

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Sections

2950 Assessment

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2953 Filing of Business Address

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INITIAL STATEMENT OF REASONS/

POLICY STATEMENT OVERVIEW

The California Department of Food and Agriculture (Department) proposes to amend Title 3 California Code of Regulations (CCR) Sections 2950-2954 to update the registration fee structure for the Apiary Protection Program.

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

This regulation is intended to address the obligation of the Secretary of Food and Agriculture to adopt such regulations as are reasonably necessary to carry out the provisions of the California Food and Agricultural Code (FAC). The California regulation that sets the fee to register the location of each apiary, CCR Section 2951, was last updated in 1984. The fee, 15 cents a colony, is no longer reflective of the cost the county agricultural commissioners must spend to register the colonies and provide apiary services. Combined county costs to administer the apiary registration program in FY 2018-19 were \$126,000, in FY 2019-20 were \$260,000, and in FY 2020-21 were \$ 142,000. The current annual registration fee of \$10 for resident beekeeper authorized by Food and Agriculture Code Section 29044 covers only a portion of the cost to administer the registration portion of the Apiary Protection

Program. Collected registration fees in FY 2019-20 were \$11,620 (Bee Safe Program Legislative Report, p. 10). If apiaries are not registered, the counties are unable to perform actions such as notifying apiary owners before certain pesticides are applied.

Purpose

The fees collected from apiary owners serve multiple purposes. The county agricultural commissioners who enforce FAC, Division 13, Chapter 1, and collect the fees can apply to the State to be reimbursed for their costs spent inspecting and registering apiaries, protecting against the spread of invasive pests, and hive theft prevention and recovery. When the apiaries are registered, notifications are available to apiary owners when pesticides are being sprayed in the area, which can protect bees and the owner's investments in their colonies. Apiary owners and brokers must provide a phone number or email to receive pesticide notifications. Other funds from this fee go to the costs incurred by the county agricultural commissioners in the administration and enforcement of Division 13, Chapter 1 of the Food and Agricultural Code.

At this time, the fees collected are not covering the costs required for registration, pest control and hive theft prevention and recovery. Also, unregistered apiary owners cannot be reached when pesticides are being sprayed. Without reimbursement for registration, counties may lack funding to spend time on apiary registration. With a decrease in registration, the potential increases for hives to be sprayed by pesticides due to the lack of communication that would be facilitated by registration.

Factual Basis

The factual basis for the determination by the Department that the amendment of CCR Sections 2950-2954 is necessary is as follows:

The current assessment fees for colonies in California, last amended in 1984, does not cover the costs associated with apiary registration, administration, and enforcement of the

program.

Due to this discrepancy, the industry supported the passage of Assembly Bill 719 (2023), which increased the amount allowed for the apiary registration fee from \$10 to a maximum \$250 annual fee. The Department, in consultation with the Department's Apiary Advisory Board, the California Association of Commissioners and Sealers Association, California State Beekeepers Association (industry) and the public, propose to change the existing fee from 0.15 cents per colony to the new fee structure shown below:

<u>Number of colonies</u>	<u>Fee</u>
1-9	\$10.00
10-24	\$100.00
25 + colonies	\$250.00
Broker	\$250.00

Registration fees and levels were recommended by a joint task force of the Apiary Advisory Board. The beginning tier of 1-9 represents the number designated in statute (Food and Agriculture Code 29044) as the number of hives that are designated as a hobbyist and qualify for a waiver. This amount remains at \$10 after consultation with hobbyists and other public members that were likely to be impacted by this fee. This number is consistent with other states, such as Montana, that consider a person with 10 or less hives a hobbyist. Wyoming lowers that number to 5 hives or less for hobbyist designation. The next level tier represents the number that USDA considers hobbyist level beekeepers, which is less than 25 hives. Many hobbyists with greater than 9 hives receive an economic benefit from this number of hives in the form of honey, pollination, or other apiary products. The fee of \$100 represents the additional county services needed by the larger number of beehives. The final tier of 25+ represents a commercial beekeeper. Commercial beekeepers are subject to several inspection, health and pest related statutes that require services from the State. Greater enforcement of these statutes was requested by the California's beekeeping industry and confirmed by Assembly Bill 719. Based on known enforcement costs provided

to the task force by the California Agriculture Commissioners and Sealers Association, an annual registration fee of greater than \$300, was initially proposed for commercial beekeepers to assist in paying for these services by the California State Beekeepers Association and presented to the California Department of Food and Agriculture's Apiary Advisory Board task force, but \$250 was assigned as that is the maximum allowable fee in statute.

Project Description

Section 2950

The title "Assessment" is being changed to "Registration Assessment" to fix a clarity issue. The presence of "registration" in the title adds an additional clarity to the section.

"Regardless of origin" has been added to the description of colonies to which the fees apply. Apiaries, by definition, include bees, comb, hives, appliances, or colonies, wherever they are kept, located, or found and are moved around the country (FAC Section 29002).

An apiary in California may have arrived from another state, and the amendment makes clear that despite this fact the fee still applies.

The authority and reference for this section has been updated from Section 29032 to 29044, as 29044 is the existing law that prohibits an annual registration fee from exceeding two hundred and fifty dollars.

Section 2951

The title "Assessment Fee" is being changed to "Registration Assessment Fee" to fix a clarity issue. The presence of "registration" in the title makes clear the subject matter of the section, and further changes to the section to include adding schedule. The due date for the fee is now stated as January 1 of each year. No due date was listed prior to this proposed regulation and creating a new due date helps the individual paying the fee and the program track what fees are due.

The previous fee of 15 cents per colony has been removed. This fee, last set in the 1980s, no longer covers program requirements that include registration, pest control, and hive theft prevention and recovery.

This section establishes the new annual registration fee. It keeps the historic registration fee amount of \$10 for those with one to nine colonies and establishes a new fee for those with a larger amount of colonies: \$100 for 10-24 colonies, \$250 for over 25 colonies, and brokers at \$250. The schedule also establishes an assessment fee for brokers who control the movement of several hives that enter and transit the state during pollination season and derive a monetary profit from providing these services. These new fees will be used to reimburse the counties who are responsible for registering colonies, as well as fund programs that benefit beekeepers throughout California. These programs are registration, pest control, and hive theft prevention and recovery.

The authority and reference for this section has been updated from Section 29032 to 29044, as 29044 is the existing law that prohibits an annual registration fee from exceeding two hundred and fifty dollars.

Section 2952

The title “Penalties” remains unchanged. The penalty of one-half the amount due remains unchanged and the delinquency language has been simplified to impose the late fee on all accounts that are delinquent more than 31 days.

The authority and reference for this section has been updated from 29032 to 29044, as this is the existing law that specified that late fees are included for anyone that fails to register their apiary under sections 29041 and 29042.

Section 2953

The title “Filing of Business Address” is being changed to “Registration of Apiaries and number of colonies” to make clear the subject matter of the section. The text has been

updated to clarify the registration requirements established in the FAC and clarifies the 30-day grace period for registration reporting if colonies are obtained after the 1st day of January in the calendar year. This information is necessary to ensure the adequate calculation of the assessment fee.

The authority and reference for this section has been updated from 29032 to 29040, 29042, 29043, 29045 as this is the existing law that specifies registration requirements, fees and late fees.

Section 2954

The title "Payment Form" remains the same. The text has been updated to establish registration completion and payment through the online payment portal established through a joint effort between the CDFA and County Agricultural Commissioners. The Department also makes clear that it is the registrants responsibly that the registration information is true and correct. The form is the same for the purposes of pesticide notification referenced in FAC section 29101 as is required by law.

The authority and reference for this section has been updated from 29032 to 29043, 29044, 29045. Section 29043 is the existing law that requires the same form for registration and pesticide notification regarding apiaries to be used statewide, 29044 requires payment for registration, and 29045 makes it unlawful for any person to maintain an apiary that is not registered.

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 29040, provides that every person that is the owner, broker, or is in possession of an apiary that is located within the state, on the first day of January of each year, shall register the number of colonies in each apiary that is owned or possessed by the person and the location of each apiary. Every person required to register under this article, shall do so on the first day of January of each year in which they maintain, possess, or are in possession of an apiary, or within 30 days thereafter, as prescribed in this article.

Existing law, FAC Section 29042, provides that every person who moves bees into the state or otherwise comes into possession of an apiary that is located within the state after the first day of January, shall register the name of the owner and the number and location of colonies moved into the state or so acquired within 30 days after coming into possession of the apiary.

Existing law, FAC Section 29043, provides that registration of an apiary shall be filed with the commissioner of the county in which the apiary is located, or with the director if there is no commissioner in the county. The director shall adopt a form of registration to be used statewide, which shall include a request for notification of use of pesticide in accordance with Section 29101. All commissioners shall use the same form.

Existing law, FAC Section 29044 provides that each beekeeper, apiary owner, apiary operator, broker, or person in possession of any apiary, shall pay, in addition to any other fees imposed under this chapter, an annual registration fee not to exceed two hundred fifty dollars (\$250) to the secretary on January 1 of each year, to cover the cost of apiary registration. The Secretary may adopt such regulations and update a schedule of registration fees.

Existing law, FAC Section 29045 provides that it is unlawful for a person to maintain any apiary that is not registered pursuant to this article. Each registration is valid until January 1 of the following year.

Existing law, FAC Section 29101 provides that each beekeeper shall report to the commissioner of the county in which the beekeeper's apiary is located, on a form approved by the secretary, each location of apiaries for which notification of pesticide usage is sought. This report for notification may be filed with and be part of the form used for registration pursuant to Article 4 (commencing with Section 29040), or shall be submitted in writing if notice of relocation is made as set forth in Section 29070 or 29070.5. Except for reports filed as part of an initial registration pursuant to Section 29040, each request shall be provided electronically or shall be mailed within 72 hours before locating an apiary, where feasible, but in no event later than 72 hours after locating an apiary.

Existing law, FAC Section 29301 provides that the director may make any regulations that are reasonable and necessary to carry out this chapter.

Existing law, FAC Section 29302 provides that unless otherwise stated, it shall be an infraction for any person to fail to comply with any requirement of this chapter, or regulations adopted pursuant to this chapter, after a warning notice of seven days is given.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

The Department is the only agency that can implement apiary fees. As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of these regulations and has determined that it is not inconsistent or incompatible with existing state regulations.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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.).

Anticipated Benefits from This Regulatory Action

The implementation of these amendments will allow for higher fees to be collected from apiary owners. County agricultural commissioners will be able to more effectively enforce apiary registration. Registering apiaries allows the Department and county agricultural commissioners to know the location of apiaries and contact apiary owners to notify them of pesticide releases that can affect the bees, leading to healthier apiaries overall.

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 Section 11346.3(b))

The Department estimates the direct costs to registrants for annual apiary registration to be \$479,840 (2023 dollars) in the first year. This estimate is based on 2023 apiary registration data from BeeWhere, a uniform apiary registration platform owned by the California Agricultural Commissioners and Sealers Association (CACASA), and based on the proposed fee structure to be included in the amended regulation.

Apiary Colonies	Registrants	Proposed Fee	Cost
1-9	2939	\$10	\$29,390
10-24	307	\$100	\$30,700
25+	1429	\$250	\$357,250
Brokers	250	\$250	\$62,500
-	6,077	-	\$479,840

The annual recurring costs of the regulations is estimated to be \$479,840 (2023 dollars), but the actual amount will be directly proportional to the number of registrants in each colony tier. The estimated total cost will be roughly \$500,000 (2023 dollars) after twenty years.

The amendment will have an economic effect on business; however, there will be no increased costs to businesses with one to nine colonies as the historic rate remains the same for this group. The small fee charged to larger business will not be large enough to affect business operations. The benefit of this fee to businesses will be notifications of pesticide applications as well as theft prevention and recovery.

The Creation or Elimination of Jobs within the State

This amendment raises registration fees charged to apiary owners. It is not expected to have a significant effect on any business. 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

This amendment raises registration fees charged to apiary owners. It is not expected to have a significant effect on any business. Therefore, the Department has determined that this regulatory proposal will not have a significant impact on the creation or elimination of new businesses in California.

The Expansion of Businesses in California

This amendment raises registration fees charged to apiary owners. It is not expected to have a significant effect on any business. 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 California.

Worker Safety

The amendment of this regulation will have a positive effect on worker safety, as being alerted to pesticides being used in the surrounding area will be a safety benefit.

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

The Department has determined that Sections 2950, 2951, 2952, 2953 and 2954 do 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 2950-2954.

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 action 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

This amendment raises registration fees charged to apiary owners. Homeowners and community gardens with less than 10 colonies may not need to pay the amended fee. There is a fee waiver process through the county agricultural commissioner's office.

Potential Impacts to General Fund and Welfare

The proposed regulation does not have immediate or definitive impact to the general fund or general welfare. This amendment raises registration fees charged to apiary owners.

Significant Adverse Impact on Business

The Department has determined that the proposed action will not have a significant adverse economic impact on businesses, including the ability of California businesses to compete

with businesses in other states. The Department's determination there will be no increased costs to businesses with one to nine colonies as the historic rate remains the same for this group. The small fee charged to larger business will not be large enough to affect business operations.

Assessment

The Department has made an assessment that the amendment to these regulations 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, (4) is expected to benefit the health and welfare of California residents, (5) is expected to benefit the state's environment, and (6) is expected to benefit workers' safety.

Health and welfare of California residents: The amendment of these regulations benefits the health and welfare of California residents. Pollinator health insures important pollination services to commercial agricultural crops as well as home gardens, providing a more secure food system, lower costs, less carbon emissions.

Environment: The amendment of these regulations benefits the state's environment. Having more healthy pollinators will benefit all plants requiring pollination they interact with, both native and not.

Workers' Safety: The amendment of these regulations benefits worker safety because the amendments assist with alerting workers to pesticide use in the surrounding area, which is a safely benefit.

These conclusions are based upon the same analysis related to the adverse economic impact on businesses above. Furthermore, the Department does not expect this fee increase to create jobs or impact businesses.

Alternatives Considered

The Department must determine that no alternative would 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 actions.

The Department considered taking no action. If no action is taken the fee structure will not be changed and apiaries will continue to be unregistered. Some counties will continue to refuse to collect these fees, as the reimbursement rate is insufficient to cover costs. If apiaries are not registered, the county agricultural commissioners will be unable to perform actions such as inspections for invasive pests and diseases or notifying apiary owners when a pesticide is being sprayed.

The Department also considered implementing an out-of-state hive fee, a broker registration fee, and using State General Funds (Bee Safe Program Legislative Report, p.8). However, the proposed fee structure in the regulation was determined to be the most effective means to fund the program.

Information Relied Upon

The Department is relying upon the following studies, reports, and documents to amend of Sections 2950-2954:

BeeWhere Help Mailbox, Email sent July 14, 2023, Registered Apiary Information?

Department of Food and Agriculture, "Memorandum, California State Apiary Board Motions – January 12, 2023" January 26, 2023

California Agricultural Commissioners and Sealers Association [CACASA], 399 Attachment, July 14, 2023