

FINAL STATEMENT OF REASONS
DEPARTMENT OF FOOD AND AGRICULTURE
SUBMISSION OF REGULATIONS PERTAINING TO
Chapter 7, Subchapter 1, Section 4603(i) , Phytosanitary Certification,
Division 4, Title 3, California Code of Regulations

Update of Initial Statement of Reasons/Policy Statement Overview

The initial statement of reasons/policy statement overview is still valid.

Summary of and Response to Objections or Comments Regarding the Regulations

The summary of and response to each objection or comment received during the written comment period or received before or during the public hearing, if one was held are as follows:

No request for a public hearing was received during the public comment period and no hearing was held.

Comment

The Almond Hullers & Processors Association (AHPA) is an association for almond hullers, shellers, and processors organized to promote the business interests of its members. AHPA is a non-profit organization that was established in 1980 and represents over 90% of the California Almond industry based on tonnage. Our members export products throughout the United States and all over the world. As such, many of our member companies will be required to incur the proposed phytosanitary certificate fees. On behalf of AHPA and its membership, I appreciate the opportunity to comment on the proposal to for (sic) CDFA to implement fees on such certificates. The California Almond industry plays a significant role in both the domestic and global economy. California produces 80% of the world supply of almonds and 100% of the U.S. commercial supply. Remarkably, the California Almond industry has adapted to operating in an environment where fees and regulations continue to increase. In the process of adapting to these requirements the industry supports 33,869

jobs (Based on the USDA ERS Trade Multiplier for Tree Nuts) in the U.S. While the California Almond industry continues to bring significant income into California and supports the state's economy increased fees and regulations continue to challenge the industry's ability operate profitably. AHPA appreciates the Secretary's work to protect CDFA's vital functions in defending our industry from pests and diseases and performing food safety inspections. All of these efforts are required to keep our products moving all over the world. Of the \$31 million in general fund reductions, approximately \$3 million are going to result in fee increases for California agriculture. While AHPA's members are not satisfied with this as a permanent approach, we understand that is a necessary, temporary cost to keep CDFA's core programs intact. Additionally, we recognize that the options are limited when asked to incur these types of reductions in a limited timeframe. Legislative options are minimal at this time, and all of those options are exceptionally risky. AHPA feels very strongly that there should be significant general fund revenues flowing into CDFA. Many pests and diseases are introduced to our state through an unaware public that routinely transports plants and animals throughout and into California. Unfortunately, our industry suffers the consequences. We are hopeful that once the economy starts to improve, general fund dollars will once again come back to CDFA. Furthermore, there is a strong possibility that inspections for USDA, CDFA, county, food safety and marketing orders could be streamlined and therefore reduce costs for all parties. AHPA is partnering with the Ag Council of California to work on a potential study in this area. Therefore, we support the three-year sunset that was included in the regulation. This sunset will allow us to evaluate the program and implement better strategies, once we have had time to determine needs and desired outcomes. As the fee collections begin, we request that CDFA implement a trigger to stop collecting fees once the amount of \$1,530,969 is met on an annual basis. Per the proposal this fee income will achieve funding needed to close the funding gap as a result of the general fund budget cuts. Based on estimates for the 20011/12 year's production and shipment history the California almond industry will bear approximately 10% or \$156,000 of the anticipated phytosanitary certificate fee revenue. We want to avoid having industry dollars flow into CDFA that are beyond our common goal, particularly when there is no cap in place. AHPA asks that an annual report of fee revenue be made available

through the Department's website. This annual report should include the amount of revenue per certificate type including Federal Certificates, Federal Re-export Certificates, State Certificates, Quarantine Compliance Certificates, Master Permits, and Re-Issued Certificates that industry is being charged for. We request that the report also include itemized expenditures and the specific programs and/or activities the funding is supporting. The report should also include specifics on the methodology used in determining the fee as was done in the Initial Statement of Reasons/Policy Statement Overview for this proposal. Lastly, the report should account for the surcharges being recovered from industry by the County Ag Commissioner offices throughout the state so that a total cost born by industry can be accurately accounted for. An annual report will demonstrate value in CDFA's activities to stakeholders. Additionally, it will increase transparency and assist with accountability of expenditures, which are consistent with CDFA's history of utilizing "ag fund" dollars. Although these fees are not collected in the same way, we are hopeful that CDFA will continue its efforts to keep agriculture informed on how industry dollars are spent. To the extent possible, AHPA requests that any internal audits or process improvement study results are made public. AHPA is working with the Ag Council of California on developing an industry study to find efficiencies within various inspection processes. The findings of our study, coupled with those findings at CDFA, could assist in creating a more streamlined approach for performing various functions of CDFA that can be utilized when it is time to review the phytosanitary fees in 2015. Thank you for your time and consideration of these comments. Your continued work and dedication in navigating through tough decisions is appreciated, as the core functions of CDFA are vital to our industry. I appreciate the opportunity to comment and look forward to collaborating in the future.

Response

The Department appreciates the support and looks forward to working with the affected industries to resolve future funding issues which are outside the scope of this rulemaking. The Department considered a cap and determined that it would not be equitable to have a "cap" as some parties may financially benefit without paying the service fee if they request the service after the cap was reached. Instead, the Department plans an annual review of

the number of certificates issued, total reimbursement received and the Departments qualifying costs to determine if it is necessary to recalculate the “cost per Certificate” and service charge for participating under the terms of a qualifying master permit will be performed. The total allowable costs for the issuance of phytosanitary certificates (\$1,461,823) and master permits (\$69,146) will have to be tracked separately. Regarding reporting requirements, internal audits, streamlining services, process improvement, etc., these comments are outside the scope of this rulemaking. However, the Department is committed to considering the best ways to keep the affected agricultural industries and their representatives informed of how any reimbursed service charges related to this regulation are accounted for and spent. The Department intends to be fully transparent with all collected data regarding the number of qualifying certificates issued and its future qualifying support, delivery and administrative costs and any known reimbursement costs attributed to the California County Agricultural Commissioners.

Comment

The Tulare County Farm Bureau [TCFB] is a non-governmental, non-profit, voluntary membership association whose purpose is to protect and promote agricultural interests throughout Tulare County and to find solutions to the problems of the farm, the farm home and the rural community. TCFB strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California’s resources. TCFB represents over 2,500 member families in Tulare County.

Tulare County Farm Bureau is opposed to increases in the PCIT fees.

Due to state budget cuts to CDFA programs, the agency has proposed using the Phytosanitary Certificate Issuance and Tracking (PCIT) system to collect a fee for the State support of export certification programs. CDFA staff were charged with bringing together a group of stakeholders to explore and refine this concept over the course of several months.

We have discussed this rule proposal with our county’s agricultural commissioner and are

concerned that it will increase costs that will be passed on to agricultural growers and packers and be detrimental to their operations.

CDFA is basing their fee per certificate on 220,000 state and federal phytosanitary certificates issued throughout the State. The Tulare County agriculture industry, because of the diversity of products certified here with slightly over 30,000 certificates issued in calendar year 2010-11, stands to be greatly affected by the proposed rule. County agricultural commissioner staff provide an essential inspection service to cold storages, packing facilities and commercial nurseries by certifying their compliance with other County, State, and foreign quarantine requirements. Inspectors are federally certified to perform this type of phytosanitary inspection and certification.

In fiscal year 2010-11, Tulare County inspectors inspected more than 48,000 different commodity lots for export shipments to 82 countries. Since each country has unique requirements that allow for the importation of products from California (sometimes the requirements are specific to Tulare County), the inspection time varies widely. Some countries may require fumigation or in-transit cold treatments of the imported product which is monitored by department staff.

Currently for a "Standard" phyto inspection, those inspections that may lead to a state phytosanitary document accompanying the load to another state, or a standard phytosanitary inspection leading to a federal phyto certification the fee is \$29. High intensity inspections occur when a country has a specific work plan of activities which are necessary at a cost of \$69. The Australian table grape exports require a monitored fumigation with a minimum of a 4.0 to 5.5 hour inspection.

Furthermore, California Quarantine Compliance (CQC) certificates are sometimes required to move nursery products to another county or to another state. These certificates are \$13.50 in Tulare County, but there would be a 44% increase if CDFA collected a fee of \$6. There is currently no federal assessment on CQC's. Counties have never had to track

interstate movement from CQC's issued, so CDFA does not have accurate accounting on how many were issued for any given time period, either. Are you planning to collect additional funds, not figured in the cost basis? CDFA has also admitted to not knowing how many Master Permits have been issued by Ag Commissioners, nor how many times a commercial nursery has used one. These vagaries concern our county as it relates to costs that will be passed on to the county departments and how the costs will be passed on to the producers and packers.

Here are some Tulare County stats for 2010-11:

- \$29 inspection revenues totaled \$2,053,909; this figure includes those that were charged at an overtime rate.
- \$69 inspection fees totaled \$903,377; also including overtime costs.
- CQC revenues totaled \$170,500. Over 3,900 CQCs were conducted at one nursery site alone in Tulare County, and 561 phytos were issued. Another nursery in the area received 394 CQCs to date.

Tulare County is one of the largest agricultural counties in the nation and has a significant role in exporting produce throughout the globe. Our County has done an excellent job of maintaining fees at low levels to help support the agriculture economy, in these lean times we would request that you consider maintaining the fees at the current levels.

We respectfully request that you do not increase the PCIT fees on state exports.

Response

The Department concurs that due to general fund budget cuts it worked with representatives of the agricultural industry to explore alternative sources of funding. One alternative source of funding for the Department is to be reimbursed for the support services it provides for the issuance of certificates to meet other states' and countries' quarantine requirements. The Department is not raising PCIT fees. The Department has proposed a service charge for the issuance of State and federal certificates used to meet other states' and countries' quarantine requirements and for participating under the terms

of a “Master Permit” for the same purpose. The service charges for the required certificates may be collected through PCIT or by the local county agricultural commissioner’s office. The party which requests the service is responsible for paying the service charge. The service charge for a requested certificate is \$5.30; not \$6. There is no State service charge for CQCs issued for intrastate movement. Additionally, the county departments of agriculture cannot charge for a CQC which is required for intrastate movement by a State regulation or county ordinance. The Department has collected data from the county departments of agriculture which supports the number of CQCs issued for interstate movement. The Department has collected data which supports the number of Master Permits issued for interstate movement and the involved support costs. There are no costs being “passed” on to county departments, producers and packers. The Department is not requiring any changes in county fees. The Department concurs that Tulare County has a significant role in the export of agricultural commodities. The Department will continue to adopt this regulation for the reasons stated in its Initial Statement of Reasons (ISR). The remainder of the comment is outside the scope of this rulemaking.

Comment

Thank you for the opportunity to comment on the Department of Food and Agriculture's proposal to amend Section 4603, Schedule of Charges, by adopting a new subsection (i) pertaining to service charges for Phytosanitary Certification in Title 3, Division 4 of the California Code of Regulations. Tuolumne County has concerns with the proposed regulation. Our concerns lie with Section (i)(3) Collection and Remittance of Fees.

The proposed regulation requires each agricultural commissioner's office to assess the required fees and to annually remit the fees to the Department. The regulations also provide that any county agricultural commissioner's office issuing less than 100 certificates during the 12 month period is exempt from having to remit the collected fees and the fees may be retained by the collecting office.

The Board of Supervisors in Tuolumne County has not adopted fees for the issuance of phytosanitary certificates or certificates of quarantine compliance. This service is provided at no charge to Tuolumne County businesses. Tuolumne County Agricultural Commissioner's Office issues only 45 to 50 certificates annually. For Tuolumne County to collect these fees and then retain them would be equivalent to the County charging fees for certificates, an activity we are not authorized to do.

Additionally, the Agricultural Commissioner's Office has no mechanism for tracking and collecting these fees. To establish and maintain a mechanism for tracking and collecting these fees would create a new workload for the Agricultural Commissioner's Office at a cost that would exceed the amount generated from any fees and reasonable surcharge.

In consideration of these issues, I suggest that subsection (i)(3)(D) be revised to exempt any county agricultural commissioner's office issuing less than 100 certificates during the applicable 12 month period from having to collect and remit the fees.

Response

The Department does not concur that Tuolumne County's collection of these fees and then retaining the State's service charge is equivalent to the County charging fees for certificates, an activity they are not authorized to do. The service charge fees which the County may retain are clearly State service fees as outlined in this regulation; not county fees. The Department put this provision into the regulation at the request of some agricultural commissioners and it was based upon that it may not be cost effective for the commissioners to reimburse the Department for small amounts of these service charges. Some commissioners stated it can cost from \$150 to \$200 just to issue a check to the Department. These fees would only need to be collected by the County if the PCIT system was not used. The Department considered exempting counties from having to collect the fees if less than 100 qualifying certificates were issued and concluded this would result in some businesses/individuals having an unfair business economic business advantage based upon their location in the State. The County can eliminate any conflicts noted by using the PCIT system. There is no

cost to the County to use the PCIT system. If the PCIT system is used for the issuance of the qualifying certificates, the county does not have to maintain and track any qualifying service charge fees collected. This is automatically done through the PCIT system. According to the data supplied by the USDA and pertaining to PCIT, Tuolumne County issued 28 federal phytosanitary certificates in 2010 through PCIT. Therefore, as Tuolumne County is already using the PCIT system to ensure it does not have to collect and track the service charges required by the USDA, this regulation should not place cause an additional burden to your current practice. Additionally, should the County elect not to use PCIT for the issuance of federal phytosanitary certificates, it would have to develop a collection and tracking system to recover the federal service charge and this same tracking system could be used to collect and track the State's service charge.

Comment

We, the undersigned organizations, appreciate the opportunity to express our concerns with the proposed regulations. While we appreciate the budget situation facing the State of California and the Department of Food and Agriculture (Department), we are concerned with the precedent created by the proposed addition of subdivision (i), where the agricultural industry will be required to pay fees to support pest programs designed to benefit and protect the State as a whole. The inclusion of the top paragraph on page 3 of the Initial Statement of Reasons is a strong statement recognizing the public's responsibility in funding pest exclusion programs. Unfortunately, the actions of the Department to shift costs to the industry is not consistent with this statement.

Response

The Department does not concur that the adoption of this regulation is inconsistent with its position that there is both an obligation of the general fund and the industry requesting a phytosanitary certification service to support pest programs which benefit both. This obligation is outlined in the ISR.

Comment

When the initial fee for service proposal was discussed with industry representatives, we were led to believe the fee would only cover the administration and oversight of issuing phytosanitary certificates. Our understanding was that cost would be in the \$2-\$3 range per certificate. We did not anticipate a percentage of the entire program to be shifted to this new fee.

Response

The Department could not forecast what the potential cost per certificate would be until it determined what the qualifying support costs actually were.

Comment

The formula used to calculate the \$1.4 million is easily understood by the description in the Statement of Reasons. However, the allocation to each element of the program is not as easy to follow. How did the Department reach the conclusion on the percentage to be attributed to trade among the various programs? We ask because the percentage varies considerably. For example, 19 percent of the program costs of Pest Detection and 14 percent of the cost of Quarantine Response are attributed to the support of trade but only 8 percent of Emergency Pest Eradication Projects and 9 percent of Plant Pest Diagnostics are attributed to trade. We have no reason to state these percentages are inaccurate but believe the industry deserves a more thorough explanation of how each calculation was made if we are being asked to pay.

Response

The Department had to implement budget cuts. As part of the budget solutions process for fiscal year 2011/12 the Department analyzed all functions, tasks, personnel and expenditures associated with each task. This was originally done to determine what essential functions should be retained and the costs associated with each function, where there may be opportunities for process improvement (overlap, duplication, etc.) and what functions could be eliminated if required to do so under a budget cut. This information was shared with industry representatives prior to the concept of this regulation. In subsequent discussions with industry representatives, the concept of the Department obtaining its

reimbursement for services related to phytosanitary certification was discussed. The Department subsequently used the information which was already developed and shared with industry representatives for the purpose of determining the allowable costs of each program's budget to be attributed to trade. To do this, the affected program managers identified the functions, tasks, and the number of staff that performs the functions within their area of responsibility which supported trade facilitation and pest free areas as outlined in the ISR. The number of staff per task was equated to personnel expenditures for the particular task. The allowable administrative costs under Code of Federal Regulations, Title 7, Chapter III, subsection 354.3(g)(5)(i), such as Information Technology, Human Resources, etcetera, varies based upon a program's personnel expenditures. The program's personnel expenditures are equated to number of employees required to provide the identified trade support functions. The Pest Detection Program has the highest number of staff performing the identified trade support function so its allowable administrative costs are higher than the other identified program's administrative costs. Additionally, the Pest Detection Program is performing the identified trade support functions all year round. The Pest Eradication Program has fewer staff and it performs the trade support functions, eradicating exotic pests, on an as needed basis. Therefore the administrative costs will differ between these programs. This is no different than a large business where the administrative costs for the marketing section can vary from the administrative costs of the shipping section. As the administrative costs are allowable, this leads to differences in the percentages between the programs which are performing the identified trade support functions which were outlined in the ISR and support the issuance of phytosanitary certificates.

Comment

Based on meetings with CDFA, it is also our understanding Federal law caps the amount that can be attributed to the issuance of phytosanitary certificates. However, the reference to that cap cannot be found in the statement of reasons or the language of the regulation. It is important for industry to know how much more, if any, of the program's cost can be shifted to industry if the current budget situation does not improve. Please

provide us the reference to Federal law that specifies the maximum percentage a state can charge to certificate holders.

Response

The applicable federal regulation can be found on page two of the ISR which stated, “Existing federal regulation establishes that states may charge to recover their costs for issuing federal phytosanitary certificates and such charges shall conform to Code of Federal Regulations, Title 7, Chapter III, subsection 354.3(g)(5)(i). In order to recover the costs, one option is for the State to establish a cost per certificate based upon the State’s delivery, support, and administrative costs divided by the estimated number of certificates to be issued.” This regulation was based upon that option; the “cost-per-certificate.” There is no cap or percentage per se, other than it has to be the State’s qualifying general fund delivery, support and administrative costs divided by the number of certificates issued. Additionally, in the ISR it stated, “The Department is aware that its total qualifying costs may vary annually depending upon its general fund budget and the pro rata is also subject to change. The Department is also aware that the total number of certificates of quarantine compliance, federal and State phytosanitary certificates issued for the requested services will also vary annually. Finally, the number of master permits and master permit participants is subject to change too. The Department is committed to reviewing all of these issues and revising the regulation if necessary to ensure it accurately reflects the qualifying cost per certificate and master certificates.” If the qualifying costs from the general fund go down and the number of certificates increases, the cost per certificate decreases. If the qualifying costs stay the same but there is an extreme drop in the number of qualifying certificates issued, the cost per certificate would increase, etc.

Comment

We believe of all agencies in state government, the Department of Food and Agriculture should be the most sensitive to the cost pressures impacting farmers. While a \$5.30 fee does not seem like much by itself, farmers in California are faced with increased fees from the State Water Resources Control Board, Regional Water Boards, the Air Resources Control Board and a number of other state and local agencies. We

understand State law only requires the Department to assess the impact of its fee on business. However, an acknowledgement of the reality of the burden of the cumulative effect of these fees is not prohibited. This fact, in and of itself, is not a reason for the Department to delay the proposal but we would appreciate the Department being more sensitive in this area in the future.

Response

The Department is committed to working with the California State Board of Food and Agriculture on the California Agricultural Vision, a process to result in a strategic plan for the future of the State's agriculture and food system. Its motivation was the rapidly growing list of challenges facing agriculture, from regulations and water supplies to urbanization and climate change. The Department concurs there is no reason to delay the proposed adoption of this regulation.

Comment

Finally, the ability to move product in domestic and international markets is of utmost importance to our industry. We understand the impacts would be far greater to our members if California's pest programs were to deteriorate more than has occurred over the past few years. With that being said, we are calling on the Department to bring industry leaders together to engage in serious discussion about the future funding of its pest programs.

Response

This comment is outside the scope of this rulemaking.

Comment

The California Farm Bureau Federation (Farm Bureau) is writing in response to the recent proposal to establish state phytosanitary and master certificate fees to cover state administration activities relating to the issuance of these certificates. Farm Bureau represents over 30,000 farmers and ranchers members who will be impacted by this proposal. We realize that some budget cuts to programs were necessary in order to maintain the core functions of the Department – to protect against the introduction of

invasive pests and diseases. After reviewing the Department's budget in detail, cutting \$1.53 million in general funds from the Pest Exclusion Branch was the only reasonable option. Without this reduction, savings would have to be realized from other sources which could further jeopardize the stability of some of CDFA's programs. The revised proposal does reflect a more accurate calculation of the number of state phytosanitary certificates issued. Therefore, it reduces the cost per certificate to \$5.30 from the previous proposal of \$6.55. Though this will result in an increased costs to our members, we recognize that this is temporarily necessary in order to maintain this program and the ability to ship product outside the state and country.

Response

The Department concurs with this comment.

Comment

The revised proposal also establishes a three-year sunset that we support. The sunset provides the impacted parties with an opportunity to evaluate the activities and associated costs of the program in the future and determine if the program fees are appropriate and necessary. At the end of the three years the Farm Bureau expects to do a thorough review of the functions, purpose and associated costs of this program to the state to determine if this or any other similar fee should be continued. The regulation should be amended to adjust the following year's fees according to the balance collected from the previous year. For instance, if the revenue from the fees collected is greater than \$1.461 million, then the following year's fees should be adjusted to reflect the carryover from the previous year. We expect after a year of collection the department and the industry will have more specific data on the number of the certificates issued and the department's associated costs.

Response

The Department concurs with this comment.

Comment

We do have concerns with the fee proposed for master certificates and the associated activities. It is not clear what the different administrative activities are for administering the

issuance of a state phytosanitary certificate as compared to those for administering the issuance of a master certificate. We think this is an important question and would like to review this further with the department in the near future. When the additional costs that are levied by the counties to administer the master certificate are coupled with the new state fee of \$125 per year, the total cost of shipping can be excessive. Also, as previously stated, we ask that the Department adjust the following year's fee according to the previous year's balance.

Response

The administrative activities and costs for the issuances of a State phytosanitary certificate or participation under the terms of a master permit are outlined on pages 5 through 7 and page 9 of the ISR. Master permit participants have the flexibility of shipping at any time without and inspector having to be present to complete an inspection and issue an original phytosanitary certificate if the shipment qualifies. Additionally, there is no limit on the number of shipments which can be made. If the participant under a master permit is not gaining the proper cost benefit ratio from participation and believes the costs are excessive, they can request individual phytosanitary certificates. The Department has some master permits which have been in place for some time. The program's costs associated with those master permits include providing assistance to existing participants, resolving problems with any shipments with the participants and the destination state agricultural officials; seeking reinstatement of any participants should they become suspended for violating the terms of the master permit or have a pest problem and adding new participants. New master permits can be developed at any time when deemed appropriate by the destination state and the program. This requires negotiations of the terms and conditions of the master permit which can be a lengthy process besides the previously mentioned activities once they are in place. The Department concurs that adjustments to the service charge should be made as appropriate.

Comment

This proposal has brought to light the larger issue of various certificates that are needed in order to ship a product. It illustrates the need for a more comprehensive program for

shippers. Collectively, the fees that are collected at the county, state and federal level can add up and can become cost-prohibitive for farmers and ranchers. We hope that you will take our comments into consideration when issuing the final rule. We recognize you are making hard decisions for many of the programs and we thank you for considering our input in this process. The Department is an important part of the continued viability of agriculture in California.

Response

The Department acknowledges this comment and takes all germane comments into consideration during the rulemaking process. The Department appreciates the support. The rest of this comment is outside the scope of this rulemaking.

Comment

The San Diego County Farm Bureau appreciates this opportunity to comment on the proposal to amend Section 4603, Schedule of Charges, by adopting a new subsection (i), pertaining to service charges for Phytosanitary Certification in Title 3, Division 4, of the California Code of Regulations. As the leading county in the United States in the production of horticultural crops, San Diego will generate a substantial portion of the total fees to be collected through the Certificate Service Charge Fee and Annual Master Certificate Fee proposals. While the need to generate income to replace lost General Fund support for the California Department of Food and Agriculture's (CDFA) phytosanitary certification program is understood, it must be acknowledged that these new fees will impact the competitiveness of California's nursery producers.

Response

No evidence has been presented to the Department that there will be a significant overall impact on the competitiveness of the affected parties requesting this service. The rest of this comment is outside the scope of this rulemaking.

Comment

It is not clear that the estimation of the number of annual issued certificates used in the

fee calculation for the Certificate Service Charge is entirely accurate. If the estimation is too high, the result could be a future escalation in the fee per certificate. It is our request that CDFA revisit the fee structure and consult with the nursery industry before setting a fee increase driven by the actual number of certificates issued.

Response

The Department has made every effort to obtain accurate information for this proposed rulemaking. The Department concurs that the actual service fee may increase or decrease based upon its qualifying general fund delivery, support and administrative costs and the number of phytosanitary certificates issued. The Department will consult with representatives of all affected parties in any future rulemaking.

Comment

If the fees collected through the Certificate Service Charge are more than the allowable support costs, the excess fees should remain in the program to defer future costs and reduce the certificate fee.

Response

The Department concurs with this comment.

Comment

The Annual Master Certificate Fee is based on a small class of users. Because the \$125 fee is high, an erosion in users would result in a significantly higher rate for those who remain in the program. It is our request that CDFA revisit the fee structure and consult with the nursery industry before setting a fee increase driven by a reduced number of users.

Response

The Department will consult with all representatives of affected parties when proposing any rulemaking action changing the service fee for participating under the terms of a master permit.

Comment

The Annual Master Certificate program is relatively small at just \$67,002 per year. We have a concern that administering the collection of the fee will, itself, compose a significant portion of the program cost. With efficiencies in mind, and not seeing any notable difference in the administration of the Certificate and Master Certificate Programs, we suggest future consideration for combining the fee collection for the two programs. This could result in a notable reduction in the cost of a Master Certificate and a minor, if any, increase in the cost of a Certificate.

Response

The Department does not concur with this comment and it would be inequitable for master permit participants not to reimburse the Department for its costs for providing this service.

Comment

Glenn County is a rural agricultural county. Our agribusinesses have found increasing economic pressure as a result of increasing state fees and regulations. Water, fire and weights and measures have all been targeted to push the burden onto agriculture and now phytosanitary certificates. When our local agricultural community heard of these new fees the common response was, "so what else is new?" Political rhetoric and promises at a recent economic development conference declared that regulations and fees should be reduced to relieve the pressure on businesses and industry whether products are traded at local, national or international levels so that our state's economic situation can again flourish. The amount of the increase to the phytosanitary Certificates and Certificates of Origin may seem small at \$5.30. This amount will grow tremendously when multiplied by the number of phytosanitary certificates signed. Glenn counties (s i c) agricultural community is composed of family farms. We are a community where people help each other to get the work done. According to the disclosures regarding this proposed action a person would incur costs of \$5.30 per phytosanitary certificate issued and \$125 annually to participate under the terms of a Master Permit should they request these services. We are here to support our businesses and industry. We

are not here to place a burden on them. This added fee is just one more thing in a time of low economic activity. Reducing the regulatory and fiscal impact will help our businesses and industries to again flourish. We need to promote and foster business. The Glenn County Board of Supervisors is opposed to increased phytosanitary fees to offset the state's budget cuts.

Response

This is a general objection to the establishment of the Department's service charges. However, the Department intends to adopt the regulation for the reasons outlined in the ISR. No feasible alternative exists.

Comment

Agricultural Council of California (Ag Council) is a public policy association representing more than 15,000 farmers across California, ranging from farmer-owned businesses to the world's best-known brands. Our members export products throughout the United States and all over the world. As such, many of our member companies will be required to incur the phytosanitary and master certificate fees. Almost 30% of these funds will come from Ag Council's membership, alone. On behalf of Ag Council and its membership, I appreciate the opportunity to comment. As a member of the Secretary Ross's stakeholder consortium, I appreciate the extensive amount of work it took to come up with \$31 million in general fund reductions within a ten month timeframe. These reductions were in addition to the funds that were cut from the fairs, for a total of \$62 million in general fund reductions to the Department. These cuts will have a significant impact on CDFA's programs. Numerous programs have been reduced or zeroed-out completely. Some programs were not vital to the core functions of the Department, but some programs were, such as the noxious weed program. Ag Council appreciates the Secretary's work to protect CDFA's vital functions in defending our industry from pests and diseases, and performing food safety inspections. All of these efforts are required to keep our products moving all over the world. Of the \$31 million in general fund reductions, approximately \$3 million are going to result in fee increases for California agriculture. While Ag Council's members are not satisfied with this as a permanent approach, we understand that is a necessary, temporary

cost to keep CDFA's core programs intact. Additionally, we recognize that the options are limited when asked to incur these types of reductions in a limited timeframe. Legislative options are minimal at this time, and all of those options are exceptionally risky. We are hopeful that the once the economy starts to improve, general fund dollars will once again come back to CDFA, and we will work toward that goal. Furthermore, there is a strong possibility that inspections for USDA, CDFA, food safety and marketing orders could be streamlined and therefore reduce administrative and overhead costs for all parties. Our membership is working on a potential study in this area. Therefore, we support the three-year sunset that was included in the regulation. This sunset will allow us to evaluate the program and implement better strategies, once we have had time to determine needs and desired outcomes. We are hopeful that the results of our study will recognize a significant cost-savings to the extent that the sunset on the fee will be permanent.

Response

The Department appreciates this comment.

Comment

As fee collections begin, Ag Council requests that CDFA implement a trigger or cap, to stop collecting fees once the amount of \$1,530,969 is met on an annual basis. Per the proposal, this fee income will achieve funding needed to close the funding gap as a result of the general fund budget cuts.

Response

The Department has considered a cap and determined that it would not be equitable to have a "cap" as some parties may financially benefit without paying the service fee if they request the service after the cap was reached. Instead, an annual review of the number of certificates issued, total reimbursement received and the Departments qualifying costs to determine if it is necessary to recalculate the "cost per Certificate" and service charge for participating under the terms of a qualifying master permit will be performed. The total allowable costs for the issuance of phytosanitary certificates (\$1,461,823) and master permits (\$69,146) will have to be tracked separately.

Comment

Ag Council asks that an annual report of the fee revenue be made available through the Department's website. This annual report should include the amount of revenue per certificate type including Federal Certificates, Federal Re-export Certificates, State Certificates, Quarantine Compliance Certificates, Master Permits, and Re-Issued certificates costs to the industry. We request that the report also include itemized expenditures and the specific programs and/or activities the funding is supporting. Specifics on the methodology used in determining the fee should also be included, as was done in the Initial Statement of Reasons/Policy Statement Overview for this proposal. Lastly, the report should account for the surcharges being recovered from industry by the County Ag Commissioner offices throughout the state so that a total cost born by industry can be accurately accounted. An annual report will demonstrate value in CDFA's activities to stakeholders. Additionally, it will increase transparency and assist with accountability of expenditures, which are consistent with CDFA's history of utilizing "ag fund" dollars. Although these fees are not collected in the same way, we are hopeful that CDFA will continue its efforts to keep agriculture informed on how industry dollars are spent. To the extent possible, Ag Council requests that any internal audits or process improvement study results are made public. Our membership is working on developing an industry study to find efficiencies within various inspection processes. The findings of our study, coupled with those findings at CDFA, could assist in creating a more streamlined approach for performing various functions of CDFA that can be utilized when it is time to review the phytosanitary fees in 2015.

Response

The Department plans an annual review of the number of certificates issued, total reimbursement received and the Departments qualifying costs to determine if it is necessary to recalculate the "cost per Certificate." Regarding reporting requirements, internal audits, streamlining services, process improvement, etc., these comments are outside the scope of this rulemaking. However, the Department is committed to considering the best ways to keep the affected agricultural industries and their representatives informed of how any reimbursed service charges related to this regulation are accounted for and

spent. The Department intends to be fully transparent with all collected data regarding the number of qualifying certificates issued and its future qualifying support, delivery and administrative costs and any known reimbursement costs attributed to the California County Agricultural Commissioners.

Comment

Thank you for your time and consideration of these comments. Your continued work and dedication in navigating through tough decisions is appreciated, as the core functions of CDFA are vital to our industry. I appreciate the opportunity to comment and look forward to collaborating in the future.

Response

The Department appreciates this comment.

The following comments were received after the close of the public comment period and the Department is electing to respond.

Comment

The regulation needs an incentive for growers to use the Phytosanitary Certificate Issuance and Tracking system (PCIT), just like USDA has (e.g. \$6 using PCIT or \$12 without PCIT), or a provision for counties to keep a portion of the CDFA fee, just like the Division of Measurement Standards is doing with their administrative fee. Without growers using PCIT, counties will incur considerable workload increase and expense in collecting CDFA fees and would be required to develop a surcharge to recover their costs. We want to avoid this entirely. Not only is imposing a fee to cover the costs associated with collecting a different fee absurd, it's very expensive. We estimate our costs in developing a "surcharge" would be several thousand dollars. We already have two models for solving this problem - we favor an incentive for PCIT use, like the USDA model.

Response

The Department considered this option but determined that its qualifying costs are the same whether PCIT is used or not. The Department, at the request of some of the affected

County Agriculture Commissioners placed a provision in the regulation enabling them to obtain cost recovery when PCIT is not used. The USDA has established that for federal phytosanitary certificates PCIT may be used or they may be issued manually to those requesting the service. The Department does not have the authority to override this enabling federal regulation covering the issuance of federal phytosanitary certificates. If a county established that it was choosing to impose a significant surcharge to its clients if PCIT was not used this should provide the noted incentive to use PCIT.

Comment

We are also concerned with the \$125 master permit fee. Of the 65 businesses currently using a master permit in San Diego County, there may be only a handful that have a clear economic advantage in doing so. There may be a significant number of shippers who stop using this permit system and simply request shipment inspections and a phytosanitary certificate rather than pay for the twice annual inspections of their nursery in addition to this new fee. Please consider the effect of a change in the number of participants in the program. Will it rise sharply if a substantial number of permit holders drop out of the program? Can the \$65,000 amount simply be included in the \$1.4 million amount collected with the phytosanitary certificates? The increase to each certificate may not be significant - probably around \$.25/certificate.

Response

The Department considered charging by the number of the times the master permit was used for shipments or by establishing a flat fee for participating. The Department determined that at this time the flat fee was the most effective and equitable method to recover its service charge. This option can be reevaluated in any future rulemaking based upon the number of participants. Besides the pure economics, master permit participants also have an advantage in marketing; being able to ship at any time they are ready, including after normal business hours, without having to request and schedule an inspection. The Department determined that it would be financially inequitable to exempt master permit participants. While some master permit participants may choose to drop out others may elect to participate as new master permits are implemented; including those for

agricultural commodities other than nursery stock. The Department does not have the ability to predict future costs for master permit participants.

Comment

On behalf of the members of the California Association of Nurseries and Garden Centers (CANGC), I write to express our concerns with the proposed regulations. CANGC is a trade organization founded in 1911 to promote and protect the nursery industry of California and continues to be the driving force behind California's lawn and garden industry which is comprised of hundreds of entrepreneurs. California is the number one state for both nursery and floral crop production. The 2008-2009 CANGC economic report places production figures at \$3.75 billion with retail lawn and garden sales (including nursery product) of \$11.74 billion. Wholesale production in California accounts for 21.9% of the nation's production of nursery crops. In California, nursery combined with floral crops makes it the 2nd largest agricultural crop in the state. Nurseries and garden centers provide jobs to over 192,000 Californians. In recent years, our members have faced significant challenges due to the building industry collapse and overall economic situation of the state. Our members understand the budget situation facing the State of California and the Department of Food and Agriculture (Department). With that being said, we are concerned the proposed regulation will place a disproportionate negative impact on the nursery industry, which relies on the use of phytosanitary certificates and master certificates for the movement of product. While we understand the federal government authorizes the state to collect its costs to oversee and administer the issuance of phytosanitary certificate, no justifiable case has been presented to us for the proposed increase for Master Certificates. We see the use of each certificate being for very different purposes and believe the Master Certificate fee should be a separate discussion and regulation, if such a fee is ultimately deemed appropriate. The current proposal will result in a direct out of pocket expense to pay the certificate fees but will also result in a human resources expense due to the need to train and redirect staff resources in each company. For some of our members that ship out of state this indirect cost increase

will total in the hundreds of thousands of dollars. We do not believe these costs were included in the evaluation of the regulation. Again, our members appreciate the difficult situation facing the Department. We also appreciate the time made by staff to discuss the issues with our industry. However, due to the negative impact the Master Certificate fee would have on our industry, we request it be included in a separate discussion and dealt with in a later regulation, if such an increase can be justified at that time.

Response

The Department's analysis does not indicate there will be a disproportionate negative impact on the nursery industry. There are far more phytosanitary certificates issued for other agricultural commodities than for nursery stock. In fact the almond industry has indicated that based upon the number of phytosanitary certificates issued to its industry it will bear 10 percent of the overall costs (see comment on page two). Additionally, the shippers of other agricultural commodities also participate under the terms of master permits and will be reimbursing the Department the same service charge. The Department's data supports a service charge for master permit participants as outlined in the ISR. The Department's ISR explains the need for financial equity between the requested services through either the issuance of an individual phytosanitary certificate or participating under the terms of a master permit. The Department has not been presented with any evidence of the need to train and redirect staff resources as a result of this proposed regulation. Reimbursing the Department for the master permit service charge directly is essentially the same as paying any other bill incurred by the affected industry. The same should hold true for the service charge for the issuance of phytosanitary certificates. Additionally, the affected industry already has processes in place to reimburse the USDA and the counties for these phytosanitary services. The Department does not concur that a service charge for master permit participants should be considered in a separate regulation as it would be inequitable at this time to exempt master permit participants from paying a service charge for this service. The remainder of the comment is outside the scope of this rulemaking.

The original Notice under “**DISCLOSURES REGARDING THE PROPOSED ACTION**,” stated: “Cost impacts on a representative private person or business: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. However, a representative private person or business would incur costs of \$5.30 per phytosanitary certificate issued.”

This was revised to state: “Cost impacts on a representative private person or business: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. However, a representative private person or business would incur costs of \$5.30 per phytosanitary certificate issued and \$125 annually to participate under the terms of a Master Permit should they request these services.”

This revision of this Notice was printed in the California Regulatory Notice Register 2011, Volume No. 51-Z, pages 2055 and 2056. The revised Noticed was the Notice which was placed upon the Department’s website which lists all rulemaking actions and mailed out on December 19, 2011 to the Department’s mailing list for this regulation.

Mandate on Local Agencies and School Districts

The Department of Food and Agriculture has determined that Sections 4603(i) does not impose a mandate on local agencies or school districts. 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 proposed action.

The cost impact of the changes in the regulations on a representative private person or business is expected to be insignificant. If a representative private person or business

requests the phytosanitary service pertaining to this regulation they will reimburse the Department \$5.30 per certificate or \$125 annually if participating under the terms of a master permit. The Department has determined that this action 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.

Assessment

The Department has made an assessment that this amendment to the regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

Alternatives Considered

The Department of Food and Agriculture has determined that no alternative considered 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 action.