



April 13, 2016

**To: Julie Saare-Edmonds, CDWR**

**From: Joshua Kress, CDFA**

**Subject: Comments regarding ITP public draft report recommendation 7.5 dated February 13, 2016**

The following are sections taken from Section 7, Recommendation 5 of the February 13, 2016 draft of the “Recommendations Report to the Legislature On Landscape Water Use Efficiency” developed by the Independent Technical Panel On Demand Management Measures (ITP) (**in bold**) and corresponding comments from the California Department of Food and Agriculture (CDFA) (*in italics*):

**Current plant labeling requirements are inconsistent and inadequate. The California Food and Agricultural Code (section 53481) states that all nursery stock sold in California “shall be labeled . . . if so required by regulations.” However, the current regulations for Nursery Stock Grades and Standards California Code of Regulations (CCR), Title 3 (and reproduced in the Nursery Inspection Procedures Manual, Item 5) do not require nursery stock labeling. CCR section 3061 stipulates that plants sold in the State may be labeled, and if so, must then comply with the Food and Agricultural Code’s labeling requirements.**

- *This statement is incorrect:*
  - *California Food and Agricultural Code (FAC) § 53481 provides that all nursery stock shall be labeled as to the correct name when sold.*
  - *FAC § 53481 provides that plants shall be labeled for grade size “if so required by regulations”.*
  - *FAC § 53482 provides that all nursery stock shall be labeled as to the correct name when shipped, delivered, or transported, but authorizes CDFA to create an exemption for this rule in regulation.*
  - *3 CCR § 3061 provides for an exemption of individually labeling of plants when shipped, delivered, or transported, as authorized in FAC § 53482.*
  - *The requirements for and exemptions from labeling for grade size are outlined in 3 CCR § 3062.*
- *CDFA will propose rulemaking during 2016 to clarify that 3 CCR § 3061 does not exempt plants from labeling when sold, and thanks the ITP for bringing this point of confusion to our attention.*

**Additionally, CCR section 3062 should be amended to change the words “Nursery stock, when offered for sale, need not be graded and tagged at the discretion of the person offering the stock for sale” to the following: “Nursery stock, when offered for sale, shall be graded and tagged”.**



- *CDFA does not concur with this recommended change. The grade size labeling requirement is intended for bare-root stock. 3 CCR § 3062 sets grade size standards for bare-root roses, grapevines, and deciduous fruit, almond, walnut, and pecan trees.*
- *CDFA intends to schedule scoping meetings with growers of these types of nursery stock to update these grade size standards and to clarify when bare-root plants are required to be labeled for grade size in order to ensure that accurate, complete information is provided to the consumer.*

**The following provisions of Division 18, Chapter 5 (Nursery Stock Grades and Standards) of the Food and Agricultural Code should be revised as indicated:**

**53393. Not later than January 1, 2017, the director shall adopt regulations to implement sections 53481(e), 53482, and 53483 of this chapter.**

**53481. When nursery stock is sold, it shall be labeled plainly and legibly as to the grade size, if so required by regulations, and as to the correct name and water use characteristics as follows:**

**(a) The correct name for ornamentals, except roses, fruit trees, and annual or herbaceous perennial ornamental plants, shall be the botanical name including subspecies, hybrid, cultivar or variety (if any).**

**(b) The correct name for fruit trees shall be the recognized common name and cultivar.**

**(c) The correct name for turf shall be the kind and cultivar.**

**(d) The correct name for roses, annual or herbaceous perennial ornamental plants, dormant bulbs, tubers, roots, corms, rhizomes, pips, and other kinds of nursery stock shall be the cultivar name and botanical name (if available), except that the recognized common name (if any) shall be required whenever no cultivar name has been given or can be determined.**

**(e) The correct water use classification for any taxa listed in the Water Use Classification of Ornamental Landscape Species.**

**53482. In order to identify nursery stock properly, whenever it is shipped, delivered, or transported to any purchaser, each plant shall be individually labeled as to the correct name. The director may create exceptions to this section by regulation, consistent with the need to correctly identify plants that are subject to inspection after installation in a landscape subject to the Model Water Efficient Landscape Ordinance or any local landscape ordinance.**

**53483. Nursery stock on display for sale at retail may shall be individually labeled by a sign on any block of stock of the same kind and species, except that plants of the same taxa when packaged inseparably together maybe identified by a single label on each such**

**package. Turf shall be labeled by a sign showing the required correct name of the stock on display.**

- *CDFA does not concur with the proposed addition of FAC § 53393. Regulations to implement FAC § 53482 have already been established (3 CCR § 3061). FAC § 53481 and 53483 are self-executing and do not require regulations for their implementation.*
- *CDFA does not concur with the proposed change to FAC § 53481 to require labeling with the water use classification listed in the Water Use Classification of Ornamental Landscape Species (WUCOLS). CDFA recognizes that WUCOLS is a valuable, science-based resource for the horticultural industry. However, CDFA does not feel that use of this document meets the standard necessary for enforcement of a statewide requirement:*
  - *As stated by the ITP, WUCOLS includes water use classifications for only a small percentage of plant species sold in California.*
  - *WUCOLS is a scientific resource, not a regulatory document. It does not include procedures for public input as changes are made or additional species are classified.*
- *CDFA does not concur with the proposed change to FAC § 53482. Enforcement of the Model Water Efficient Landscape Ordinance (MWELo) and related local ordinances is outside of the scope of the Food and Agricultural Code. CDFA feels that this proposal would be better accomplished by CDFA: (1) working with CDWR staff to issue an advisory to county inspectors to be aware of such requirements, (2) working with CDWR and the nursery industry to provide outreach materials on MWELo requirements to growers, and (3) providing links regarding MWELo on the CDFA Nursery Services Program webpage.*
- *CDFA recommends that the ITP meet with subject matter experts from within the nursery industry to determine if the proposed change to FAC § 53483 would be practical to implement and whether or not it would achieve the ITP's goal.*

Thank you for your consideration. If you have questions or need further information, please contact me at (916) 654-0435 or [joshua.kress@cdfa.ca.gov](mailto:joshua.kress@cdfa.ca.gov).

Sincerely,



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