

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED AMENDMENT OF THE REGULATIONS

Title 3, California Code of Regulations

Section 3899(a)

INITIAL STATEMENT OF REASONS/
PLAIN ENGLISH POLICY STATEMENT OVERVIEW

Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulations are Intended to Address

This regulation is intended to address the need to update the schedule of agricultural seeds to include industrial hemp. This will ensure that seed purchased by the consumer is properly identified and of the quality claimed on the label. This amendment also corrects alphabetization errors, standardizes the abbreviation of genera and updates scientific names to match current accepted nomenclature and harmonize with Federal seed regulations.

Specific Purpose and Factual Basis

The specific purpose of the amendment to Section 3899(a) is to include industrial hemp as an agricultural crop in the list of plants and crops grown in California, and to ensure that industrial hemp seed sold is in compliance with Chapter 2 of Division 18 of the California Food and Agricultural Code (FAC), also known as the California Seed Law.

The legislative intent of the California Seed Law is 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. (FAC Section 52288(a))

Existing law requires every labeler and seller of agricultural or vegetable seed for sale in California to register with the secretary to obtain authorization to sell seed. Each labeler is required to pay an assessment, not to exceed forty cents per one hundred dollars gross annual sales of vegetable or agricultural seed, with some exceptions. These fees and assessments are

used to enforce the California Seed Law to ensure seed being sold is properly labeled as to kind, variety, and purity. (FAC Section 52351 and 52354)

Existing law instructs that the California Seed Law and corresponding regulations should conform to the Federal Seed Act (7 U.S.C., Sec. 1551, et seq.) and the accompanying regulations, where possible. (FAC Section 52281)

Existing law permits the Secretary, by regulation, to establish lists of plants and crops which are grown in California (FAC Section 52332(a)). The Secretary has established lists of agricultural and vegetable crop seeds by regulation in California Code of Regulations, Title 3, Section 3899, subsections (a) and (b), respectively.

Existing law provides for the cultivation of industrial hemp and hemp seeds and requires growers of industrial hemp and seed producers to register with the county agricultural commissioner. (FAC Division 24)

Effective December 20, 2018, the Agriculture Improvement Act of 2018 amended federal law to provide for hemp production and regulation in all states and territories (Section 10113; 7 U.S.C. 1639o-1639s) and added “hemp” to the definition of “agricultural commodity” (Section 11119; 7 U.S.C. 1518).

Existing federal regulations also include hemp in the definition of “agricultural seeds” in the Federal Seed Act Regulations (7 C.F.R. 201.2).

The Department is proposing to amend Section 3899(a) to include “industrial hemp” and “hemp” in the list of agricultural seeds grown in California in subsection (a), and to specify that the listing applies to “industrial hemp” as defined in the FAC and not to “cannabis” as defined in the Health and Safety Code (HSC). The amendment of Section 3899(a) will ensure that the provisions of

the California Seed Law are clearly and uniformly applied to industrial hemp seeds grown and sold in California.

The hemp plant is used for floral material, fiber, CBD extraction, and grain. The Agricultural Marketing Service of the U.S. Department of Agriculture (AMS) estimates that two-thirds of the planted acreage of hemp is for floral material. The remaining acreage is split evenly between fiber and grain.

Specific amendment-

- Add “Industrial Hemp” (*Cannabis sativa* (L.) and its synonym “Hemp” to section 3899(a) and include a reference to the definition of industrial hemp at the end of section 3899(a)

General amendment-

- Update scientific names where necessary to match current accepted nomenclature:
 - Change either species or genus name:
 - Harlan brome (*Bromus stamineus*; update = *B. catharticus* Vahl var. *elatus* (É. Desv.) Planchuelo),
 - Mountain Brome (*Bromus marginatus*; update = *B. carinatus* Hook. & Arn. Var. *marginatus* (Steud.) Barkworth & Anderton,
 - Buffalograss (*Buchloe dactyloides*; update = *Bouteloua dactyloides* Columbus),
 - Guineagrass (*Panicum maximum* var. *maximum*; update = *Megathyrsus maximum* (Jacq.) B. K. Simon & S. W. L. Jacobs),
 - Pearl millet (*Pennisetum glaucum*; update = *Cenchrus americanus* (L.) Morrone);
 - Napiergrass (*Pennisetum purpureum*; update = *Cenchrus purpureus* (Schumach.) Morrone),
 - Natalgrass (*Rhynchelytrum repens*; update = *Melinis repens* (Willd.) Zizka),
 - Smilograss (*Piptatherum miliaceum*; update = *Oloptum miliaceum* (L.) Röser & Hamasha)
- Added subspecies or variety name:

- Field bean (*Phaseolus vulgaris*; update = *Phaseolus vulgaris* var. *vulgaris*),
 - Tepary bean (*Phaseolus acutifolius*; update = *Phaseolus acutifolius* var. *acutifolius*),
 - Yellow bluestem (*Bothriochloa ischaemum*; update = *Bothriochloa ischaemum* var. *ischaemum*),
 - California brome (*Bromus carinatus*; update = *Bromus carinatus* var. *carinatus*),
 - Corn (*Zea mays*; update = *Zea mays* subsp. *mays*),
 - Popcorn (*Zea mays*; update = *Zea mays* subsp. *mays*),
 - Annual rape (*Brassica napus* var. *napus*; update = *Brassica napus* subsp. *napus* f. *annua* (Schübl. & G. Martens) Thell.),
 - Turnip rape (*Brassica rapa* subsp. *silvestris*; update = *Brassica rapa* subsp. *Oleifera* (DC.) Metzg.),
 - Winter rape (*Brassica napus* var. *napus*; update = *Brassica napus* subsp. *napus* f. *napus*),
 - Intermediate wheatgrass (*Thinopyrum intermedium* subsp. *intermedia*; update = *Thinopyrum intermedium* subsp. *intermedium*),
 - Pubescent wheatgrass (*Thinopyrum intermedium* subsp. *intermedia*; update = *Thinopyrum intermedium* subsp. *Barbulatum* (Schur) Barkw. & D.R. Dewey),
- Remove subspecies or variety name:
 - Barley (*Hordeum vulgare* L. subsp. *vulgare*; update = *Hordeum vulgare* L.),
 - Japanese millet (*Echinochloa* var. *frumentacea*; update = *Echinochloa frumentacea*)
- Correct authorities for listed taxon:
 - Alfilaria (*Erodium cicutarium* (L.) L'Her.: update = *Erodium cicutarium* (L.) L'Hér.),
 - Bahiagrass (*Paspalum notatum* Fluegge; update = *Paspalum notatum* Flüggé),
 - Giant bermudagrass: (*C. dactylon* (L.) Pers. var. *aridus* Harlan & de Wet; update = *C. dactylon* (L.) Pers. var. *aridus* J.R. Harlan & de Wet),
 - Big bluegrass (*P. secunda* J.S. Presl; update = *P. secunda* J. Presl.),

- Dallisgrass (*Paspalum dilatatum* Poir); update = (*Paspalum dilatatum* Poir.),
 - Dichondra (*Dichondra repens* Forst. & Forst. f.; update = *Dichondra repens* J.R. Forst. & G. Forst.),
 - Whitestem filaree (*Erodium moschatum* (L.) L'Her.; update = *Erodium moschatum* (L.) L'Hér.),
 - Hardinggrass (*Phalaris aquatica* (L.)); update = *Phalaris aquatica* L.
 - India mustard (*Brassica juncea* (L.) Czernj. & Coss; update = *Brassica juncea* (L.) Czern.),
 - Napiergrass (*Pennisetum purpureum* Schum.); update = *Cenchrus purpureus* (Schumach.) Morrone)
 - Pigeonpea (*Cajanus cajan* (L.) Millsp.; update = *Cajanus cajan* (L.) Huth),
 - Sesbania (*Sesbania exaltata* (Raf.) Rydb. Ex A.W. Hill; update = *Sesbania exaltata* (Raf.) Rydb.),
 - Beardless wheatgrass (*Pseudoroegneria spicata* (Pursh) A. Love; update = *Pseudoroegneria spicata* (Pursh) Á. Löve),
 - Tall wheatgrass (*Thinopyrum ponticum* (Podp.) Z. W. Liu & R. C. Wang; update = *Thinopyrum ponticum* (Podp.) Barkworth & D. R. Dewey),
 - Western wheatgrass (*Pascopyrum smithii* (Rydb.) A. Love; update = *Pascopyrum smithii* (Rydb.) Barkworth & D. R. Dewey)
- Correct alphabetizing for the following:
 - Broomcorn: Sorghum
 - Broom millet: Proso millet
 - Oatgrass, tall
 - Velvetbean

With the general amendment, as outlined above, several scientific names are updated, and several typographic errors, alphabetization errors and authority errors are corrected. These changes improve the quality and comprehensibility of Section 3899(a), but are non-substantive.

Economic Impact Analysis

All sellers of agricultural and vegetable seed are required to register with the department with an annual fee of forty dollars. Labelers pay an assessment based on their yearly sales. Based on feedback from the Industrial Hemp Advisory Board, the Department has estimated that approximately 250-300 prospective growers will register to grow hemp in the first year. The amount of companies interested in selling hemp seed and the size of the market is unknown.

Anticipated Benefits from This Regulatory Action

Including industrial hemp in the list of agricultural crops will ensure seed is properly identified and of the quality and amount specified on the label and ensure assessment of sales of such seed to cover the Department's costs to provide an orderly market place.

The general amendment changes improve the quality and comprehensibility of Section 3899, but they are non-substantive.

The Hemp Business Journal estimated industrial hemp-based product sales in the United States reached \$820 million in 2017 and are expected to reach \$1.9 billion by 2022. According to Vote Hemp, the United States has seen significant growth in acreage of industrial hemp cultivation: 9,770 acres of industrial were grown in 2016; 25,713 acres were grown in 2017; 78,176 acres were grown in 2018. This rapid increase may have resulted in seed sold that is not of the character represented to the buyer.

Assessment

Based upon the Economic Impact Analysis, the Department has made an assessment that the proposed regulation would not likely eliminate jobs or existing businesses within California. The Department has made an assessment that the proposed regulation would not likely substantially impact the creation of new jobs or businesses, nor affect the expansion of businesses currently doing business within California.

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.

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

The proposed regulation change will add industrial hemp to the list of agricultural crops. The cost of forty dollars a year to register as a seed seller is reasonable. The seed assessment for seed labelers is reasonable to cover the cost of seed enforcement, and is the same for all agricultural and vegetable seed crops.. The agency is not aware of any additional cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Although it is unknown if the change in the regulation would result in the creation of new jobs or businesses, it is anticipated that the regulation may affect the creation of jobs and businesses but not the elimination of jobs and businesses within California.

The Department of Food and Agriculture has determined that the amendment of Section 3899(a) has 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 proposed action.

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

- The registration fee is required of other sellers of agricultural seed in California.
- The assessment fees will be used for enforcement of the seed law which assists both buyers and sellers.

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 taking no action. If no action is taken, the uncertainty as to whether the provisions of the California Seed Law and regulations apply to industrial hemp seeds sold and shipped in California, including registration to sell, labeling requirements, seed dispute investigation and mediation will continue. The alternative was rejected because it would not preserve the orderly marketing of seed in California.

Information Relied Upon

The Department is relying upon the following studies, reports, and documents in proposing the amendment of Section 3899(a):

2017 US Hemp Crop Report, Vote Hemp, June 5, 2018

2018 US Hemp Crop Report, Vote Hemp, January 28, 2019

Calflora: Information on California plants for education, research and conservation, with data contributed by public and private institutions and individuals, including the Consortium of California Herbaria. [web application]. 2019. Berkeley, California: The Calflora Database [a non-profit organization]. Available: <https://www.calflora.org/> (Accessed: Aug 23, 2019).

Darbyshire, S. J. & L. E. Pavlick 2007. *Festuca*. In: Flora of North America Editorial Committee, eds. 1993+. Flora of North America North of Mexico. 20+ vols. New York and Oxford. Vol. 4, p. 415.

Federal Register / Vol. 84, No. 211 / Thursday, October 31, 2019 / Rules and Regulations 84 FR 58522 - Establishment of a Domestic Hemp Production Program

Hemp as an Agricultural Commodity, Congressional Research Service, June 22, 2018
"2017 Annual Retail Sales for Hemp Products Estimated at \$820 Million," Vote Hemp press release, June 28, 2018

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