

DEPARTMENT OF FOOD AND AGRICULTURE  
Title 3 of the California Code of Regulations Section 3915.1

**Notice of Proposed Rulemaking  
45 – Day Notice**

The Department of Food and Agriculture (Department) proposes to revise Title 3 of the California Code of Regulations (CCR) Section 3915.1 pertaining to the Mediation Notice Label.

**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 his or her 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 January 23<sup>rd</sup>, 2023. The Department will consider only comments received at the Department offices by that date or postmarked no later than January 23<sup>rd</sup>, 2023. 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  
[Erin.Lovig@cdfa.ca.gov](mailto:Erin.Lovig@cdfa.ca.gov)  
916.403.6650

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](mailto:rachel.avila@cdfa.ca.gov).

Unless there are substantial changes to the proposed regulations prior to adoption, the Department of Food and Agriculture may adopt the proposal as set forth in this notice without further notice to the public. Following the public hearing, if one is requested, or following the written comment period if none is requested, the Department, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

**AUTHORITY**

The Department proposes to amend Section 3915.1 pursuant to the authority vested by Sections 407 and 52332 of the Food and Agricultural Code (FAC).

## **REFERENCE**

The Department proposes this action to implement, interpret and make specific Section 52332 of the FAC.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

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

## **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 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 OF THE PROPOSED AMENDMENT**

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 will ensure 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 RUSSEL and be more consistent with other state 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 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 Sections 3915, 3916, 3917, and 3918 of the California Code of Regulations, will remain.

There is no existing, comparable federal regulations or statute.

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

### **EVALUATION OF INCONSISTENCY / INCOMPATIBILITY WITH EXISTING STATE REGULATIONS**

The Department considered any other possible regulations addressing the noticing label, and it found that these proposed amendments are the only regulations dealing with this subject, and the Department is the only State agency which can clarify the dispute resolution procedures and make it more consistent with other states' laws and regulations. As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of Section 3915.1 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 or school districts: None.

Cost or savings to any state agency: The Department has determined that this regulatory proposal will not have a significant impact on any state agency in the State of California. The proposed amendment does not eliminate the labeling requirement established in Section 52456 of the FAC and Section 3867 of the California Code of Regulations, except as provided in Section 52451 of the FAC.

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 compliance activities are currently being performed by existing staff throughout quarantine areas within the State without any impact on small business.

### **RESULTS OF THE ECONOMIC IMPACT ANALYSIS / ASSESSMENT**

The Department has concluded that the Section 3915.1 amendment (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) is 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.

### **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](http://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.