

FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists due to the detection of Japanese beetle, *Popillia japonica*, in California. On July 12, 2011, two adult Japanese beetle, a male and a female, were unexpectedly trapped in the Fair Oaks area of Sacramento County. Japanese beetle is one of the most destructive insect pests in the United States. The adult beetle is a gregarious and general feeder that causes serious damage to fruits, truck and garden crops, ornamental herbaceous garden plants, ornamental shrubs, trees and vines, and many other urban plants. The larvae feed extensively on the root systems of plants, particularly in grassy (sod/turf) areas such as parks, golf courses, etc. This unexpected occurrence of Japanese beetle in the Fair Oaks area is indicative of an incipient infestation existing in the Fair Oaks area of Sacramento County. Therefore, the Department is proposing to amend Section 3589, Japanese Beetle Eradication Area by adding Sacramento and Placer counties. If a state agency makes a finding that the adoption (or amendment) of a regulation is necessary to address an emergency, the regulation may be adopted (amended) as an emergency regulation. Government Code Section 11346.1(b)(1). "Emergency" means a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare." Government Code Section 11342.545.

Emergency Rulemaking Procedures

In this document the Department is providing the necessary specific facts demonstrating the existence of an emergency and the need for immediate action to prevent serious harm to the general welfare of the citizens of California, pursuant to Government Code Section 11346.1(b)(2).

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person

who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6. Since the Department does not have a record of any person requesting a notice of regulatory actions under Government Code Section 11346.4(a)(1), the notification provisions of Government Code Section 11346.1(a)(2) do not appear to be applicable to this emergency action. Further, the Secretary believes that this emergency clearly poses such an immediate, serious harm that delaying action by the Office of Administrative Law providing five working days advance notice to allow public comment would also be inconsistent with the public interest, within the meaning of Government Code Section 1349.6(b).

California Environmental Quality Act

An Environmental Impact Report (EIR), "Japanese Beetle Project," was prepared by the Department as the lead agency under the California Environmental Quality Act (CEQA). The EIR is available upon request from the Department.

Evidence of An Emergency

Both as adults and as grubs (the larval stage), Japanese beetles are destructive plant pests. Adults feed on the foliage and fruits of several hundred species of fruit trees, ornamental trees, shrubs, vines, and field and vegetable crops. Among the plants most commonly damaged are rose, grape, crabapple, turf grass and beans. Adults leave behind skeletonized leaves and large, irregular holes in leaves. The grubs develop in the soil, feeding on the roots of various plants and grasses and often destroying turf in lawns, parks, golf courses, and pastures. Today, the Japanese beetle is the most widespread turf-grass pest in the United States. Efforts to control the larval and adult stages are estimated to cost more than \$460 million a year. Losses attributable to the larval stage alone have been estimated at \$234 million per year—\$78 million for control costs and an additional \$156 million for replacement of damaged turf. Additionally, as a

general feeder, the Japanese beetle likely poses a serious threat to the general environment and some of California's threatened and endangered species. Therefore, it is necessary to amend Section 3589(a) on an emergency basis.

Project Description

The CDFA begins an eradication project when it determines that a Japanese beetle infestation exists within the state.

Delimitation Trapping

Intensive trapping is triggered when one or more beetles are found in a trap. The objective is to determine the extent and epicenter of an infestation. The trap density is increased to 50 traps per-square-mile within one-square-mile core surrounding each adult find. The trap density are five traps/mile in a two-mile buffer area surrounding the core. Traps near the core are monitored daily for a week and weekly thereafter. Due to the location of the infestation and its close proximity to Placer County, some of the required delimitation trapping will occur in Placer County. Therefore it is also necessary to Placer County to the regulation.

General

Treatment will begin immediately after notification, within 24 to 72 hours after an infestation is determined to exist. Japanese beetle eradication programs rely on chemical treatment to two phases of the insect life cycle: larva and adult. Treatment areas, based on the known flight capabilities of the adult insect, are approximately a one-half mile radius from the source of an infestation, as determined by beetle finds. Foliar treatments of all host and suspected host material are made during the adult flight season from May through September. Soil treatment is timed to kill larvae when they are actively feeding on grass roots in the spring and fall. Residents are notified at least 24 hours before the initial soil or foliar treatment except in isolated cases when immediate treatment is necessary.

Notification

The purpose of notification is to comply with state law and present accurate information in an understandable format to concerned groups. Local and state elected representatives of the residents in the treatment area will be notified and appraised on major developments before and during treatment. Any residents whose property will be treated with foliar sprays or soil treatment following the discovery of an infestation on or near the property will be notified in writing prior to treatment. Treatment notices include the name of the pest to be eradicated, the material to be used, the boundaries, and a phone number to call in case of additional questions on project operations and the number for the medical hot line. Following treatment, a completion notice is left detailing any precautions the homeowner should take.

Treatment

Foliar treatment uses an insecticide applied by hydraulic spray equipment to all potential host plants within the treatment area. Application is repeated at 15-21 day intervals during the adult flight season. Shorter application intervals may be needed during the peak growing season to adequately cover rapidly growing foliage.

Soil pesticides are applied in the spring and fall. These materials are granular and are applied using shaker cans and calibrated rotary or drop spreaders. The pesticide is watered into the soil.

Pesticide Monitoring

A pesticide monitoring program is used to evaluate program effectiveness and environmental impact. Pesticide monitoring is a cooperative effort involving federal, state, and county personnel. The evaluation must effectively address agency, cooperator, and public concerns.

In compliance with appropriate pesticide laws, the CDFA or agricultural commissioners pesticide enforcement personnel will make regular inspections of treatment and mixing/loading equipment and activities, and pesticide container storage.

Pesticide residues in the environment will be monitored by the Division of Pest Management Environmental Hazards Assessment Program. Monitoring for detectable levels of pesticides in and around treatment areas may include sampling of air, foliage, food crops, water, soil, or other media. Monitoring results will indicate program effectiveness by measuring persistence of pesticides in pest host materials, and show environmental impact by measuring residues in non-target environmental components.

Post-Treatment Monitoring

To ensure the success of an eradication program, intensive trapping continues for three years following the completion of treatment. Additional finds may trigger re-treatment.

The Department also relied upon the following documents for determining this proposed emergency rulemaking:

California Pest and Damage Record #s 1429235 and 1496270.

“Action Plan for Japanese Beetle, *Popillia japonica* (Newman),” May 2000, California Department of Food and Agriculture, Plant Health and Pest Prevention Services (nine pages).

“Japanese Beetle Program Manual for Airports,” December 2004, United States Department of Agriculture, Marketing and Regulatory Programs, Animal and Plant Health Inspection Service, Plant Protection and Quarantine.

“Monitoring The Pesticide Treatments of the Japanese Beetle Project, Sacramento County, California, 1983-1986, Volume I: Carbaryl,” December 1988, Environmental Hazards Assessment Program, California Department of Food and Agriculture.

“Environmental Assessment of Japanese Beetle & Its Eradication in California,” 1983-84 Program, California Department of Food and Agriculture.

“Environmental Impact Report, Japanese Beetle Project,” 1974, California Department of Food and Agriculture.

Authority and Reference Citations

Section 3589(a):

Authority: Sections 407 and 5322, Food and Agricultural Code.

Reference: Sections 5761, 5762, 5763 and 5764, Food and Agricultural Code.

Informative Digest

The Secretary is proposing to amend this regulation pursuant to the authority in Food and Agricultural Code (FAC) Section 407, “the director may adopt such regulations as are reasonably necessary to carry out the provisions of this code which he is directed or authorized to administer or enforce,” and FAC Section 5322, “the director may establish, maintain, and enforce quarantine, eradication, and such other regulations as are in his or her opinion necessary to circumscribe and exterminate or prevent the spread of any pest which is described in FAC Section 5321.

Additionally, FAC Section 401.5 states, “the department shall seek to protect the general welfare and economy of the state and seek to maintain the economic well-being of agriculturally dependent rural communities in this state” and Section 403 states, “the department shall prevent the spread of injurious insect pests.”

Section 3589(a). Japanese beetle Eradication Area.

This amendment will add the entire counties of Sacramento and Placer to the regulation as an additional area under the eradication area for Japanese beetle. The effect of the

change is to provide authority for the State to conduct eradication activities against Japanese beetle in Placer and Sacramento counties.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 39591.15(a) does not impose a mandate on local agencies or school districts. All eradication activities shall be conducted by the Department.

Cost Estimate

The Department has also 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 proposed action.