

DEPARTMENT OF FOOD AND AGRICULTURE
Title 3 of the California Code of Regulations

Section 3867, Labeling of Seed Containers.
Notice of Proposed Rulemaking
45 – Day Notice

The Department of Food and Agriculture (Department) proposes to amend Title 3 of the California Code of Regulations (CCR) Section 3867, Labeling of Seed Containers.

PUBLIC HEARING

A public hearing is not scheduled. However, a public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person or their authorized representative may submit written comments relevant to the proposed regulations to the Department. Comments may be submitted by USPS, FAX or email. The written comment period closes on May, 27, 2025. The Department will consider only comments received at the Department offices, by that date or postmarked no later than May, 27, 2025. Submit comments to:

Erin Lovig, Senior Environmental Scientist Supervisor
California Department of Food and Agriculture Plant Health and
Pest Prevention Services
1220 N St,
Sacramento, CA 95814
916.403.6650
Permits@cdfa.ca.gov

Questions regarding the substance of the proposed regulation should be directed to Erin Lovig. In her absence, you may contact Rachel Avila at (916) 698-2947 or rachel.avila@cdfa.ca.gov.

AUTHORITY

The Department proposes to amend Section 3867 pursuant to the authority vested by Sections 407, 52331 and 52332 of the Food and Agricultural Code (FAC).

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 52332, 52451, 52452, 52453, 52454, 52455, 52456, and 52484 of the FAC.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The specific purpose of Section 3867 is to outline the correct procedures for labeling seed containers. Providing the number of noxious weed seeds on the label is important to maintain truth in labeling and to protect growers as well as public land. Harmonizing with the Federal Seed Act allows seeds to move more easily within commerce and helps maintain the integrity of California seed law. The Department also corrects a FAC reference, it was listed as FAC 55424 instead of the correct 52454.

EXISTING 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 52331, provides that the, by regulations, shall do all of the following:

- (a) Adopt germination standards for vegetable seed.
- (b) Adopt tolerances to be applied in all enforcement procedure required by this chapter.
- (c) Prescribe methods of procedure in the examination of lots of any agricultural or vegetable seed, and in securing samples of such lots.
- (d) Establish a reasonable schedule of fees for tests, examinations, and services except those which are required for quarantine or other purposes, not directly related to the enforcement of this chapter. The schedule shall be based upon the approximate cost of the service rendered. The director may, however, provide for the examination of seeds for identification purposes without charge.
- (e) Adopt such other regulations as will assist in carrying out the purposes of this chapter.

Every standard or tolerance which is adopted pursuant to this chapter shall be as nearly as practicable to that which is established under the Federal Seed Act.

Existing law, FAC Section 52332, provides that (a) A list of the plants and crops that the secretary finds are or may be grown in this state.

(b) A list of the plants and crops that the secretary finds are detrimental to agriculture if they occur incidentally in other crops, and which, therefore, are classed as weed seed except if sold alone or as a specific constituent of a definite seed mixture.

(c) A list of noxious weed seed that the secretary finds are prohibited noxious weed seed, as defined in this chapter.

(d) A list of those noxious weed seed that are not classified as prohibited noxious weed seed and are classified by this chapter as restricted noxious weed seed.

(e) A list of substances that are likely to be used for treating grain or other crop seed that the secretary finds and determines are toxic to human beings or animals if used, and an appropriate warning or caution statement for each substance.

Also, in subsection (g) it requires that additional labeling requirements for coated, pelleted, encapsulated, mat, tape, or any other germination medium or device used on seed in order that the purchaser or consumer will be informed as to the actual amount of seed purchased.

Existing law, FAC Section 52451, provides that this article does not apply to any of the following:

- (a) Seed or grain that is not intended for sowing purposes.
- (b) Seed that is in storage in, or consigned to, a seed cleaning or conditioning establishment for cleaning or conditioning.
- (c) Seed or grain that is transported without transfer of title for sowing on land that is owned by the person by whom the seed or grain was produced.
- (d) Seed that is weighed and packaged in the presence of the purchaser from a bulk container, if the container is properly and conspicuously labeled as provided by this chapter.
- (e) Seed or grain that is transported from one warehouse to another without transfer of title or in storage in a warehouse, if each container is plainly marked or identified with a lot number or other lot identification and the label information that is required by this article is available at the request of an enforcing officer.
- (f) Seed distributed or received by noncommercial seed sharing activity.

Existing law, FAC Section 52452, provides that:

- (a) Except as otherwise provided in Section 52454, each container of agricultural seed that is for sale or sold within this state for sowing purposes shall bear upon it or have attached to it in a conspicuous place a plainly written or printed label or tag the information listed within this FAC.

Existing law, FAC Section 52453, provides that except as otherwise provided in Section 52454, each container of vegetable seed that is for sale or sold within this state for sowing purposes shall bear upon it, or have attached to it, in a conspicuous place, a plainly written or printed label or tag in the English language, that gives all of the information listed within this FAC.

Existing law, FAC Section 55454, provides that any lot of more than one container of seed which is transported to a dealer for resale, or any lot of more than five containers of seed which is sold to a consumer, is exempt from the requirements which are prescribed by Section 52452 or 52453 if both of the following requirements are complied with:

- (a) Each container is plainly marked or identified with a lot number or other lot identification.
- (b) The invoice and one or more of the containers bears the tag or label which is required by such sections.

Existing law, FAC Section 52455, provides that in addition to the labeling requirements of this article, all seed at the time of sale by a retail merchant for nonfarm usage, shall conspicuously bear upon the labeling of the seed a viability assurance statement information listed within this FAC.

Existing law, FAC Section 52456, provides that in addition to the labeling requirements of this article, all seed, except seed at the time of sale by a retail merchant for nonfarm

use, shall conspicuously bear upon the label adequate notice of the requirement to follow the conciliation, mediation, or arbitration procedures governing disputes between labelers and any person, as authorized by this chapter, and the consequences of failing to follow those procedures.

Existing law, FAC Section 52484, provides that:

(a) Except as otherwise provided in Section 52486, it is unlawful for any person to ship, deliver, transport, or sell agricultural or vegetable seed that is treated after harvest with any substance that is likely to be poisonous or toxic to human beings or animals unless there is conspicuously shown on the analysis tag or label, on a separate tag or label attached to each container, or on each container all of the following information within this FAC.

ANTICIPATED BENEFITS OF THE PROPOSED AMENDMENT

This amendment brings the existing seed labeling regulation into harmony with state and federal requirements. This is important for the seed industry to allow clear and comprehensive requirements as seed moves across state borders and provides for the testing of noxious weed seeds in vegetables which is important for growers and the environment to prevent the introduction of noxious weed seed.

There are no existing, comparable federal regulations or statutes.

There are no known specific benefits to worker safety or the health of California residents.

EVALUATION OF INCONSISTENCY / INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of Section 3867 and has determined that they are 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.).

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: None

Cost to any local agency or school district requiring reimbursement pursuant to Gov. Code sec. 17500 et seq. (Gov. Code sec. 11346.5(a)(6).): None

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the State: None.

Cost impacts on a representative private person or business: The agency is not aware of any cost impacts that a representative person or business would necessarily incur in reasonable compliance with the proposed action.

Significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states: The cost impacts are expected to be none and minimal/non-consequential. The Department makes the initial determination that the proposed action will not have a significant, statewide adverse economic impact.

Significant effect on housing costs: None

Small business determination: The proposed action will not affect small business because this action only provides authority for state quarantine activities and does not require reporting, recordkeeping, or compliance by businesses.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS / ASSESSMENT

The amendment of Section 3867 is designed to bring seed labeling into compliance with state and federal regulations. The Department has made an assessment that the amendment to this regulation would: (1) not create or eliminate jobs within California, (2) not create new business or eliminate existing businesses within California, (3) not affect the expansion of businesses currently doing business within California, and (4) is not expected to benefit the health and welfare of California residents, (5) is expected to benefit the state's environment, and (6) is not expected to benefit workers' safety.

By preventing the introduction of noxious weed seeds to there will be a positive impact to the environment, which will benefit from reduced competition between native plants and introduced weeds.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and 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.

The Department invites interested persons to present alternatives during the written comment period.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department has prepared an initial statement of reasons for the proposed action, and has made available all the information upon which its proposal is based and the express terms of the proposed action. The Department has posted the information regarding this proposed regulatory action on its Internet website (www.cdfa.ca.gov/plant/Regulations.html). A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the comment period and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer named herein. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the agency officer named herein.