

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

Notice of Proposed Rulemaking

45 – Day Notice

The Department of Food and Agriculture (Department) proposes to amend Section 3280 in title 3 of the California Code of Regulations for the protection of California’s agricultural industry, residential neighborhoods, and the natural environment from the movement and spread of Japanese Beetle, within California.

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 mail, FAX or email. The written comments must be received by the Department at its office by February 17, 2020. The Department will consider only comments received at the Department offices by that time or postmarked no later February 17, 2020. Submit comments to:

Dean Kelch, Environmental Program Manager
California Department of Food and Agriculture
Plant Health and Pest Prevention Services
2800 Gateway Oaks Drive, Suite #200
Sacramento, CA 95833
Dean.Kelch@cdfa.ca.gov
916.403.6650
916.651.2900 (FAX)

Unless there are substantial changes to the proposed regulation prior to adoption, the Department may adopt the proposal as set forth in this notice without further notice to the public.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

Existing law allows the Secretary to adopt quarantine regulations as necessary to protect the California agricultural industry from pests and prevent the spread of injurious insect pests and animal diseases (Food and Agricultural Code (FAC) sections 407, 5301, and 5302).

The proposed amendment to section 3280 is intended to clarify prohibitions found in the FAC for the prevention of the artificial spread of Japanese beetle into California via any means of transportation, and establish enforcement mechanisms, including holds, inspections, and fines, for violations of the prohibitions.

The Department considered any other possible related regulations in this area and finds that these are the only regulations dealing in this subject area, and the Department is the only State agency that can implement this proposed regulation. As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of this proposed regulation and has determined that it is not inconsistent or incompatible with existing state regulations.

Anticipated Benefits from This Regulatory Action

By increasing trap densities at nurseries, creating new enforcement mechanisms, and defining key terms that are part of the enforcement mechanisms, the amendment of Section 3280 will prevent damage to the agricultural industry of California, including direct damage from Japanese beetle infesting conveyances arriving from infested states and provinces. Indirect economic damage will also be prevented from implementation of quarantines, increased agricultural industry production costs, increased pesticide use, increased cost to consumers, increased cost of pesticide use to homeowners, and the need to implement a State interior quarantine and the need to implement a federal domestic quarantine.

ADOPTED TEXT

This proposed action establishes that if, after inspection of any conveyance such as an aircraft, truck, or train car by a California State Plant Quarantine Official, a live Japanese beetle is found in the conveyance or shipment within the conveyance, the following steps shall be taken:

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 form Live 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.

If a live Japanese beetle is found on or in a conveyance, the inspector shall issue a hold notice (State Form 66-130) to the shipper representative. The conveyance will then be held for treatment until the inspecting officer determines the Japanese beetle in the conveyance or shipment has been exterminated.

This proposed action also extends the existing Japanese beetle quarantine area to North Dakota, defines the following terms used in the regulation: category 1 state, conveyance, shipper, transporter, owner, bailee, inspecting officer, inspection, and California State Plant Quarantine Officer, and live, dead, and moribund beetles. It also gives minimums for trap density at origin, a site less than 5 acres uses 3 traps, 5-30 acres a minimum of three traps, with 1 additional trap added for every 5 acres over 15 acres, 31 to 160 minimum of 6 traps, with 1 additional trap added for every 10 acres over 60 acres, and sites greater than 160 a minimum of 16 traps, with 1 additional trap added for every 12 acres over 200 acres. It also requires that the documentation to recommend a noninfested county be placed on the approved county list include the date that the area was surveyed.

APPEALS

Before a civil penalty is levied as described in section 3280(f)(5), the person charged with the violation can appeal the fine. The appeals process complies with the provisions of FAC 5311. The person charged with the violation shall receive notice and be given an opportunity to be heard, if they decide they may seek a review of the decision of the secretary within 30 days of the decision.

To appeal to the secretary the person against whom a civil penalty is levied they may take the following actions within 10 days of the date of receiving notification of the penalty, as follows:

- The appeal shall be in writing, signed, and shall state the grounds for the appeal.
- 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.
- The secretary may grant oral arguments at the time written arguments are filed.
- If 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, unless altered by an agreement between the secretary and the person appealing the penalty.

- The secretary shall decide the appeal within 10 days after the filing of the appeal, and at oral argument.
- The secretary shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments.
- On an appeal pursuant to this section, the secretary may sustain, modify by reducing the amount of the penalty levied, or reverse the decision.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate 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.

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: There will potentially be a cost impact to shippers, but this impact will be ameliorated as shippers bring their conveyances into compliance with the Japanese beetle quarantine.

Cost impacts on a representative private person or business: This regulatory proposal may have a small impact on the expansion of current businesses in the State as existing California businesses may choose to be trained and equipped to treat for Japanese beetle and make themselves available as vendors for this service. This impact should be temporary as shippers bring themselves into compliance with the Japanese beetle restrictions and cease bringing beetles into the State.

Small Business Determination: The proposed regulation may affect small business.

Other nondiscretionary cost or savings imposed on local agencies: None.

Significant effect on housing costs: None.

Results of the Economic Impact Assessment

The Department has made an assessment that the proposed regulation would not likely eliminate jobs or existing businesses within California. The Department has made an assessment that the proposed regulation would likely promote the creation new jobs and businesses and affect the expansion of businesses currently doing business within California. As stated above under “Anticipated Benefits from this Regulatory Action” the proposed regulation will prevent damage to the agricultural industry of California by preventing direct damage from Japanese beetle infested conveyances arriving from infested states and province. The health and welfare of California residents will be protected from indirect economic damage from implementation of quarantines, increased agricultural industry production costs, increased pesticide use, increased cost to consumers, increased cost of pesticide use to homeowners, and the need to implement a State interior quarantine and the need to implement a federal domestic quarantine.

The amendment requires shippers to treat airplanes that do not pass inspection. New vendors may be formed to provide this service or current vendors may hire new staff.

ALTERNATIVES CONSIDERED

The Department must determine that no reasonable alternative considered to the proposed regulation or that has otherwise been identified and brought to its attention would either 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, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this notice.

The Department considered taking no action. If no action is taken, Japanese beetle will continue to enter California and there will be a higher potential for infestations requiring a quarantine. This would be harmful to the agricultural industry of the state.

AUTHORITY

The Department proposes to adopt Section 3280 pursuant to the authority vested by Sections 407, 5301, 5302, and 5311 of the Food and Agricultural Code of California.

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 5024, 5301, 5311, 5701, 6403, 6441, 6442, and 6461 of the Food and Agricultural Code.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed to is:

Dean Kelch, Environmental Program Manager
California Department of Food and Agriculture
Plant Health and Pest Prevention Services
2800 Gateway Oaks Drive, Suite #200
Sacramento, CA 95833
Dean.Kelch@cdfa.ca.gov
916.403.6650
916.651.2900 (FAX)

In his absence, you may contact Rachel Avila at (916) 403-6813. Questions regarding the substance of the proposed regulation should be directed to Rachel Avila.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website (www.cdfa.ca.gov/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 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 herein.

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 herein.