

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 sections 3854 and 3835 in the regulations in Title 3 of the California Code of Regulations (CCR) pertaining to Noxious Weed Seed.

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 May 22, 2017. The Department will consider only comments received at the Department offices by that time. Submit comments to:

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)

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 CCR sections 3854 and 3855 is to list noxious weed seeds that have been categorized as prohibited and restricted, respectively, as defined in the Food and Agriculture Code (FAC) sections 52257 and 52258. The list 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(d).

The Department wishes to categorize 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 addition of additional prohibited weed seeds to the list in CCR 3854 and the addition of many restricted weed seeds to the list in CCR Section 3855. It will also harmonize seed regulation with the regulation of noxious weeds.

The Department considered any other possible related regulations in this area, and we find 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

To protect our environment, noxious weeds are prohibited from sale at nurseries. These amendments will enhance our ability to protect California agriculture and environment by having agricultural seed for planting meeting the requirements of these proposed amended regulations.

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. It 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

The amendment of this proposed regulation will establish plants listed as California noxious weeds as either restricted or prohibited under seed regulation.

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 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.

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 may affect 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 to 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. If no action is taken, then the application of regulation of commercial seed would continue to be inconsistent with noxious weed law and certain noxious weed seed would continue to be allowed entry in commercial seed.

AUTHORITY

The Department proposes to adopt sections 3854 and 3855 pursuant to the authority vested by sections 407 and 52452(d) of the Food and Agricultural Code of California.

REFERENCE

The Department proposes this action to implement, interpret and make specific sections 52452, 52256, 52257, and 52258 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
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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.