

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE  
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations  
Section 3915.1 Mediation Notice

INITIAL STATEMENT OF REASONS/  
POLICY STATEMENT OVERVIEW

The California Department of Food and Agriculture (Department) proposes to amend Title 3 California Code of Regulations (CCR) Section 3915.1 with changes recommended by the Seed Advisory Board (Board) that will bring the current label notice into compliance with the Recommended Uniform State Seed Law (RUSSL), a model law developed by the Association of American Seed Control Officials (AASCO).

Description of Public Problem, Administration Requirement, or Other Condition or Circumstance  
the Regulation is Intended to Address

This regulation is intended to address the obligation of the Department to preserve the orderly marketing of seed in California. The California Seed Law (Food and Agricultural Code, Division 18, Chapter 2) was adopted by the Legislature to enable the seed industry, with the aid of the state, to ensure that seed purchased by the consumer-buyer is properly identified and of the quality and amount represented on the tag or label as required in Food and Agriculture Code (FAC) Section 52288. The labeling requirements established in Sections 52451 to 52456 of the FAC differ by seed type, use, and container size. In addition, seed labelers, as defined in Section 52254.5 of the FAC, must provide adequate notice of the arbitration, conciliation, or mediation procedures governing seed disputes on the label (FAC 52456). Agricultural and vegetable seed labels, as required by FAC 52456 and specified in Title 3 CCR Section 3867 must bear the mediation notice established in Title 3 CCR Section 3915.1. The mediation notice informs the consumer of the mandatory dispute resolution procedures, in the event seed does not perform as described on the label. However, some states listed in the mediation notice currently prescribed in Title 3 CCR Section 3915.1 do not require dispute resolution as a prerequisite to seeking legal action; this causes the existing regulation to be inconsistent with other states' laws and regulations. Therefore, the Department seeks to amend Title 3 CCR Section 3915.1.

## **Purpose and Factual Basis**

The specific purpose of amending Title 3 CCR Section 3915.1 is to clarify the dispute resolution procedures and make it more consistent with other state laws and regulations.

The factual basis for determination by the Department that the amendment of this regulation is necessary is as follows:

The Board may provide recommendations and advise the Secretary on all matters pertaining to the California Seed Law (FAC 52296). Section 407 of the FAC grants the Director authority to adopt regulations that are reasonably necessary to carry out the provisions of the FAC, and Section 52331 of the FAC requires the Director to adopt regulations that will assist in carrying out the purposes of the California Seed Law.

On October 13, 2020, the Board recommended the Department amend the existing regulation to facilitate the movement of interstate seed. The Board requested the amendment of Title 3 CCR Section 3915.1 to align with the RUSSEL. Developed by AASCO, states may utilize the model regulations in RUSSEL to unify laws and regulations to facilitate interstate commerce. The Notice of Arbitration/Mediation/Conciliation in RUSSEL was updated in 2016 by AASCO to reflect regulatory changes in the dispute resolution procedures by removing the list of specific states that require arbitration, mediation, or conciliation. The states of North Dakota and South Dakota do not require arbitration, conciliation, or mediation as a prerequisite to seeking legal action, and both are currently listed in the existing regulation. Based upon recommendation by the Board, the Department relied upon the current version of RUSSEL to clarify the dispute resolution procedures in Title 3 CCR Section 3915.1.

## **Project Description**

The Department proposes the following changes to Title 3 CCR Section 3915.1:

The amendment adds the text “or an equivalent notice that includes the required information in this section” after the word ‘notice’ and before the word ‘shall’. As many states have different labeling requirements, this additional text allows for the differences on labels of products sold throughout the United States.

The amendment removes the text “(sworn for AR, FL, IN, MS, SC, TX, WA; signed only CA, ID, ND, SD)” after the word ‘complaint’ and before the word ‘along’.

The amendment also removes the text “Commissioner/Director/Secretary of Agriculture, Seed Commissioner, or Chief Agricultural Officer” after the word ‘the’ and before the word ‘within’ and adds ‘Designated State Authority’ after the word ‘the’ and before the word ‘within’.

Making these changes to the text clarifies the dispute resolution procedures outlined in the mediation notice, but it does not change the labeling requirement established in Section 52456 of the FAC and Title 3 CCR Section 3867, except as provided in Section 52451 of the FAC.

### Current 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 the FAC which the Secretary is directed or authorized to administer or enforce.

Existing law, FAC Section 52332, provides that regulations adopted by the Secretary for the mandatory conciliation, mediation, or arbitration of disputes shall require that adequate notice be provided on the seed label notifying any buyer of the requirement to submit a dispute to mandatory conciliation, mediation, or arbitration as a prerequisite to other dispute resolution mechanisms, including litigation.

### Anticipated Benefits from This Regulatory Action

The Department anticipates consumers and seed labelers will benefit from the proposed amendment of this regulation. California’s agricultural economy relies on the production of numerous agricultural and vegetable crops that are grown from seed. The movement of interstate seed into California’s seed marketplace ensures a diverse and ample supply of agricultural and vegetable seed for consumers and intrastate seed labelers. The “labeling”, as defined in Section 52255 of the FAC, of interstate seed must comply with the laws and regulations in each destination state, and interstate seed labelers must change their seed labels accordingly. The proposed amendment will align with the Notice of

Arbitration/Conciliation/Mediation in RUSSL and be more consistent with other states' laws and regulations, reducing the burden on interstate seed labelers selling seed in California. The Department also anticipates the proposed amendment will improve regulatory compliance, resulting in fewer violations for seed labelers. In addition, a "person", as defined in Section 38 of the FAC, will not incur increased costs due to the proposed amendment of this regulation. The labeling requirement, established in Section 52456 of FAC and Title 3 CCR Section 3867, except as provided in Section 52451 of the FAC, will not be eliminated.

When California consumers purchase seed for commercial crop production, they rely on the analytical information presented on the seed label to estimate field plantings and crop yields. In the event seed does not perform as described on the label, California consumers may pursue mediation, a prerequisite to seeking legal action, to resolve seed disputes. The proposed amendment will more concisely describe the dispute resolution procedures to consumers and reduce improperly labeled containers of seed in the marketplace. Lastly, the formal complaint, investigation, and mediation procedures, as outlined in Title 3 CCR Sections 3915, 3916, 3917, and 3918, will remain.

#### Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that this regulation does not impose a mandate on local agencies or school districts.

#### Economic Impact Analysis (Government Code 11346.3(b))

Having the label notice align with the Recommended Uniform State Seed Law (RUSSL), will benefit:

- the general public
- the agricultural industry

#### *The Creation or Elimination of Jobs within the State*

The Department has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs in the State of California. The proposed amendment of this regulation does not eliminate the labeling requirement established in Section 52456 of the FAC and Title 3 CCR Section 3867, except as provided in Section 52451 of the FAC.

### *The Creation or Elimination of Businesses in California*

The Department has determined that this regulatory proposal will not have a significant impact on the creation of new businesses in the State of California. The proposed amendment does not eliminate the labeling requirement established in Section 52456 of the FAC and Title 3 CCR Section 3867, except as provided in Section 52451 of the FAC.

### *The Expansion of Businesses in California*

The Department has determined that this regulatory proposal will not have a significant impact on the expansion of businesses currently doing business in the State of California. The proposed amendment does not eliminate the labeling requirement established in Section 52456 of the FAC and Title 3 CCR Section 3867, except as provided in Section 52451 of the FAC.

### *Worker Safety*

This regulation is not expected to have an effect on worker safety.

### *Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities*

The Department of Food and Agriculture has determined that Title 3 CCR Section 3915.1 does not impose a mandate on local agencies or school districts and no reimbursement is required under Section 17561 of the Government Code.

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 amendment of Title 3 CCR Section 3915.1.

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. The Department has determined that the proposed actions will not have a significant adverse economic impact on housing costs or California business, including the ability of California businesses to compete with businesses in other states. The Department's determination that the action will not have a significant statewide adverse economic impact on business was based on the following:

1. The mediation notice, as required by Sections 52456 of the FAC and Title 3 CCR Section 3867, except as provided in Section 52451 of the FAC, is required on the label of agricultural and vegetable seed sold for farm use in California.

#### *Potential Impact to Homeowners and Community Gardens*

There are no potential impacts to homeowners or community gardens. Seed distributed or received through noncommercial seed sharing activities does not require a seed label ((FAC 52451(f)). Also, the label, as required by Title 3 CCR Section 3867, shall bear the mediation notice on containers of seed sold for farm use, where “farm” is defined as a place of agricultural production with \$1,000 or more in annual sales (FAC 52262).

#### *Potential Impacts to General Fund and Welfare*

The proposed amendment of this regulation will not affect the General Fund and Welfare. The labeling requirement, established in Section 52456 of the FAC and Title 3 CCR Section 3867, is not eliminated by the proposed amendment of this regulation, except as provided in Section 52451 of the FAC.

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

#### **Assessment**

The Department has made an assessment that the amendment of the regulation will (1) will have no significant impact on the creation or elimination of jobs in the State of California, (2) will have no impact on the creation or elimination of businesses within the State of California, (3) will have no impact on the expansion of businesses within the State of California, (4) will have no impact on the health and welfare of California residents, (5) will have no impact on the state’s environment, and (6) is not expected to benefit workers’ safety.

#### **Alternatives Considered**

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

The Department considered not amending the existing regulation. However, California's consumers and intrastate seed labelers rely on interstate seed labelers to purchase agricultural and vegetable seed. The existing regulation may discourage interstate seed labelers from selling seed in California, because it is burdensome and inconsistent with other state laws and regulations. Interstate seed labelers may label containers with variations of the existing regulation to comply with other state laws and regulations, resulting in a violation of California Seed Law. Any lot of agricultural or vegetable seed in violation of the California Seed Law, as outlined in Sections 52481 to 52489 of the FAC, cannot be sold until the violation is resolved, and may result in a stop-sale order (FAC Sections 52391-52395). Resolving violations is laborious and costly for seed labelers and seed sellers, and often requires a substantial amount of time to resolve. Furthermore, improperly labeled containers of seed may not provide adequate notice of the dispute resolution procedures to consumers, causing the existing regulation to be unclear. Therefore, the Department has not identified any reasonable alternatives and seeks to preserve the orderly marketing of seed in California.

### **Information Relied Upon**

The Department relied upon the following studies, reports, and documents in the proposed adoption and subsequent amendment of Title 3 CCR Section 3915.1:

1. California Department of Food and Agriculture. (2020, October). Approved Meeting Minutes for October 2020 Seed Advisory Board Meeting.
2. Association of American Seed Control Officials AASCO. (2016, April). RUSSL Recommended Uniform State Seed Law. Retrieved August 2, 2022, from [https://www.seedcontrol.org/pdf/russl\\_2017.pdf](https://www.seedcontrol.org/pdf/russl_2017.pdf)
3. S.D. Codified Laws § 38-12A-21.
4. N.D. Cent. Code § 4.1-53.
5. Ga. Comp. R. & Regs. R. 40-12-6-.02