

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 adopt Section 3899 in the regulations in Title 3 of the California Code of Regulations pertaining to the Schedule of Agricultural Seeds.

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 regulation to the Department. Comments may be submitted by USPS, FAX or email. The written comment period closes on February 17, 2020. The Department will consider only comments received at the Department offices by that time or postmarked no later than February 17, 2020. Submit comments to:

Dean Kelch, Environmental Program Manager
California Department of Food and Agriculture
Plant Health and Pest Prevention Services
2800 Gateway Oaks Drive, Suite #200
Sacramento, CA 95833
Dean.Kelch@cdfa.ca.gov
916.403.6650
916.651.2900 (FAX)

Unless there are substantial changes to the proposed regulation 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.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

The purpose of this amendment is to update the Section 3899 to add Industrial Hemp, update various seed scientific and common names to match current nomenclature, and fix alphabetical errors in the list. By harmonizing this regulation with the industry standard, the Department avoids ambiguity and ensure compatibility with standards followed by other states.

The proposed amendment of Section 3899 will include industrial hemp as an agricultural crop in the list of plants and crops grown in California, and ensure that industrial hemp seed that is 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 Department considered any other possible related regulations in this area, and finds that these are the only regulations dealing in this subject area, and the only State agency which 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

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.

According to Vote Hemp, the United States has seen significant growth in acreage of industrial hemp cultivation: 9,770 acres of industrial hemp 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 of a character not represented to the buyer.

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

ADOPTED TEXT

The adoption of this proposed regulation will add industrial hemp (*Cannabis sativa* (L.) and its synonym "Hemp" to section 3899(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), and include a reference to the definition of industrial hemp at the end of section 3899(a).

The adoption of this proposed regulation will also make the following updates to scientific names where necessary to match current accepted nomenclature.

Update scientific names where necessary to match current accepted nomenclature:

Change to 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 citations 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

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: None

Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: 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 impacts on a representative private person or business: All sellers of agricultural and vegetable seed are required to register with the department with an annual fee of forty dollars.

Small Business Determination: The proposed regulation may affect small business that sell industrial hemp seed. They will be required to pay an annual fee of forty dollars.

Other nondiscretionary cost or savings imposed on local agencies: None.

Significant effect on housing costs: None.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Department has made an assessment that the proposed regulation likely would not eliminate jobs or existing businesses within California. The Department has made an assessment that the proposed regulation likely would promote the creation of new jobs and businesses and affect the expansion of businesses currently doing business within California. By including industrial hemp on the schedule of agricultural seeds, hemp can be registered by seed sellers in the state of California, allowing them to expand and grow their business.

ALTERNATIVES CONSIDERED

The Department must determine that no reasonable alternative 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. If no action is taken industrial hemp would not be included on the seeds for planting list and seed sellers would not be able to register.

AUTHORITY

The Department proposes to amend Section 3899 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 to is:

Dean Kelch, Environmental Program Manager
California Department of Food and Agriculture
Plant Health and Pest Prevention Services
2800 Gateway Oaks Drive, Suite #200
Sacramento, CA 95833
Dean.Kelch@cdfa.ca.gov
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916.651.2900 (FAX)

In his absence, you may contact Rachel Avila at (916) 403-6813. Questions regarding the substance of the proposed regulation should be directed to Rachel Avila.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website (www.cdfa.ca.gov/regulations.html).

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.