

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations
Section 3589 Japanese Beetle Eradication Area

INITIAL STATEMENT OF REASONS/
POLICY STATEMENT OVERVIEW

The California Department of Food and Agriculture (Department) proposes to make permanent the emergency amendment to Title 3, California Code of Regulations (CCR) Section 3589 Japanese Beetle Eradication Area, which provides authority to the Department to eradicate, by the established means and methods, infestations of Japanese beetle (*Popillia japonica*) in Marin County.

Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address

These regulations are intended to address the obligation of the Secretary of Food and Agriculture to protect the agricultural industry of California from the movement and spread within California of injurious plant pests as required by Food and Agricultural Code (FAC) Sections 401 and 403.

Purpose and Factual Basis

The specific purpose of amending CCR 3589 Japanese Beetle Eradication Area is to make permanent the expanded eradication area for the Japanese beetle in California to include Marin County. This will allow targeted actions for eradication of Japanese beetle in Marin County, as necessary, and reduce the chance of allowing natural and artificial dispersal and the subsequent spread of the pest in California. Any necessary eradication and quarantine actions taken by the Department will be in cooperation with the USDA and the affected county agricultural commissioners.

The factual basis for the determination by the Department that the amendment of Section 3589 is necessary is as follows:

On June 29, 2023, an adult male Japanese beetle was taken from a trap in the San Rafael area of Marin County. The detection of a Japanese beetle is indicative of an incipient infestation of Japanese beetle in this area. Therefore, the Department adopted an emergency amendment to address this issue immediately and allow for eradication of this pest. The effect of the amendment provided authority for the State to conduct eradication activities against Japanese beetle in Marin beginning on 8/1/2023 and expiring on 1/29/2024.

Because Japanese beetles are so damaging to its host plants, CDFA are amending the eradication area in order to aid us in maintaining the economic baseline. 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 apple, pears, caneberries, pears, blueberries, cherries, plums, corn, 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 (USDA Program Aid No. 1599, *Managing the Japanese Beetle: Homeowner's Handbook*, revised 2007). In 2007, the Oregon Department of Agriculture conducted an economic risk analysis for the impact of Japanese beetle in Oregon and concluded the estimated crop damage costs to be \$32,110,400 and estimated quarantine costs to be \$2,312,832 if Japanese beetle was not

controlled. As the value of California's affected industries are substantially larger than Oregon's, the economic impacts would be substantially higher. Additionally, as a general feeder, the Japanese beetle likely poses a serious threat to the general environment and likely some of California's threatened and endangered species. Hosts for this pest also exist in California's natural environment, putting them at risk.

In order to prevent the spread of Japanese beetle through the movement of aircraft, the USDA maintains a Japanese Beetle Federal domestic Quarantine, 7 CFR 301.48 and a companion manual "Japanese Beetle Program Manual For Airports." The National Plant Board has representatives from each state's agricultural department. On March 4, 2016, it issued a revised "U.S. Domestic Japanese Beetle Harmonization Plan." This plan governs the movement of nursery stock between states to ensure Japanese beetle is not artificially spread. Finally, the Department maintains the Japanese Beetle Exterior Quarantine in Title 3 of the California Code of Regulations Section 3280 to prevent the artificial introduction of Japanese beetle into California.

The planned production of trees (FAC Sections 22 and 23), vines, rose bushes, ornamental plants, floricultural crops, and other horticultural crops, whether in open fields or greenhouses (FAC Sections 23 and 23.6), and plants growing in native stands or planted for ornamental purposes (FAC Section 24.5) have all been declared by the Legislature to be part of the agricultural industry.

The production, processing, manufacture, and distribution of floriculture and nursery products constitute a important industry of California. These products not only provide substantial revenues for California and its political subdivisions through tax revenues and other means, but they also furnish employment and a means of livelihood for many thousands of California's population. These industries also furnish substantial employment to related industries that are vital to the public health and welfare. The basic research and development for the floriculture and nursery industries contribute substantially to food production in California that is essential to the welfare and health of its citizens. The

Legislature has determined that these industries are affected with a public interest, and sections enacted to declare the importance of these industries are for the purpose of protecting and furthering the public health and welfare. (FAC Section 24).

Until now, Japanese beetle has never been detected in Marin County. If the beetle is allowed to spread and become established in host production areas, California's agricultural industry would suffer losses due to decreased production of foliage and fruits, increased pesticide use, and loss of markets if other states or countries enact quarantines against California products. The urban and natural environment also contains host plants for this pest and would be a risk as well. Therefore, the Department is proposing to make permanent the amendment to Title 3 CCR Section 3589 (a), Japanese Beetle Eradication Area, to include Marin County.

This regulation will help avoid harm to the public's general welfare by providing authority for the Department to perform detection, control, and eradication activities against Japanese beetle in Marin County long enough to ensure that eradication is effective. It is necessary to have eradication authority in order to stop the Japanese beetle in the early stages of infestation and prevent spread of the beetle to non-infested areas. In addition, now that a pathway for this pest into Marin County has been established, it may be more likely that infestations will occur in the future. The amendment will allow timely response to any future detections of Japanese beetle in Marin County. Therefore, it is necessary to permanently amend this regulation to allow for eradication activities in Marin County.

The entire county of Marin is being proposed as an eradication area because the utilization of these political boundaries will avoid frequent amendments to the regulation; if the Japanese beetle is detected elsewhere within this county, there will be no associated regulatory impacts in areas of the county where no beetles are found. By the time there is a detection, beetles which may have already spread naturally from the initially recognized infested area may have resulted in small infestations outside the current known infested area. Additionally, these beetle finds may be linked to smuggled uncertified fruit shipments

which have been distributed within the area. Only through the implementation of this regulation would the Department be able to rapidly treat these small infestations in the affected county as they are detected.

If the Japanese beetle were allowed to spread and become established in host production areas, California's agricultural industry would suffer losses due to decreased production of marketable produce, increased pesticide use, and, if other states or countries enacted quarantines against California products, loss of markets.

Project Description

This amendment will provide authority for the State to perform specific detection, control, and eradication activities against Japanese beetle in Marin County. This will allow targeted actions for eradication of Japanese beetle and reduce the chance of natural and artificial dispersal and the subsequent spread of the pest in California. Any eradication actions taken by the Department will be in cooperation with the USDA and the affected county agricultural commissioners.

Current 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 that the Secretary is directed or authorized to administer or enforce.

Existing law, FAC Section 5322, provides that the Secretary may establish, maintain, and enforce quarantine, eradication, and such other regulations as are in her opinion necessary to circumscribe and exterminate or prevent the spread of any pest that is described in FAC Section 5321.

Existing law, FAC Section 5761, provides that the Secretary may proclaim any portion of the state to be an eradication area with respect to the pest, prescribe the boundaries of such

area, and name the pest and the hosts of the pest which are known to exist within the area, together with the means or methods which are to be used in the eradication or control of such pest.

Existing law, FAC Section 5762, provides that the Secretary may proclaim any pest with respect to which an eradication area has been proclaimed, and any stages of the pest, its hosts and carriers, and any premises, plants, and things infested or infected or exposed to infestation or infection with such pest or its hosts or carriers, within such area, are public nuisances, which are subject to all laws and remedies which relate to the prevention and abatement of public nuisances.

Existing law, FAC Section 5763, provides that the Secretary, or the commissioner acting under the supervision and direction of the director, in a summary manner, may disinfect or take such other action, including removal or destruction, with reference to any such public nuisance, which he thinks is necessary.

Expenditures, if any, allocated for the replacement nursery stock shall not exceed an amount which is budgeted for the purpose or approved by the Director of Finance.

The existing laws obligates the Secretary to investigate and determine the feasibility of controlling or eradicating pests of limited distribution but establishes discretion with regard to the establishment and maintenance of regulations to achieve this goal.

This amendment provides the necessary regulatory authority to prevent the artificial spread of a serious insect pest which is a mandated statutory goal.

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.” The amendment of this regulation is preventing the potential spread of the Japanese beetle to uninfested areas of the State.

Anticipated Benefits from This Regulatory Action

The adoption of this regulation provides the necessary regulatory authority to eradicate a serious insect pest; this is a mandated, statutory goal.

This regulation is necessary to prevent the spread of Japanese beetle to un-infested areas of the State. The regulation benefits industries (nursery, fruit for domestic use and exports, packing facilities), the environment (urban landscapes), and the overall California economy by preventing the spread of Japanese beetle.

The amendment of this regulation benefits the apple, pears, caneberries, pears, blueberries, cherries, plums, corn, rose, grape, crabapple, turf grass and beans (nursery, fruit for domestic use and exports, packing facilities) and the environment (urban landscapes) by providing the Department an eradication program to prevent the artificial spread of Japanese beetle over short and long distances.

The California, national and international consumers of California apple, pears, caneberries, pears, blueberries, cherries, plums, corn, rose, grape, crabapple, turf grass and beans benefit by having high quality fruit available at lower cost. It is assumed that any increases in production costs will ultimately be passed on the consumer.

The amendment of this regulation benefits homeowners who grow their own host fruits for consumption and host material which is planted as ornamentals in various rural and urban landscapes.

The adoption of this regulation may benefit homeowners who grow host material for consumption and/or ornamentals in various rural and urban landscapes. By providing a basis to prevent infestation with Japanese beetle and thereby preventing damage to hosts, the

regulation eliminates any future need for hosts to be treated to mitigate infestations of Japanese beetle.

California Environmental Quality Act

Prior to conducting any action authorized by this regulation, the Department shall comply with the California Environmental Quality Act of 1970 (Public Resources Code Section 21000 et. seq. as amended) and the State CEQA Guidelines (Title 14 California Code of Regulations Section 15000 et. seq.).

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that this regulation does not impose a mandate on local agencies or school districts.

Economic Impact Analysis (Government Code 11346.3(b))

The eradication and prevention of the spread of Japanese beetle in California through the amendment and implementation of this regulation economically benefits:

- the general public
- homeowners and community gardens
- the agricultural industry
- the State's general fund

The Creation or Elimination of Jobs within the State

The Department has been conducting eradication actions throughout the State for over 30 years without causing significant creation or elimination of jobs. Therefore, the Department has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs in the State of California.

The Creation or Elimination of Businesses in California

The Department has been conducting eradication actions throughout the State for over 30 years without causing significant creation of new businesses. Therefore, the Department has determined that this regulatory proposal will not have a significant impact on the creation of new businesses in the State of California.

The Expansion of Businesses in California

The Department has been conducting eradication actions throughout the State for over 30 years without causing significant impact on businesses. Therefore, the Department has determined that this regulatory proposal will not have a significant impact on the expansion of businesses currently doing business in the State of California.

Worker Safety

This regulation is not expected to have an effect on worker safety.

Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that Section Japanese beetle does not impose a mandate on local agencies or school districts. All eradication activities shall be conducted by the Department. Therefore, no reimbursement is required under Section 17561 of the Government Code.

The Department also has determined that 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 and no nondiscretionary costs or savings to local agencies or school districts, will result from the amendment of subsection 3589.

There are 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 and no nondiscretionary costs or savings to local agencies or school districts anticipated from the adoption of this amendment.

The Department has determined that the proposed actions will not have a significant adverse economic impact on housing costs or California business, including the ability of California businesses to compete with businesses in other states.

Potential Impact to Homeowners and Community Gardens

The implementation of this regulation will aid in preventing increased costs to the consumers of host materials and increased pesticide usage by homeowners and others. If an infestation of Japanese beetle is not eradicated due to a delay in eradication efforts, then homeowners and community gardeners would be negatively impacted.

Potential Impacts to General Fund and Welfare

The proposed amendment does not have immediate or definitive impact to the general fund or general welfare. Rather, it would facilitate a fast and effective response if Japanese beetle is detected in the new designated eradication area. Speed of response is key to eradicating an incipient pest infestation. Programmatic delays potentially can lead to pest quarantines, as well as increased production costs and potential job loss. The agricultural industry is one of the economic engines in the State. Negative impacts to agriculture impact the State's economic recovery and the general welfare of the State. Additionally, any further job losses in this area would likely be felt by low-skilled workers whose employment options are already limited. The loss of any additional agricultural jobs would likely result in an increase in the State's public assistance obligations which would also negatively impact the State's economic recovery.

The Department is the only agency which can implement eradication areas. 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.

Assessment

The amendment is designed to prevent or minimize the spread of Japanese beetle by

amending Section 3589 to include Marin County. The Department has made an assessment that the amendment to this regulation would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California,(3) affect the expansion of businesses currently doing business within California, (4) is expected to benefit the health and welfare of California residents, (5) is expected to benefit the state's environment, and (6) is not expected to benefit workers' safety.

The health and welfare of California residents: The proposed action will benefit the health and welfare of California residents by preventing increased costs to the consumers of host materials and increased pesticide usage.

The state's environment: The amendment of this regulation benefits the environment (urban landscapes) by providing the Department an eradication program to prevent the artificial spread of the Japanese Beetle over short and long distances. As a general feeder, the Japanese beetle likely poses a serious threat to the general environment and likely some of California's threatened and endangered species. Hosts for this pest also exist in California's natural environment, putting them at risk.

Alternatives Considered

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

The Department considered taking no action. If no action is taken, the Department would not have eradication authority for Japanese beetle in Marin County. Without eradication authority to treat beetle infestations in Marin County the Animal and Plant Health Inspection Service (USDA APHIS) could potentially designate the entire state as infested with Japanese beetle, rather than just infested counties. If USDA APHIS were to consider the entire state infested, there would likely be additional detrimental quarantine

requirements directed against California host commodities by the USDA APHIS and our international trade partners. Therefore, this alternative was rejected.

Information Relied Upon

The Department is relying upon the following studies, reports, and documents in the amendment of Section 3589:

Email from Kyle Beucke on Monday, July 3, 2023 “Eradication authority for JB”

“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,” Fourth Edition Issued 2016. United States Department of Agriculture, Marketing and Regulatory Programs, Animal and Plant Health Inspection Service, Plant Protection and Quarantine.

“Economic Risk Analysis: Oregon and the Japanese Beetle (*Popillia japonica*) Newman,” 2007, Oregon Department of Agriculture.

“U.S. Domestic Japanese Harmonization Plan,” revised March 4, 2016, National Plant Board.