

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE
Notice of Proposed Rulemaking

The Department of Food and Agriculture proposes to amend Section 3280 of the regulations in Title 3 of the California Code Regulations pertaining to the Japanese beetle Exterior Quarantine.

PUBLIC HEARING

A public hearing is not scheduled. 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 amendment to the Department. Comments may be submitted by mail, facsimile (FAX) AT 916.654.1018 or by email to lrains@cdfa.ca.gov. The written comment period closes at **5:00 p.m. on September 19, 2011**. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Lindsay Rains
Department of Food and Agriculture
Plant Health and Pest Prevention Services
1220 N Street Room 210
Sacramento, CA 95814
lrains@cdfa.ca.gov
916.654.1017
916.654.1018 (FAX)

AUTHORITY AND REFERENCE

Food and Agricultural Code Sections 407, 5301, and 5302 authorize the Department to amend these regulations. The proposed revisions are to a regulation that interprets and makes specific Sections 5301 and 5302 of the Food and Agricultural Code.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

Existing law 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 and spread of pests and to make and enforce such regulations to prevent any plant or thing which is, or is liable to be infested or infected by, or a carrier of any pest from passing over any quarantine line (Food and Agricultural Code, Sections 401, 403, 407, 5301 and 5302).

Section 3280 was adopted and established Japanese beetle, *Popillia japonica*, as a quarantine pest, the entire states of Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island,

South Carolina, Tennessee, Vermont, Virginia, and West Virginia and parts of Alabama, Kansas, Minnesota, Missouri, Wisconsin and Canada as quarantine areas, the articles and commodities covered, restrictions and that the Director may issue special permits. This amendment would update the quarantined areas and exceptions to movement restrictions to align the California exterior quarantine with the National Plant Board's Japanese Beetle Harmonization Plan. The plan was created to assure that the pest risks associated with movement of plant material were acceptably managed and to facilitate the orderly marketing of nursery stock and other regulated commodities between states. Adopted by the National Plant Board on August 19, 1998, it was most recently revised on April 12, 2011. There is no existing, comparable federal regulation or statute.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Other nondiscretionary cost or savings imposed on local agencies: 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

Cost or savings in federal funding to the state: None.

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

Cost impact on a representative private person or businesses: The department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Amendment of these regulations will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California

Significant effect on housing costs: None.

Small Business Determination

The Department has determined that the amendment of these regulations will affect small business.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would 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.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Lindsay Rains
Department of Food and Agriculture
Plant Health and Pest Prevention Services
1220 N Street Room 210
Sacramento, CA 95814
lrains@cdfa.ca.gov
916.654.1017
916.654.1018 (FAX)

In her absence, you may contact Stephen Brown at the same phone number.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website (<http://www.cdfa.ca.gov/phpps/Regulations.html>).

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed action, has available all of 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 above.

If the regulations amended by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of amendment. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named above.

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Rains at the above address.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Department may amend 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. Please send requests for copies of any modified regulations to the attention of Lindsay Rains at the address indicated above. 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 will be posted on the Department's web site or a copy may be obtained by contacting Ms. Rains at the address listed above.