required
- b) enforcing laws and regulations which relate to plant quarantine

Existing law, FAC section 5310, provides that in addition to any other penalties prescribed in this division, any person who violates this division or any regulation adopted pursuant to this division is liable civilly in an amount not exceeding ten thousand dollars (\$10,000) for each violation.

Existing law, FAC section 5311, provides the secretary may levy a civil penalty against a person violating this regulation in an amount not to exceed two thousand five hundred dollars (\$2,500) for each violation. The remainder of the section outlines the procedures for implementing this fine and the appeals process.

Existing law FAC section 5350, provides that the Secretary shall establish a program for inspection of conveyances entering California through airport facilities to prevent the introduction into, or the spread within the State of pests. It also provides that the inspections shall be performed by plant quarantine officers.

Existing law, FAC section 5701, provides that if any pest exists on any premises, the Secretary may hold any plant or other host or possible carrier which is, or may be, capable of disseminating or carrying the pest. The Secretary shall notify the owner of the plant or other host or possible carrier, or his or her agent, of this action, and the issuance of any shipping permit or nursery stock certificate with respect to the plant or other host or possible carrier shall be refused and any such permit or certificate which has been previously issued shall be revoked.

Existing law, FAC section 6301.1 provides that the Secretary shall adopt federal quarantine regulations in Parts 301 to 369, inclusive of Title 7 of the Code of Federal Regulations. Federal regulation 7 CFR Subpart F – Japanese Beetle (§§ 301.48 – 301.48-8) covers the federal Japanese beetle quarantine and regulations.

Existing law, FAC section 6403, provides that the officer who makes the inspection may enter at any time into any conveyance or place within the state where the plant or thing is located to ascertain whether it is, or is liable to be, infested or infected with any pest.

Existing law, FAC section 6441, provides that if, after inspection, any plant or thing is found to be infested or infected, the owner or bailee shall, at his expense, disinfect the conveyance or place where the plant or thing may have been located, in such manner as to destroy all infection or infestation present, or that is liable to be present.

Existing law, FAC section 6442, provides that the officer who makes the inspection shall not permit any article to be removed which has come in contact with the infested or infected plant or thing, if

such article might convey infection or infestation, until after the infection or infestation is destroyed, except for the purpose of destruction or disinfection under the supervision of the inspecting officer. Any article which is liable to be infested or infected shall be held until it has been thoroughly disinfected and the pest has been destroyed.

Existing law, FAC section 6461, provides that it is unlawful to ship or transport any plant or any other thing into this state which is infested with any pest which has been listed, by the Secretary, as detrimental to agriculture in this state. In addition to the civil, criminal, and administrative remedies specified in this division, the Secretary may, after notice and opportunity to respond, impose inspection, treatment, certification, holding, or other requirements for any shipper or transporter that has shipped or transported three or more pest-infested shipments into this state within any 12-month period. Regarding any commercial shipment violating any of those requirements imposed pursuant to this section, the Secretary may also charge the shipper or transporter the cost of inspecting and controlling the pest.

Existing law, FAC section 6465, provides that if, after the treatment or processing, the inspecting officer determines that the pest has been exterminated, the shipment may be released.

Existing law, Code of Civil Procedure (CCP) section 1094.5, provides that a review of the decision of the Secretary to impose a penalty may be sought by the person against whom the penalty was levied.

California Environmental Quality Act

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

Economic Impact Analysis

The prevention of the introduction of Japanese beetle in California through the amendment and implementation of this regulation has the following economic impacts:

The Creation or Elimination of Jobs within the State

Section 3280 regulations are designed to minimize the introduction of Japanese beetle from interstate travel and shipping. Inspection activities are currently being performed by existing state and county staff at airports and entry points throughout the State. The proposed amendments clarify the responsible parties for abatement of a Japanese beetle infestation discovered during inspection. The proposed amendments do not require any additional inspection times or costs above that of the existing regulation. Therefore, the Department has determined that this amendment will have no significant impact on the creation or elimination of jobs in the State of California.

The Creation of New Businesses or the Elimination of Existing Businesses within the State

The proposed amendments do not require any additional treatment or costs above that of the existing regulation. Therefore, the Department has determined that this amendment will have no significant impact on the creation or elimination of existing businesses in the State of California.

The Expansion of Businesses Currently Doing Business within the State

The proposed amendments do not require any additional treatment or costs above that of the existing regulation. Therefore, the Department has determined that this amendment will have no significant impact on existing businesses in the State of California.

Worker Safety

The amendment of this regulation is 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 subsection 3280 does not impose a mandate on local agencies or school districts and no reimbursement is required under Section 17561 of the Government Code. The California Plant Quarantine Officers are sometimes county staff, but the Department does not foresee that the amendments to Section 3280 will increase county staff workload beyond current levels.

The Department also has determined that no savings or increased costs to any state agency, 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, no nondiscretionary costs or savings to

local agencies or school districts, and no costs or savings in federal funding to the State will result from the amendment of subsection 3280.

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. The Department's determination that the action will not have a significant statewide adverse economic impact on business was based on the following:

Potential Impact to Homeowners and Community Gardens

Homeowners and community gardens would not be impacted by the proposed amendments.

Potential Impacts to General Fund and Welfare

The general fund and welfare would not be impacted by the proposed amendments.

Assessment

The Department has made an assessment that the adoption of the regulation would not 1) create or eliminate jobs within California; 2) create new business or eliminate existing businesses with California; or 3) affect the expansion of businesses currently doing business with California.

Alternatives Considered

The Department of Food and Agriculture must determine if an alternative course of action would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

The Department considered taking no action. If no action is taken, there would continue to be clarity issues with the regulation and there would not be a defined process for appealing fines levied by the Secretary. Therefore, this alternative was rejected.

Information Relied Upon

The Department relied upon the following studies, reports, and documents in the proposed amendment of Section 3280:

National Plant Board. 2016. U.S. Domestic Japanese Beetle Harmonization Plan. Revised June 20, 2016. 43 pages.

USDA. 2016. "Japanese Beetle Program Manual", United States Department of Agriculture.

USDA. 2019. Japanese Beetle (*Popillia japonica* Newman), United States Department of Agriculture; Animal and Plant Health Inspection Service. Accessed: September 10, 2019.

<https://www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/japanese-beetle>