

DEPARTMENT OF FOOD AND AGRICULTURE  
Title 3 of the California Code of Regulations Section 3280

**Notice of Proposed Rulemaking**  
**45 – Day Notice**

The Department of Food and Agriculture (Department) proposes to revise title 3 of the California Code of Regulations (CCR) Section 3280, subsection (f) pertaining to Japanese Beetle Exterior Quarantine.

**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 July 18, 2022. The Department will consider only comments received at the Department offices by that date or postmarked no later than July 18, 2022. Submit comments to:

Dean Kelch  
Department of Food and Agriculture  
Plant Health and Pest Prevention Services  
1220 N Street  
Sacramento, CA 95814  
dean.kelch@cdfa.ca.gov  
916.403.6650  
916.651.2900 (FAX)

Questions regarding the substance of the proposed regulation should be directed to Dean Kelch. In his absence, you may contact Erin Lovig at (916) 654-1017 or [erin.lovig@cdfa.ca.gov](mailto:erin.lovig@cdfa.ca.gov), FAX number (916) 651-2900.

Unless there are substantial changes to the proposed regulation prior to adoption, the Department of Food and Agriculture may adopt the proposal as set forth in this notice without further notice to the public. Following the public hearing, if one is requested, or following the written comment period if none is requested, the Department of Food and Agriculture, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

**AUTHORITY**

The Department proposes to amend Section 3280 pursuant to the authority vested by Sections 407 and 5301 and 5302 of the Food and Agricultural Code (FAC) of California.

**REFERENCE**

The Department proposes this action to implement, interpret and make specific Sections 5021, 5311, 5701, and 6441 of the FAC and Section 1094.5 of the Code of Civil Procedure (CCP).

**INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW**

The California Department of Food and Agriculture (Department) adopted the Section 3280 exterior quarantine to provide authority for the State to protect the agricultural industry and the environment by preventing the movement and spread of an injurious plant pest, Japanese beetle within California. These revisions clarify the regulation with regard to abatement procedures and fines for conveyances containing a Japanese beetle infestation.

### **EXISTING LAWS & 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 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 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 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, 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.

### **ANTICIPATED BENEFITS OF THE PROPOSED AMENDMENTS**

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

## **EVALUATION OF INCONSISTENCY / INCOMPATIBILITY WITH EXISTING STATE REGULATIONS**

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.

## **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

A 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.

## **DISCLOSURES REGARDING THE PROPOSED ACTION**

Mandates on local agencies or 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

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 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.

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

The proposed amendments do not require any additional treatment or costs above that of the existing regulation. Therefore, the Department does not anticipate that these amendments will affect small businesses.

Significant effect on housing costs: None

## **RESULTS OF THE ECONOMIC IMPACT ANALYSIS / ASSESSMENT**

The Department has concluded that this Section 3280 amendment (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, and (3) will have no impact on the expansion of businesses within the State of California.

Small business determination: There are no known private sector cost impacts.

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

## **CONSIDERATION OF ALTERNATIVES**

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effect in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private

person 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.

The Department invites interested persons to present statements or alternatives during the written comment period.

#### **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. The Department has posted the information regarding this proposed regulatory action on its Internet website ([www.cdfa.ca.gov/plant/Regulations.html](http://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 at this website or available upon request.

#### **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 (contact) 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 (contact) named herein.