

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE  
Notice of Proposed Rulemaking

The Department of Food and Agriculture proposes to amend Section 3906 of the regulations in Title 3 of the California Code of Regulations pertaining to the assessment on sales of agricultural and/or vegetable seed.

**PUBLIC HEARING**

A public hearing is not scheduled. 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 his or her authorized representative may submit written comments relevant to the proposed amendment to the Department. Comments may be submitted by mail, facsimile (FAX) at 916.654.1018 or by email to [Sara.Khalid@cdfa.ca.gov](mailto:Sara.Khalid@cdfa.ca.gov). The written comment period closes at 5:00 p.m. on November 30, 2015. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Sara Khalid  
Department of Food and Agriculture  
Plant Health and Pest Prevention Services  
1220 N Street  
Sacramento, CA 985814  
[Sara.Khalid@cdfa.ca.gov](mailto:Sara.Khalid@cdfa.ca.gov)  
916.654.1017  
916.654.1018 (FAX)

**AUTHORITY AND REFERENCE**

Food and Agricultural Code Sections 407 and 52331 authorize the Department to adopt this regulation. The proposed revision is to a regulation that interprets and makes specific Sections 52331, 52354, and 52354.5 of the Food and Agricultural Code.

**INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW**

The specific purpose of Section 3906 is to establish the annual assessment rate per one-hundred dollars gross annual dollar volume sales of agricultural and/or vegetable seed for the preceding fiscal year, beginning July 1. The proposed amendment will set this fee at \$0.30 per \$100 gross annual dollar volume sales of agricultural and/or vegetable seed for the fiscal year beginning July 1, 2015.

Food and Agricultural Code (FAC), Sections 52291-52298 provides for an eleven member Seed Advisory Board (Board) and establishes the composition, terms of office and duties of the Board. One of the duties, provided by Section 52296, is to recommend the dollar volume assessments on gross annual dollar volume sales of agricultural and/or

vegetable seed. FAC, Section 52354 establishes that the assessment shall not exceed \$0.40 per \$100 gross annual dollar volume sales of agricultural and/or vegetable seed.

FAC, Section 52354.5 establishes that the Board shall make a recommendation regarding the level of assessment to the director and that the director shall fix the annual assessment in an amount that will provide sufficient funds to carry out the activities of the Seed Services Program. During their May 13, 2015 meeting, the Board approved a motion to set the assessment rate at \$0.30 per \$100 gross annual dollar volume sales of agricultural and/or vegetable seed for the fiscal year beginning July 1, 2015. The current assessment rate is \$0.25 per \$100 gross annual dollar volume sales. Since seed sales are expected to decline, this increase is necessary to prevent cash flow from declining too low.

#### Anticipated Benefits from this Regulatory Action

The Board is required to keep a reserve balance per the Department of Finance. This reserve ensures that there would be enough money in the California Pool Fund to fund an orderly process to close down a program. If the reserve balance falls below required funding levels, Seed Testing Services would either not be provided at all or would be provided at a lower level of service. The seed services program provides testing for agricultural seed as well as any private seed requests.

The required funding level ensures that the impacts on program levels of activities are kept to a minimum in the event of an unexpected occurrence that would otherwise increase costs of the program. The programs must respond to crisis incidents such as response to testing for a new disease that would not be included in a regulation. The program would not be able to respond to emergency scenarios unless there was a reserve for funding.

The amendment of this regulation ensures the orderly and efficient marketplace for seed, seed quality for purchasers, labeling enforcement, invasive pest and disease free seed, as well as indirectly ensuring a safe food supply.

As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of this regulation and has determined that it is not inconsistent or incompatible with existing state regulations.

#### DISCLOSURES REGARDING THE PROPOSED ACTION

*The Department has made the following initial determinations:*

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None

Other nondiscretionary costs to or savings on local agencies: None.

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

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impact on a representative private person or businesses: There are 256 firms that submit an average assessment payment of approximately \$1,364 per year. The proposed change in the assessment will increase their payments by about \$273 each. There are 17 large firms having average sales of approximately \$5.8 million per year. The proposed change in the assessment will increase their payments by approximately \$5,760 each.

Significant effect on housing costs: None.

#### *Small Business Determination*

The Department has determined that the proposed regulations will affect small business.

#### Results of the Economic Impact Analysis

Amendment of these regulations will not:

- (1) Create or eliminate jobs within California;
- (2) Create new businesses or eliminate existing businesses within California; or
- (3) Affect the expansion of businesses currently doing business within California.

There are no known specific benefits to the worker safety or the health of California residents. The Department is not aware of any specific benefits the amendment of this regulation will have to the protection of public safety of California residents or worker safety. This regulation ensures the orderly and efficient marketplace for seed, seed quality for purchasers, labeling enforcement, invasive pest and disease free seed, as well as indirectly ensuring a safe food supply.

The Department has evaluated and determined that the amendment of this regulation is not inconsistent with existing State regulations. There are no other comparable existing State regulations [Gov. Code sec. 11346.5(a)(3)(D)].

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department 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 person and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Notice.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

## CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Sara Khalid  
Department of Food and Agriculture  
Plant Health and Pest Prevention Services  
1220 N Street  
Sacramento, CA 95814  
[Sara.Khalid@cdfa.ca.gov](mailto:Sara.Khalid@cdfa.ca.gov)  
916.654.1017  
916.654.1018 (FAX)

In her absence, you may contact Laura Petro at the same phone number.

## INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website ([www.cdfa.ca.gov/cdfa/pendingregs](http://www.cdfa.ca.gov/cdfa/pendingregs)).

## AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed action, has available all of the information upon which its proposal is based, and has available the express terms of the proposed action. 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 above.

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Khalid at the above address.

## AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Department may amend the proposed regulation 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 regulation as revised. Please send requests for copies of any modified regulations to the attention of Sara Khalid at the address indicated above. 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 will be posted on the Department's web site or a copy may be obtained by contacting Ms. Khalid at the address listed above.