

**State of California  
Office of Administrative Law**

**In re:**  
Department of Food and Agriculture

**Regulatory Action:**

**Title 03, California Code of Regulations**

**Amend section: 3280**

**NOTICE OF APPROVAL OF REGULATORY  
ACTION**

**Government Code Section 11349.3**

**OAL Matter Number: 2022-0721-05**

**OAL Matter Type: Regular (S)**

---

This rulemaking action by the Department of Food and Agriculture specifies that Japanese Beetle infestations of conveyances must be abated by the transporter of the conveyance.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on October 1, 2022.

**Date: August 25, 2022**



---

Nicole C. Carrillo  
Senior Attorney

**For: Kenneth J. Pogue  
Director**

**Original: Karen Ross, Secretary  
Copy: Karen Olmstead**

# REGULAR

For use by Secretary of State only

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-2022-0518</b>	REGULATORY ACTION NUMBER <b>2022-0721-05</b>	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

**ENDORSED - FILED**  
in the office of the Secretary of State  
of the State of California

**AUG 25 2022**

GH

1:57 PM

OFFICE OF ADMIN. LAW  
2022 JUL 21 PM2:02

AGENCY WITH RULEMAKING AUTHORITY California Department of Food and Agriculture	AGENCY FILE NUMBER (If any)
---	-----------------------------

### A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
<b>OAL USE ONLY</b>	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

### B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Japanese Beetle Exterior Quarantine	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
TITLE(S) 3	AMEND Section 3280
	REPEAL
3. TYPE OF FILING	
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)	
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)	
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State
<input type="checkbox"/> Effective other (Specify)	<input type="checkbox"/> \$100 Changes Without Regulatory Effect
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY	
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission
<input type="checkbox"/> Other (Specify)	<input type="checkbox"/> State Fire Marshal
7. CONTACT PERSON Karen Olmstead	TELEPHONE NUMBER 916-403-6879
FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) karen.olmstead@cdfa.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE Kevin Masuhara	DATE
TYPED NAME AND TITLE OF SIGNATORY Kevin Masuhara, Deputy Secretary, California Dept. Food & Agriculture	

For use by Office of Administrative Law (OAL) only

**ENDORSED APPROVED**

**AUG 25 2022**

Office of Administrative Law

In Title 3, Division 4, Chapter 3, Subchapter 4, Article 3, Section 3280:

[no changes to sec. 3280(a) – (b)(9)]

Amend Section 3280, Subsection (b)(10), (b)(11) and (b)(12) to read:

~~(10) “Owner” is defined as a person to whom something belongs, whether an object, property, or organization.~~

(11) “Person” is defined as any individual, partnership, association, corporation, limited liability company, or any organized group of persons whether incorporated or not.

(12) “Shipper” is any person who engages in the operation of selling, marketing, handling, or distributing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise.

(13) “Transporter” is defined as a person or thing that moves something from one property to another, within or into the state.

(c) Area Under Quarantine.

(1) The entire states of Alabama, Arkansas, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia.

(2) In Canada: the entire provinces of New Brunswick, Nova Scotia, Ontario, Prince Edward Island, and Quebec.

(d) Articles and Commodities Covered. The following are hereby declared to be hosts and possible carriers of the pest quarantined against:

(1) Soil except when commercially packaged. For the purposes of this section, soil shall mean all growing media;

(2) Humus, compost, and manure (except when commercially packaged);

(3) All plants with roots (except bareroot plants free from soil). “Free from soil” as used in this regulation shall mean free from soil in amounts that could contain concealed Japanese beetle larvae or pupae;

- (4) Grass sod;
  - (5) Plant crowns or roots for propagation (except when free from soil);
  - (6) Bulbs, corms, tubers, and rhizomes of ornamental plants (except when free from soil);
  - (7) Any other plant, plant part, article, or conveyance when it is determined by a California State Plant Quarantine Officer to present a hazard of spreading live Japanese beetle due to infestation or exposure to infestation by Japanese beetle.
- (e) Restrictions. All articles and commodities covered are prohibited entry into California from the area under quarantine with the following exceptions:

- (1) Certificate of Treatment. All of the articles and commodities covered except grass sod, are approved for entry into California when accompanied by a certificate issued by an authorized state agricultural official at origin declaring that the article or shipment was treated for Japanese beetle prior to shipment in accordance with methods and procedures approved and prescribed by the Secretary.

All treatments shall be performed under direct supervision of an authorized state agricultural official or by the shipper under a compliance agreement with the authorized state agricultural official to perform the treatments. The authorized state agricultural official shall monitor all treatments and procedures performed under a compliance agreement.

The phytosanitary certificate shall bear the following Additional Declaration (AD): "The rooted plants were treated to control *Popillia japonica* according to the criteria for shipment to category 1 states as provided in the U.S. Domestic Japanese Beetle Harmonization Plan."

- (2) Certificate of Origin. Commercial plant shipments with soil may be shipped from the area under quarantine into California provided such shipments are accompanied by a certificate issued by an authorized state agricultural official at origin. Grass sod is not eligible for this authorization. Such certificates shall be issued only if the shipment conforms fully with either (A), (B), (C), (D), or (E) below:

(A) *Production in an Approved Japanese Beetle-Free Greenhouse/Screenhouse.* All the following criteria apply:

- 1. All growing media shall be sterilized, except for commercially processed or prepared (soilless) growing material.

2. All stock shall be free of soil (bareroot) before planting into the approved medium.
3. The potted plants shall be maintained within the greenhouse/screenhouse during the entire adult flight period.
4. During the adult flight period, June through September, the greenhouse/screenhouse shall be made secure so that adult Japanese beetle cannot gain entry. Security will be documented by the authorized agricultural official.
5. No Japanese beetle-contaminated material shall be allowed into the secured area at any time.
6. The greenhouse/screenhouse shall be officially inspected by the inspecting officers and shall be specifically approved as a secure area. They shall be inspected by the same inspecting officers for the presence of all life stages of the Japanese beetle.
7. The plants and their growing medium shall be appropriately protected from subsequent infestation while being stored, packed and shipped.
8. Certified greenhouse/screenhouse nursery stock shall not be transported into or through any infested areas unless shipment integrity is preserved and documented and adequate safeguards are applied to prevent possible infestation.
9. Shipments from each greenhouse/screenhouse operation approved by the inspecting officer as having met and maintained the above criteria, shall be issued a phytosanitary certificate bearing the following additional declaration (AD):

“The rooted plants (or crowns) were produced in a California Department of Food and Agriculture approved Japanese beetle-free greenhouse or screenhouse.”

- (B) *Plants Produced Outside Regulated Area.* The plants were not produced in the regulated area, were transported into the regulated area in a closed conveyance or closed containers and at all times thereafter were protected from becoming infested with Japanese beetle.
- (C) *Origin County Free Survey.* States or portions of states listed in the area under quarantine may have counties that are not infested with Japanese beetle. Shipments of articles and commodities covered will be accepted from these non-infested counties if annual surveys are made in such counties and the results of such surveys are negative for Japanese beetle.

A list of counties so approved will be maintained by the Secretary. The agricultural officials of other states may recommend a non-infested county be placed on the approved county list by written request to the Secretary for such approval and stating how the surveys were made giving the following information:

1. Area surveyed and date survey was performed.
2. Survey method.
3. Personnel involved in survey.
4. If the county was previously infested, date of last infestation.

The recommendation for approval of such counties shall be evaluated by the Pest Exclusion Branch, Plant Health and Pest Prevention Services Division, California Department of Food and Agriculture.

If live Japanese beetle has been detected in neighboring counties, approval shall be denied. To be maintained on the approved list, each county must be reappraised every twelve (12) months. Shipments of articles and commodities covered from non-infested counties shall only be allowed entry into California if the non-infested county has been placed on the approved list prior to the arrival of the shipment in California.

- (D) *Nursery Free Survey.* Growing operations certified under this approach shall grow all their own stock or shall receive nursery stock to introduce into the operation which has been certified free of Japanese beetle by an authorized agricultural official.

*Detection Survey:*

The nursery site and a minimum one-mile radius buffer area shall be trapped on an annual basis by an authorized agricultural official. The growing operation shall be trapped at the following trap density:

1. For sites less than 5 acres in size, 3 traps are used per site.
2. For sites 5 to 30 acres in size, a minimum of three traps are used, with 1 additional trap added for every 5 acres over 15 acres.
3. For sites 31 to 160 acres in size, a minimum of 6 traps are used, with 1 additional trap added for every 10 acres over 60 acres.
4. For sites greater than 160 acres in size, a minimum of 16 traps are used, with 1 additional trap added for every 12 acres over 200 acres.

Traps shall be evenly spaced throughout the trapping areas. In addition, the surrounding one mile buffer area shall be trapped at a minimum of 2 traps placed per square mile.

Traps shall be baited with a lure consisting of a Japanese beetle food lure (for example: phenyl-ethyl proprionate: eugenol: geraniol [3:7:3 ratio]) in addition to a male sex pheromone. Traps shall be renewed as often as necessary to maintain trapping efficacy.

The detection of a female (or any beetle if identification of sex is not performed) Japanese beetle on the nursery site shall result in that nursery being considered infested until a delimitation survey has been completed and regulated articles and commodities cannot be certified based upon an origin free from Japanese beetle.

The detection of a Japanese beetle in the buffer area shall trigger a delimitation survey and the nursery may continue to ship until there is a second detection in the same season as the original detection.

*Delimitation Survey:*

Delimitation traps shall be placed over a 49 square-mile area. Trap density in the core square mile shall be increased to 50 traps. Trap densities in the remainder of the delimitation area shall be decreased from the core outward within 48 hours of the find to complete a 50-25-5-5 trap array. Trap densities in the core square mile shall be increased to protocol levels within 24 hours, while trap placement in the remainder of the delimitation area shall be completed from the core outward within 48 hours of the find. Traps in the core mile shall be serviced daily for the first week, and all others serviced at least once within the first week. After one week of negative finds, all trap inspection frequencies shall change to weekly.

Delimitation trapping shall then continue for the remainder of the season. Trap densities revert to origin survey levels after two seasons of negative finds (includes the find season).

The phytosanitary certificate shall bear the following Additional Declaration (AD):

“The plants were produced in a nursery which was found to be free of Japanese beetle (*Popillia japonica*) based on negative detection trapping.”

*(E) Production During a Pest-Free Window*

The entire rooted plant production cycle (planting, growth, harvest, and shipment) will be completed within a pest-free window outside the adult Japanese beetle flight period, June through September, in Japanese beetle-free commercial growing medium or sterilized field soil. The accompanying phytosanitary certificate shall bear the following Additional Declaration (AD):

“These plants were produced outside the Japanese beetle flight season in Japanese beetle-free growing medium or sterilized field soil.”

- (3) Privately owned houseplants grown indoors may be inspected and passed by California State Plant Quarantine Officers if found free from Japanese beetle.

(f) Inspections For Compliance

The secretary, commissioner or a designated inspecting officer shall inspect any conveyance that is infested or infected by, or which might act as a carrier of, Japanese beetle or any conveyance that originates from an infested area. Inspection shall consist primarily of visual observation of conveyance surfaces for Japanese beetle specimens as well as any other objects that may harbor Japanese beetles.

- (1) If, upon or during inspection of any conveyance, a live Japanese beetle is found, the secretary or the commissioner may order the reclosure of any conveyance that is capable of disseminating or carrying the pest. Any aircraft may be moved from the area of inspection, including withdrawal from the state, as directed by airport personnel, pending abatement. For ground vehicles, the inspector shall determine the location the vehicle is to be held if the shipper transporter or their representative chooses abatement rather than withdrawal from the state. The shipper, as identified on the bill of lading, transporter or their representative shall be immediately notified of any hold.
- (2) The shipper transporter of the conveyance shall, at their expense, have the conveyance in which the Japanese beetle or beetles have been located rendered free of living Japanese beetles, as determined by subsequent reinspection for any living Japanese beetle.
- (3) Any article that is part of the shipment or conveyance that may have come in contact with the Japanese Beetle, if such article is capable of conveying infestation as determined by the inspecting officer, shall not be moved from the conveyance as determined by the inspecting officer until after the infestation is removed, except for the purpose of destruction or disinfection. If the inspecting officer determines that the conveyance may be moved for the purpose of insect removal, destruction, disinfection, or further inspection, then the conveyance shall be secured against the escape of Japanese beetle before being moved following the closure of all means of insect egress. This



includes closing doors or any other entryway to areas within the conveyance where Japanese beetle have been found and any egress on the conveyance.

(4) Reinspection may occur once the shipper transporter or their agent representative determines that the quarantine violation has been abated, or, if treatment occurs, once it is safe to reenter the aircraft. Once the inspecting officer determines that the conveyance is free of living Japanese beetles, the hold notice over the shipment or conveyance shall be removed. If the Japanese beetle infestation is still active upon reinspection, then withdrawal or further abatement and subsequent inspection shall be required before the hold is removed.

(5) Any conveyance in which a living Japanese beetle is detected is in violation of Food and Agricultural Code Section 6461. The secretary or the commissioner may assess a fine on the shipper transporter of not more than two thousand five hundred dollars (\$2,500) for each violation. A violation is defined as the finding of a single living Japanese beetle.

(6) If a single shipment or conveyance is found to contain multiple living Japanese beetles, the fine shall be levied for each Japanese beetle found.

(7) Appeals

Before a civil penalty is levied, the person charged with the violation shall receive notice of the nature of the violation and shall be given an opportunity to be heard. This shall include the opportunity to review the evidence and the opportunity to present evidence on his or her own behalf.

(A) The person against whom a civil penalty is levied by a commissioner or the secretary may appeal to the secretary within 10 days of the date of receiving notification of the penalty, as follows:

1. The appeal shall be in writing and signed by the appellant or their authorized agent and shall state the grounds for the appeal.
2. Any party, at the time of filing the appeal or within 10 days thereafter, may present written evidence and a written argument to the secretary.
3. The secretary may grant oral arguments upon application made at the time written arguments are filed.
4. If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days prior to the date set therefor. This time requirement may be altered by an agreement between the secretary and appellant.

5. Based on any oral or written arguments, briefs, and evidence that he or she has received in the written appeal and oral arguments, the secretary shall, within 10 days after the filing of the appeal, decide the appeal. The secretary's findings shall be based on clear and convincing evidence.
  6. The secretary shall render a written decision within 45 days of the date the appeal is received by the Department or within 15 days of the date of oral arguments.
  7. On an appeal pursuant to this section, the secretary may sustain, modify by reducing the amount of the penalty levied, or reverse the decision. A copy of the secretary's decision shall be delivered or mailed to the appellant and the commissioner who levied the penalty.
- (B) A review of the decision of the secretary to impose a penalty may be sought by the person against whom the penalty was levied within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.
- (C) Any funds recovered by the commissioner pursuant to this section shall be deposited in the county general fund in the county in which the action is brought and shall be allocated to the commissioner to cover costs related to the enforcement of this division. Any funds recovered by the secretary pursuant to this section shall be deposited in the Department of Food and Agriculture Fund to cover costs related to the enforcement of this division.

Note: Authority cited: Sections 407, 5301, 5302 and 5311, Food and Agricultural Code.  
Reference: Sections 5024, 5301, 5302, 5311, 5701, 6403, 6441, 6442 and 6461, Food and Agricultural Code.