

## FINDING OF EMERGENCY

The Secretary of the California Department of Food and Agriculture (Department) finds that an emergency exists, and that the foregoing amendment to Title 3 of the California Code of Regulations (CCR) Section 3589 (a) Japanese Beetle Eradication Area is necessary to avoid serious harm to the public peace, health and safety, or general welfare. 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 proposes to adopt this emergency amendment to address this issue immediately and allow for eradication of this pest. The effect of the amendment will be to provide authority for the State to conduct eradication activities against Japanese beetle in Marin.

### Emergency Defined

“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. If a state agency makes a finding that the adoption of a regulation is necessary to address an emergency, the regulation may be adopted as an emergency regulation. Government Code Section 11346.1(b)(1).

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.

Government Code Section 11346.1(a)(3) provides that if the emergency situation clearly poses such an immediate, serious harm that delaying action to allow public comment would be inconsistent with public interest, an agency is not required to provide notice pursuant to Government Code Section 11346.1(a)(2) (See Evidence of Emergency).

The Secretary believes that this emergency clearly poses such an immediate, serious harm that delaying action to give the notice pursuant to Government Code Section 11346.1(a)(2) would be inconsistent with the public interest, within the meaning of the Government Code Section 11349.6(b).

The information contained within this finding of emergency also meets the requirements of Government Code Sections 11346.1 and 11346.5.

The Secretary is proposing to implement 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 she 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.”

#### Evidence of an Emergency

The Japanese beetle is a highly destructive plant pest that can be very difficult and expensive to control. When Japanese beetle grubs feed on grass roots, they damage

lawns, golf courses, and pastures. Japanese beetle adults attack the foliage, flowers, or fruits of more than 300 different ornamental and agricultural plants. Because of its wide adaptability to thrive in varied environmental conditions, broad host plant feeding preferences, and the threat of artificial spread by aircraft and other conveyances, the Japanese beetle is a major risk to the agriculture and environment of California. This beetle is not yet established in California and the Department has an active eradication program in place for any outbreaks that occur from Japanese beetle incursions.

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 amend Title 3 CCR Section 3589 (a), Japanese Beetle Eradication Area, to include Marin County.

The survey, host material removal, and treatment activities authorized under this regulation must begin immediately to ensure that the beetle is contained, and this infestation does not grow and cause additional significant damage to the growers, homeowners, natural environment, and businesses in the immediate and adjacent areas. Therefore, the Secretary believes that the five-calendar-day public comment period should be waived.

### Background

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.st

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 paramount 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).

The Legislature has found and declared that plants growing in native stands or planted for ornamental purposes contribute to the environment and public health and welfare needs of the people of California (FAC Section 24.5). Japanese beetle poses a direct threat to these plants and therefore to the public health and welfare of the State of California as determined by the Legislature.

The national accepted response to the detection of one Japanese beetle is to immediately deploy a delimitation trapping array surrounding the find site until the flight season is determined to be over. The immediate implementation of this proposed regulatory action is necessary to prevent other states and the USDA from considering the entire state of California as infested with Japanese beetle. If USDA and other states were to consider California as infested, there would likely be additional detrimental quarantine requirements directed against California host commodities by the other states and international trade partners.

This regulation will avoid harm to the public's general welfare by providing authority for the State to perform detection, control and eradication activities against Japanese beetle in Marin County. In order to guarantee prevention of the spread of the beetle to noninfested areas in order to protect California's agricultural industry, it is necessary to begin delimitation activities immediately. Therefore, it is necessary to amend Title 3 CCR Section 3589(a) on an emergency basis.

### 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 authority includes:

- (1) The use of insecticides, chemicals, or other materials as spray, dust, bait or in any other form as often as necessary to effect control or eradication.
- (2) The removal and destruction of hosts if such action is the only practical way of eliminating the infestation.
- (3) The searching for all stages of Japanese beetle by visual inspection, the use of traps, or any other means.
- (4) The removal and destruction of abandoned or unwanted hosts in any stage of development. (Title 3 CCR Section 3589(c)(3)).

It is necessary to immediately perform these activities and eradication treatments within Monterey County to prevent spread of the beetle to non-infested areas and to protect California's agricultural industry and urban environment. Treatment activities against the beetle will begin upon the notification of affected parties. Though eradication does not include aerial treatments, residents are notified in writing at least 48 hours in advance of any treatment in accordance with the Food and Agricultural Code (FAC) Section 5771 – 5780.

The entire county of Marin is proposed as an addition to the eradication area because political divisions provide the most workable eradication area boundary for determining if an infestation exists and eradicating an established Japanese beetle infestation. Host material may have already been moved from an infested area to a previously non-infested area of the county. To enable rapid treatment of these small infestations without frequent amendment of the regulation, the entire county of Marin must be established as part of the eradication area. To prevent spread of the beetle to non-infested areas and to protect California's agricultural industry, it is necessary to immediately begin treatment activities against Japanese beetle. Therefore, it is necessary to implement this regulation as an emergency action.

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

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.

USDA Program Aid No. 1599, "Managing the Japanese Beetle: Homeowner's Handbook," revised May 2015.

### Authority and Reference Citations

Authority: Sections 407 and 5322 Food and Agricultural Code

Reference: Sections 5322, 5761, 5762, and 5763 Food and Agricultural Code

### Informative Digest

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 5321, provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within the state of California and determine the probability of its spread, and the feasibility of its control or eradication.

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 obligate 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.

#### Japanese Beetle Eradication Area.

This amendment will add Marin County to the eradication area for the Japanese beetle pest. The effect of the change is to provide authority for the State to conduct eradication activities against Japanese beetle in Marin.

#### Anticipated Benefits from This Regulatory Action

Adding Marin County to the eradication area will help prevent the spread of Japanese beetle, which will benefit.

- the general public
- homeowners and community gardens
- agricultural industry
- California's natural environment
- the State's general fund.

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.

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

The Department has determined that the amendment of Title 3 CCR 3589(a) does not impose a mandate on local agencies or school districts and no reimbursement is required under Section 17561 of the Government Code.

The Department also has 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 amendment of Section 3591.2.

Adding Marin County to the list of eradication areas will help prevent the spread of Japanese beetle, a known pest, to uninfected areas of California.