

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

Notice of Proposed Rulemaking

45 – Day Notice

The Department of Food and Agriculture proposes to revise section 3899, schedule I (a) and (b) in the regulations in Title 3 of the California Code of Regulations (CCR) pertaining to Agricultural Seeds.

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 regulation to the Department. Comments may be submitted by mail, FAX or email. The written comment period closes at 5:00 p.m. on August 13, 2018. The Department will consider only comments received at the Department offices by that time. Submit comments to:

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916.654.1017
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Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

The specific purpose of section 3899 schedule I is to identify and designate certain seeds or propagules of plants that may be sold and grown in agriculture. The purpose of this amendment is to update the list to reflect the form of the crop seed list used by the Department seed laboratory and the national current standards. By harmonizing this regulation with the industry standard, we avoid ambiguity and ensure compatibility with standards followed by other states.

General Amendment:

- Fix typographic and formatting errors in the current list
 - Replace FNa1 with *
 - Add space between species epithet and the authority
 - Correct spelling error: Mat bean (*Vigna aconitifolia*), Amaranth (*Amaranthus* spp.), Yellow bluestem (*Bothriochloa ischaemum*), Large hop clover (*Trifolium campestre*), Guayule (*Parthenium argentatum*), Heron's bill, Blue lupine (*Lupinus angustifolius*), Blue panicgrass (*Panicum antidotale*), Sourclover (*Melilotus indicus*), White sweetclover (*Melilotus albus*), Veldtgrass (*Ehrharta calycina*), Sweet basil (*Ocimum basilicum*), and Cumin (*Cuminum cyminum*)
 - Remove extraneous cross-referencing:
 - See also: Castorbean, Horsebean, Soybean, Velvetbean (located between list of beans and list of beets on Schedule I(a))
 - Buckhorn plaintain: see plaintain
 - See also: Alyceclover, Burclover, Sourclover, Sweetclover (located between list of clover and list of corn)
 - Foxtail millet: See Millet
 - See also: Chickpea
 - Grasspea, Pigeonpea, Roughpea, Tangier pea (located between the list of peas and the peanut)
 - Proso millet: See Millet (located between Popcorn and *Poa trivialis*)
 - See also: Wildrice (located between Rice and Ricegrass, Indian)
 - See also: Horsebean, Soybean (located between list of beans and list of beets on Schedule I(b))
 - Added common names:
 - Horsebean: Fava bean, Windsor bean
 - Subclover: Subterranean clover
 - African millet: Ragi millet
 - Guineagrass: Green panicgrass
 - Rough bluegrass: *Poa trivialis*
 - Annual ryegrass: Italian ryegrass
 - Cowpea: Southernpea
 - *Monantha* vetch: Single flower vetch
 - Pak-choi: Celery cabbage
 - Remove extraneous common names:
 - Wheatgrass: Bluestem wheatgrass
 - Sorghum: Broomcorn, Kafir, Kaoliang, Milo maize, Shallu, Sorgo
 - Grasspea: Wedge pea
 - Lettuce: Romaine
 - Mallow: Malva
 - Moved seed reference
 - Bean (field): from after Adzuki bean to after Fava Bean Schedule I(a)
 - *Sericea lespedeza*
 - *Striate lespedeza*
 - Common oat, Red oat (merged with "Oat")

- Broadbean: Horsebean
 - Cowpea, Yardlong (moved to Yardlong bean under bean list)
 - Watermelon, Muskmelon
- Update scientific names where necessary to match current accepted nomenclature
 - Change either species or genus name: Colonial bentgrass (*Agrostis tenuis*; update = *Agrostis capillaris*), Big bluegrass (*Poa ampla*; update = *Poa secunda*), Nevada bluegrass (*Poa nevadensis*; update = *Poa secunda*), Carpetgrass (*Axonopus affinis*; update = *Axonopus fissifolius*), Soft chess (*Bromus mollis*; update = *Bromus hordeaceus*), Hard fescue (*Festuca longifolia*; update = *Festuca brevipila*), Hardinggrass (*Phalaris steoptera*; update = *Phalaris aquatic*), Korean lespedeza (*Lespedeza stipulacea*; update = *Kummerowia stipulacea*), Striate lespedeza (*Lespedeza striata*; update = *Kummerowia striata*), Boer lovegrass (*Eragrostis chloromelas*; update = *Eragrostis curvula*), Japanese millet (*Echinochloa crusgalli*; update = *Echinochloa frumentacea*), Pearl millet (*Pennisetum americanum*; update = *Pennisetum glaucum*), Field mustard (*Brassica kaber*; update = *Sinapis arvensis*), White mustard (*Brassica hirta*; update = *Sinapis alba*), Rescuegrass (*Bromus unioloides*; update = *Bromus catharticus*), Indian ricegrass (*Oryzopsis hymenoides*; update = *Achnatherum hymenoides*), Smiloglass (*Oryzopsis miliacea*; update = *Pitatherum miliaceum*), Nodding stipa (*Stipa cernua*; update = *Nassella cernua*), Purple stipa (*Stipa pulchra*; update = *Nassella pulchra*), Sudangrass (*Sorghum sudanese*; update = *Sorghum x drummondii*), Velvetbean (*Mucuna deeringiana*; update = *Mucuna pruriens*), Bard vetch (*Vicia calcarata*; update = *Vicia monantha*), Beardless wheatgrass (*Agropyron spicatum*; update = *Pseudoroegneria spicatum*), Intermediate wheatgrass (*Agropyron intermedium*; update = *Thinopyrum intermedium*), Pubescent wheatgrass (*Agropyron intermedium*; update = *Thinopyrum intermedium*), Slender wheatgrass (*Agropyron trachycaulum*; update = *Elymus trachycaulus*), Streamband wheatgrass (*Agropyron riparium*; update = *Elymus lanceolatus*), Tall wheatgrass (*Agropyron elongatum*; update = *Thinopyrum ponticum*), Western wheatgrass (*Agropyron smithii*; update = *Pascopyrum smithii*), Annual wildrice (*Zizania aquatica*; update = *Zizania palustris*), Russian wildrye (*Elymus junceus*; update = *Psathyrostachys juncea*), Artichoke (*Cynara scolymus*; update = *Cynara cardunculus*), Leek (*Allium ampeloprasum*; update = *Allium porrum*), Pumpkin (*Cucurbita* spp.; update = *Cucurbita pepo*, *Cucurbita moschata*, *Cucurbita maxima*), Rhubarb (*Rheum* spp.; update = *Rheum rhabarbarum*), Squash (*Cucurbita* spp.; update = *Cucurbita pepo*, *Cucurbita moschata*, *Cucurbita maxima*), Tomato (*Lycopersicon esculentum*; update = *Solanum lycopersicum*)
 - Add subspecies or variety name: Narrowleaf vetch (*Vicia sativa* subsp. *nigra*), Winter vetch (*Vicia villosa* subsp. *varia*), Chinese cabbage (*Brassica rapa* subsp. *Pekinensis*), Tronchuda cabbage (*Brassica oleracea* var. *costata*), Cardoon (*Cynara cardunculus* subsp. *flavescens*), Carrot (*Daucus carota* subsp. *sativus*), Collards (*Brassica oleracea* var. *viridis*), Florence

fennel (*Foeniculum vulgare* var. *azoricum*), Kale (*Brassica oleracea* var. *viridis*), Pak-choi (*Brassica rapa* subsp. *chinensis*)

Amendment by addition:

- Add four new seeds to the schedule I(a) agricultural seeds list: Lentil (*Lens culinaris*), Siberian lespedeza (*Lespedeza cuneata*), Turnip rape (*Brassica rapa* subsp. *silvestris*), and Intermediate ryegrass (*Lolium x hybridum*)
- Add two new seeds to schedule I(b) vegetable seeds list: Perennial wall-rocket (*Diplotaxis tenuifolia*) and Annual wall-rocket (*Diplotaxis muralis*)
- Add the common names of Arugula, Garden Rocket, Rocket Salad, Rugula, and Salad Rocket for *Eruca sativa* on schedule I(b).
- Add the common name of Oregano for *Origanum vulgare* on schedule I(b).
- Add a breakdown of wheat types to the list. Club wheat (*Triticum compactum*), Durum wheat (*Triticum durum*), Polish wheat (*Triticum polonicum*), Poulard wheat (*Triticum turgidum*), and Wheat x Agrotriticum (*Triticum x Agrotriticum*) will be included in the amended list. The previous list had a single wheat type.
- Add two crops to schedule I(b) vegetable seeds list, that were already present on the schedule I(a) agricultural seeds list, as they are sold as both. Adzuki bean (*Vigna angularis*) and Bell bean (*Vicia faba*) are included in the amended vegetable seed list.

Amendment by removal:

- Remove two seeds from the schedule I(a) agricultural seeds list: Buffelgrass (*Cenchrus ciliaris*) and Little Mallow (*Malva parviflora*). These are weedy species and are not currently grown agronomically.

Under the general amendment, several scientific names are updated, several typographic errors are corrected, and many formatting mistakes are remedied. These changes improve the quality and comprehensibility of CCR section 3899 Schedule I, but they are non-substantive.

Under the amendment by addition, several species of crop seed are being added to CCR section 3899 Schedule I. All are crops whose seeds are currently sold and/or grown in California. Seeds of crops on the list are tested for purity according to California seed law (CCR section 3880) and labelled correctly in order to protect the consumer and avoid confusion in the trade (FAC section 52452[a]). Lentil (*Lens culinaris*), annual wall rocket (*Diplotaxis muralis*), perennial wall rocket (*Diplotaxis tenuifolia*), Siberian lespedeza (*Lespedeza cuneata*), turnip rape (*Brassica rapa* subsp. *silvestris*), intermediate ryegrass (*Lolium x hybridum*), and the following varieties of wheat: club wheat (*Triticum compactum*), durum wheat (*Triticum durum*), Polish wheat (*Triticum polonicum*), Poulard wheat (*Triticum turgidum*) and wheat x agrotriticum (*Triticum x Agrotriticum*) were not included in the last amendment of CCR section 3899 schedule I. All of these are currently

sold as seed in California. They are being added to CCR section 3899 because their non-inclusion might lead to confusion regarding quality and identification of seed lots of these species as well as related crop seed currently included in CCR section 3899 schedule I. Seed companies label and test seeds routinely. Adding new varieties to CCR section 3899 schedule I will have little or no impact on an industry that routinely practices seed testing and labelling. By providing standard names, testing, and labelling requirements for these products, there will be disambiguation as to which product a consumer is purchasing and its quality.

Two crops (Adzuki bean and Bell bean) are in CCR section 3899 schedule I (a) Agricultural Crops and will, under this amendment, be added to CCR section 3899 Schedule I(b) Vegetable Crops because depending on the circumstance, they are sold as either. Agricultural Crop seed and Vegetable Crop seed are tested and labelled in similar, but different, ways. By having these two crops appear on both lists, it allows the appropriate testing and labelling to take place depending on the proposed use of the seed.

This amendment adds additional common names for *Eruca sativa* (Arugula, Garden Rocket, Rocket Salad, Rugula, and Salad Rocket) and *Origanum vulgare* (Oregano) to CCR section 3899 schedule I to reflect current usage. Although alternative common name labelling of seed lots is allowed by CCR section 3863(c), common names in CCR section 3899 schedule I are recognized as official and their inclusion prevents their use on official labels for other varieties. The effects of these changes are expected to be modest, but they will increase the confidence of both seed producers and consumers that current frequently used common names are acceptable on labels for seed sold in California.

Under the amendment by removal, two plant species will be removed from CCR section 3899 schedule I (a): little mallow and buffelgrass. The removal of little mallow (*Malva parviflora*) from CCR section 3899 schedule I will have no impact on California agriculture, the seed industry, or the environment. Little mallow is not a regulated pest, but it is a common weed of roadsides, row crops, and waste areas in California. It currently is neither sold as commercial seed nor planted purposefully in California, nor is it likely to be so. So, its inclusion in CCR section 3899 schedule I is misleading and may confuse farmers and consumers to believe that this common weed is an agricultural plant. Therefore, it is appropriate to remove it from the list of seeds subject to seed purity testing and labelling requirements.

The other species, buffelgrass (*Cenchrus ciliaris*), will be removed from schedule I (a) to allow it to be regulated as a pest. The removal of buffelgrass from CCR section 3899 schedule I will have no impact on California agriculture, the seed industry, or the environment. It currently is neither sold as commercial seed nor planted purposefully in California, nor is it likely to be so. So, its inclusion in CCR section 3899 schedule I is superfluous. Therefore, it is appropriate to remove it from the list of seeds subject to seed purity testing and labelling requirements. Removal from CCR section 3899 schedule I (a) will allow the Department to list buffelgrass as a noxious weed in CCR section 4500 without introducing contradictions in the code.

The Department categorizes seeds of all plant species listed in CCR 4500, the California noxious weed list, as either prohibited or restricted per FAC section 52256. The outcome of that effort is the list of prohibited weed seeds in CCR 3854 and the list of restricted weed seeds in CCR section 3855. The list in CCR 3855 is used as a reference by seed labelers. The number and kind of restricted noxious weed seeds that occur incidentally in containers of agricultural planting seed must be noted on the labels of agricultural seeds following FAC section 52452(a)(4). To add buffelgrass to CCR 4500, it must first be removed from section 3899 Schedule I.

The Department considered all other possible related regulations in this area, and finds that these are the only regulations dealing in this subject area, and that the Department is the only State agency that can implement this proposed regulation. As required by Government Code section 11346.5(a)(3)(D), the Department has conducted an evaluation of this proposed regulation and has determined that it is not inconsistent or incompatible with existing state regulations.

Anticipated Benefits from This Regulatory Action

Existing law, FAC Section 403, directs that the department shall prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds.

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.

Under this amendment, the enhanced ability to label seed with currently used common names will allow better marketing of the affected products and reduce the effort of the supplier to comply with current regulations.

Under this amendment, the inclusion of six new crop seed varieties and the disambiguation of several more will improve the ability of the California consumer to choose the exact type and quality of the crop and vegetable seed that they buy.

To protect California's environment, noxious weeds are prohibited from sale at nurseries. These amendments will enhance the Department's ability to protect California agriculture and environment by removing a potential noxious weed from the list of seeds allowed to be sold and grown in the state.

The proposed regulation will harmonize seed regulation with the regulation of noxious weeds. This will enhance the ability of seed regulation to protect California agriculture and environment. The proposed amendment will also eliminate confusion about whether seed regulation or weed regulation has precedence in the importation of commercial seeds into California.

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

AMENDED TEXT

This amendment to CCR 3899 Schedule I will update the list of Agricultural and Vegetable Seeds that are grown in the state of California.

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: minimal for the removal of little mallow and buffelgrass from the list of field crop seeds. The other updates included in this amendment will slightly increase the ease of administering seed regulations in California.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None and no nondiscretionary costs or savings to local agencies or school districts.

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. Queries to several rangeland seed suppliers by CDFA staff revealed that neither buffelgrass seed nor little mallow is currently used or sold in California. The other updates included in this amendment will reduce the effort of the supplier to comply with current regulations..

Cost impacts on a representative private person or business: 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.

Small Business Determination:

The Department has determined that the proposed regulations will not affect small business. As neither buffelgrass seed nor little mallow seed are generally sold in the seed trade in California currently, the Department has not identified any adverse impacts to small business.

As the seeds listed under the “Amendment by addition section” are already currently sold, the Department has not identified any adverse impacts to small business.

Significant effect on housing costs: None.

Results of the Economic Impact Assessment

The Department has made an assessment that the proposed regulation would not: 1) create or eliminate jobs within California; 2) create new business or eliminate existing businesses within California; 3) affect the expansion of businesses currently doing

business within California; or 4) result in negative impacts to the environment. It is possible that the proposed regulation will have positive impacts on the environment in California by resulting in fewer seeds of noxious weeds entering the state.

There are no known specific benefits to worker safety or the health of California residents. The Department is not aware of any specific benefits this proposed regulation will have on the protection of public safety of California residents or worker safety. Based upon the economic analysis, the Department believes this proposed regulation benefits the general welfare of California residents (GC section 11346.3(b)).

ALTERNATIVES CONSIDERED

The Department must determine that no reasonable alternative it considered to the proposed regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or 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 than the proposal described in this notice. The Department considered taking no action. This would leave buffelgrass on the list of allowed agricultural crops. This would not be consistent with its future status as a restricted noxious weed.

AUTHORITY

The Department proposes to amend CCR section 3899 Schedule I pursuant to the authority vested by sections 407 and 52332 of the Food and Agricultural Code of California.

REFERENCE

The Department proposes this action to implement, interpret and make specific section 52332 of the Food and Agricultural Code.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed is:

Dean Kelch
Department of Food and Agriculture
Plant Health and Pest Prevention Services
1220 N Street
Sacramento, CA 95814
dean.kelch@cdfa.ca.gov
916.654.1017
916.654.1018 (FAX)

In his absence, you may contact Laura Petro at (916) 403-6650. Questions regarding the substance of the proposed regulation should be directed to Dean Kelch.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website (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 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 herein.

If the regulations amended by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of amendment. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.