

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

3024.8. Application and Fees.

4603. Schedule of Charges.

INITIAL STATEMENT OF REASONS/
POLICY STATEMENT OVERVIEW

The California Department of Food and Agriculture (Department) proposes to amend Title 3 of the California Code of Regulations (CCR) Section 3024.8 to add Grapevine Registration and Certification Fees. The Department also proposes to remove Grapevine Registration and Certification Fees from CCR Section 4603. The fees will also be updated to cover the current cost of the program.

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

These regulation amendments are intended to address the following obligations. The Department is required to cite the correct authority and correctly reference Food and Agricultural Code (FAC) that allows the Department to have regulatory registration and certification fees. Currently, the CCR section that these fees are located in, 4063, is incorrect as it's authority references nonregulatory FAC, which should not apply to this fee. The fees would be moved to the CCR section containing the Grapevine Registration and Certification regulations and which references regulatory FAC.

Purpose and Factual Basis

The factual basis for the determination by the Department that the amendment of Sections 3024.8 and 4603 are necessary is as follows:

The specific purpose of amending Sections 3024.8 and 4603 is to move Grapevine Registration and Certification Fees to the correct location in the CCR. Currently these fees

are located within CCR Section 4603. During a recent review of the fees it was noted that the correct Food and Agriculture Code (FAC) that supports this these fees is cited in CCR Section 3024.8, which currently directs the public to the fees located in CCR Section 4603. To correct this, the fees are being removed from Section 4603 and added to Section 3024.8.

With this change the fees are also being updated. The Grapevine Registration and Certification Program is industry funded and provides certification of grapevine stock as having an increased confidence of cleanliness for pests of interest. Fees in the schedule of charges must be increased to balance revenue with expenditures, as required by FAC. Participation in the Grapevine Registration and Certification Program is voluntary, and nurseries that participate in the Program will be impacted by increased fees.

Project Description

3024.8. Application and Fees.

Grapevine Registration and Certifications are being added to Subsubsection (c)(5). Subsection (A) establishes the annual application fee, with the fee increased from the previous fee of \$200 to \$250 per acre or portion thereof. Subsubsections (B)(1) and (B)(2) establish field planting inspection fees for Primary or Secondary Increase Block and Certified Nursery Planting, with fees increased from the previous fee of \$50 to \$140 and \$120 to \$170 per Primary or Secondary Increase Block and Certified Nursery Planting, respectively. Subsection (C) establishes greenhouse or other non-field planting inspection fees, with fees increased from the previous fee of \$100 to \$140 per 20,000 square feet or portion thereof. Moving the fees to Section 3024.8 allows them to be correctly cited, and the fee increase allows the fees to cover the cost of the program, as required by FAC 5822. Increasing fees will cover expenses and allow the Department to meet program requirements for additional nursery stock entered into the program, thus enabling grapevine nurseries to expand Registration and Certification grapevine acreage or square footage. Currently the existing fees are not defraying expenses, and the program is operating at an annual deficit of >\$200,000. The new schedule of fees would cover this shortfall.

4603. Schedule of Charges.

Grapevine Registration and Certification Fees are being removed from Section (f) of this regulation. In the current location these fees are improperly cited, it's authority references nonregulatory FAC, which should not apply to this fee. Removing the fee resolves this issue.

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 5821, provides that the Secretary, for the purpose of promoting and protecting the agricultural industry of the state, may, upon request, inspect plants and the premises upon or near which they are growing and the records of their sources and qualities. She may upon the basis of the information thus determined, maintain registries of the plants which are found not to be infested or infected, or liable to become infested or infected, with pests.

Existing law, FAC Section 5822, provides that the Secretary may (a) certify as to the pest freedom of plants which may have been inspected or registered or may certify as to the true pest condition of the plants. (b) Issue tags, labels, or certificates in evidence of inspection or registry. (c) Supervise or conduct any special treatments which may be necessary to insure the pest freedom of plants for propagation or planting purposes. (d) Fix uniform fees to be charged for inspections, registrations, certifications, and special treatments. The fees shall be based upon the approximate cost of the service which is rendered.

Existing law, FAC Section 5823, provides that the Secretary may also establish and enforce regulations which are necessary to carry out the purposes of this article.

Existing law, FAC Section 5851, provides that the Secretary may (a) Perform nonregulatory services such as export market phytosanitary and product quality analyses, certification, diagnostics, inspections, quality assurance, and testing relating to nursery stock, plants, seed, or plant pests and diseases. (b) Accredite and monitor or audit private entities as necessary. (c) Establish charges sufficient to recover its costs for nonregulatory services such as export market phytosanitary and product quality activities.

Existing law, FAC Section 5852, subsections (a) and (g) provides that the Secretary may provide, upon request, nonregulatory accreditation, analytical, certification, diagnostic, inspection, quality assurance, testing, and other nonregulatory services relating to nursery stock, plants, seed, or other plant pests and diseases on a charge-for-service basis or may accredit private persons or business entities to perform those services. The Department may establish, by regulation, a schedule of charges to cover the department's costs for specific services it provides. Charges for the accreditation and monitoring of laboratories located outside the state shall include the expenses for all required travel and per diem and may include application, basic, initial, renewal, and other charges that the department deems necessary to cover its costs for accreditation and monitoring or auditing for compliance. Funds collected through cost-recovery charges are dedicated to, and may only be used for, carrying out the activities and functions specified in this article.

Existing law, FAC Section 52331, subsection (a) provides that the Secretary may (d) Establish a reasonable schedule of fees for tests, examinations, and services except those which are required for quarantine or other purposes, not directly related to the enforcement of this chapter. The schedule shall be based upon the approximate cost of the service rendered. The director may, however, provide for the examination of seeds for identification purposes without charge.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

The Department is the only agency that can implement plant registration and certification. 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.

Anticipated Benefits from This Regulatory Action

These amendments allow the Department to meet the Grapevine Registration and Certification regulatory requirement of fees defraying program costs. Grapevine Registration and Certification also provides for the certification of grapevine stock as free of pests of interest, thus protecting the state's agriculture and environment by preventing the introduction and spread of injurious pests. The Grapevine Registration and Certification program benefits California businesses by allowing nurseries to fulfill contract obligations and regulatory mandates for export of nursery stock.

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 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 proposed amendment of Sections 3024.8 and 4603 would move the Grapevine Registration and Certification Fees to the correct regulatory section and raise the existing fees. This will benefit:

- The State's general fund
- The environment
- California businesses

These amendments allow the Department to meet the regulatory requirement of fees defraying program costs, provides for the certification of grapevine stock as free of pests of interest, and benefits California businesses by allowing nurseries to fulfill contract obligations and regulatory mandates for export of nursery stock.

The Creation or Elimination of Jobs within the State

These amendments move the Grapevine Registration and Certification Fees to the correct regulatory section and raise the existing fees. No additional staff positions will be created or eliminated. 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

These amendments move the Grapevine Registration and Certification Fees to the correct regulatory section and raise the existing fees. No new businesses will be required, and current activities do not eliminate existing business. Therefore, the Department has determined that this regulatory proposal will not have a significant impact on the creation of new businesses or elimination of new businesses in California.

The Expansion of Businesses in California

These amendments move the Grapevine Registration and Certification Fees to the correct regulatory section and raise the existing fees. No new businesses will be required, and current activities do not expand existing 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 California.

Significance Adverse Impact on Business

These amendments move the Grapevine Registration and Certification Fees to the correct regulatory section and raise the existing fees. Increasing fees will cover expenses and allow the Department to meet program requirements for additional nursery stock entered into the program, thus enabling grapevine nurseries to expand Registration and Certification grapevine acreage or square footage. Therefore, the Department has

determined that this regulatory proposal will not have any significant adverse impacts on businesses currently doing business in 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 has determined that Sections 3867 does not impose a mandate on local agencies or school districts. 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 Section 3867.

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 amendment of this amendment.

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

Potential Impact to Homeowners and Community Gardens

These amendments move the Grapevine Registration and Certification Fees to the correct regulatory section and raise the existing fees. Current activities do not have an impact on homeowners and community gardens. Therefore, the Department has determined that this regulatory proposal will not have any significant adverse impacts on homeowners and community gardens in California.

Potential Impacts to General Fund and Welfare

These amendments move the Grapevine Registration and Certification Fees to the correct regulatory section and raise the existing fees. By allowing the Department to meet the registration and certification regulatory requirement of fees defraying program costs the general fund is positively impacted. Grapevine Registration and Certification also provides for the certification of grapevine stock as free of pests of interest, thus protecting State agriculture and environment by preventing the introduction and spread of injurious pests. Therefore, the Department has determined that this regulatory proposal will have positive impacts on the general fund or welfare in California.

Assessment

These amendments move the Grapevine Registration and Certification Fees to the correct regulatory section and raise the existing fees. The Department has made an assessment that the amendment to this regulation would: (1) not create or eliminate jobs within California, (2) not create new business or eliminate existing businesses within California, (3) not affect the expansion of businesses currently doing business within California, and (4) is not 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 state's environment: The proposed action will benefit the state's environment as Grapevine Registration and Certification provides for the certification of grapevine stock as free of pests of interests, thus protecting the state's environment by preventing the introduction and spread of injurious pests.

These amendments move the Grapevine Registration and Certification Fees to the correct regulatory section and raise the existing fees. There are no existing comparable federal regulations or statutes.

Alternatives Considered

The Department of Food and Agriculture considered not changing the fee structure,

which has been in effect since 2010. The current fee structure has been resulting in an expenditure vs. revenue deficit of over \$200k, which goes against Grapevine Registration and Certification program regulatory requirements that fees defray expenses. As this would not cover the cost of the program as required by statute this alternative was rejected.

Information Relied Upon

Grapevine Registration & Certification Program Update Meeting Notice & Agenda –
February 5, 2025 (posted 1/15/25)