FINAL STATEMENT OF REASONS

DEPARTMENT OF FOOD AND AGRICULTURE

SUBMISSION OF REGULATIONS PERTAINING TO

Title 3, California Code of Regulations

Section 3024.5

Update of Initial Statement of Reasons

The initial statement of reasons pertaining to Section 3024.5 is still valid.

Summary and Response to Comments Received During the Notice Period of January 29, 2016 through March 14, 2016

Comments not responded to were outside the scope of this rulemaking.

Comment 1.1

Providing clean plant material and preserving the integrity of the grapevine industry is central to the values of Vintage. For this reason, we support CDFA's proposal to update the Grapevine Regulations to add Red Blotch (GRBaV) to the list of diseases of concern. While we agree with the proposed changes to the Grapevine Regulations, we respectfully request that CDFA consider the following comments prior to final publication of the Grapevine Regulations and related guidance documents.

Response to Comment 1.1

The Department thanks the commenter for the expression of support.

Comment 1.2

Cost calculation assumptions must be comprehensive: Program participants should be provided with the most accurate information available regarding the expected economic impacts of the proposed changes to the Grapevine Regulations. The Initial Statement of Reasons/ Plain English Policy Statement Overview ("Statement of Reasons"), published by CDFA in conjunction with the proposed amendments, includes a section on the economic impact of the rulemaking, wherein CDFA provides a description of the

anticipated effects of the rule. In order to more clearly understand the range of potential effects these amendments may have on participating nurseries, we seek additional clarification on the cost calculations CDFA relied upon to make these assessments.

Specifically, we are interested in whether the following costs were considered: (1) the cost to nurseries from decertifying increase blocks due to Red Blotch detection, (2) the cost of decertifying vines that have already been produced, and (3) the potential increased costs of prevention, treatment and shifts in cultural practices associated with a virus that still has an unknown vector.

Response to Comment 1.2

As stated in the Initial Statement of Reasons: "The number of additional finds due to increased testing of asymptomatic vines is unknown. The value of an increase vine, based on potential sales from progeny stock over an estimated 20 year lifespan, has been estimated at $11,500 (not accounting for inflation)."

However, the Department maintains that "vines currently found to be infected with GRBaV do not meet the standards of cleanliness for all nursery stock and must be removed." Increased testing of asymptomatic source vines will help prevent further propagation of infected vines and will help prevent shipments including infected vines being returned by customers.

The potential increased costs of prevention, treatment, and shifts in cultural practices associated with GRBaV cannot be determined, as the vector for the virus is still unknown. Without a known vector, the only method of prevention would be "rogueing out GRBaV-positive vines", as mentioned in the Initial Statement of Reasons.

Comment 1.3

Estimated impacts on program participants should be realistic: We acknowledge that participation in the Program is strictly voluntary, nevertheless, we maintain that the impacts of decertification from the Program can have very *real* ramifications on

participating nurseries. CDFA indicates that they are "not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action", nor that this action will "have a significant negative impact on business" (page 7-8). We respectfully disagree with these statements to the extent that even as voluntary members, nurseries make future financial decisions based upon the expectation of continued participation in the Program.

For instance, even though participants are engaged in this Program on an opt-in basis, the result of cancelled certification under the Program can have a substantial impact on a nursery. Lost revenue from decertified vines is only one component of the costs nurseries face should Red Blotch - or another pest or disease - be detected in an increase block. The nursery would most likely also incur additional testing expenses, fees associated with improvements to the nursery's disease management protocol, and other costs related to preparing the block for future use. In addition to the potential financial impacts decertification can have on a nursery, there is also the issue of customer confidence, which can be equally devastating for a nursery.

In recognition of the potential challenges to nurseries, we respectfully request that CDFA acknowledge that the proposed amendments to the rule may have unavoidable side effects on nurseries and include these assumptions into future discussions of the Grapevine Regulations.

Response to Comment 1.3

The Department concurs that there are potential cost impacts for compliance with the proposed action due to the potential for decertification and rogueing out of GRBaV-positive vines, as indicated in the Initial Statement of Reasons.

The Department concurs that the nursery may choose to incur additional testing fees as a result of GRBaV-positive finds: while delimitation testing would be included in the estimated overall testing costs for the program and would not be a direct charge to the

participant, any retests requested by the participant and any additional testing at private laboratories would result in an additional cost to the participant, but would not necessarily be a requirement for compliance.

The Department is not sure what “fees associated with improvements to the nursery’s disease management protocol” would be.

The costs related to preparing a site for use due to the impacts of GRBaV is unknown, as the vector for the virus is still unknown.

Comment 1.4

The inclusion of Red Blotch to the list of diseases of concern is a positive step towards disease prevention, however, the proposed Grapevine Regulations are not a guarantee that CDFA will be able to prevent the spread of the disease. As such, we believe it is inaccurate to infer that "this regulation will prevent the spread of GRBaV to non-infected vines in California..." (page 6-7), as currently stated in the Statement of Reasons. Although we agree that identifying GRBaV as a threat is an appropriate and essential action, we caution CDFA from asserting that nursery cleanliness alone will prevent of the spread of GRBaV to non-infected vines. Vintage agrees that comprehensive sanitary precautions at the nursery level may alleviate the pervasiveness of the disease, however, there are still a number of uncertainties associated with GRBaV, including unknown vector controls and proper in-field identification, that require additional research before the industry can begin to understand how to successfully control the disease on a larger scale.

Response to Comment 1.4

The Department concurs that the proposed action will help prevent the spread of GRBaV, but that other factors not covered in these regulations may continue the spread of the virus, including the use of noncertified grapevine stock and possible movement via an as-yet-unknown insect vector.

Comment 1.5

In addition to the comments submitted above, Vintage also asks that CDFA ensure that all data, research studies and expert opinions utilized to inform the rules and accompanying guidance documents be publicly accessible.

Response to Comment 1.5

All guidance documents used in the development of the rulemaking are listed in the Initial Statement of Reasons and are publicly available in accordance with the Administrative Procedures Act.

Alternatives Determination

Because of recent developments in scientific knowledge about grapevine diseases, such as the observation of negative economic impacts on wine grape production due to red blotch, and the development of new or improved testing methods for grapevine pathogens, the Department 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 regulation. In addition, the Department has determined that no reasonable alternative would be as effective as or less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Local Mandate Determination

The proposed regulations do not impose any mandate on local agencies or school districts.