

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED AMENDMENT OF THE REGULATIONS
Title 3, California Code of Regulations
Sections 3854 and 3855
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 authority of the Secretary to adopt, by regulation, lists of prohibited and restricted noxious weed seeds for purposes of labeling planting seeds under the requirements of the California Seed Regulation.

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.

Specific Purpose and Factual Basis

Section 5004 of the Food and Agricultural Code (FAC) provides regulatory authority for the Secretary to designate species of plants as noxious when they are liable to be troublesome, aggressive, intrusive, detrimental, or destructive to agriculture, silviculture, or important native species, and difficult to control or eradicate.

Section 52332 (c) of the Food and Agricultural Code provides authority for the Secretary to adopt by regulation a list of noxious weed seeds that the Secretary finds are prohibited noxious weed seed.

Section 52332 (d) of the Food and Agricultural Code provides authority for the Secretary to adopt by regulation a list of those noxious weed seeds that are not classified as prohibited noxious weed seed and are classified as restricted noxious weed seed for purposes of labeling agricultural seeds for sale in California.

FAC Section 52258 defines “restricted weed seed “ to mean the seed or propagule of any species of noxious weed, the seed of which is not otherwise designated as prohibited noxious weed, and which the director, as provided in Section 52332, finds and declares to be a restricted noxious weed seed.

The specific purpose of California Code of Regulations (CCR) Section 3855 is to list noxious weed seeds that have been categorized as restricted. 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(a)(4).

Pursuant to FAC Section 5004, the Department maintains a list of noxious plant species in section 4500 of the California Code of Regulations. The list of species in CCR Section 4500 has grown in recent years, but seeds of the new plant species listed have not been categorized as restricted or prohibited pursuant to FAC 52332 (c) and (d) for the purpose of labeling agricultural seeds.

The Department wishes to categorize seeds of all plant species listed in CCR Section 4500 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 Section 3854 and the addition of many restricted weed seeds to the list in CCR Section 3855. The Department recognizes the problem of maintaining a list of noxious plant species in CCR Section 4500 and separate lists of restricted or prohibited weed seeds in CCR sections 3855 and 3854.

As it is more efficient to change one list (i.e. CCR Section 4500) rather than two lists (i.e. CCR Section 4500 and CCR Section 3855) each time a new noxious plant species is added to CCR Section 4500, the Department would like to remove the list of restricted weed seeds in CCR Section 3855 from the seed law. It is proposed that instead of listing restricted weed seeds in CCR Section 3855, a reference be added to redirect readers to the greater list of noxious plant species located at CCR Section 4500. Such a reference should state:

“Unless listed in CCR Section 3854 as a prohibited weed seed, all seeds from plant species listed in CCR Section 4500 are considered to be restricted weeds seeds for purposes of labeling seed containers offered for sale, planting or distribution in California.”

Pursuant to the same purpose of consolidating lists and designating noxious weed seeds as prohibited or restricted, the following species have completed the regulatory process to be added to the list of noxious plant species and should be added to the current list of nineteen prohibited weed seeds in CCR Section 3854. Superseded names appear in strikethrough and the new best names are added in bold:

Acaena anserinifolia (bronze piri-piri-bur)

Acaena novae-zelandiae (biddy biddy)

Acaena pallida (pale biddy biddy)

Achnatherum brachychaetum (punagrass)

Aegilops cylindrica (jointed goatgrass)

Aegilops geniculata (ovate goatgrass)

Aeschynomene spp. (jointvetch)

~~*Alhagi pseudalhagi* (camelthorn)~~

***Alhagi maurorum* (camelthorn)**

Alternanthera sessilis (sessile joyweed)

Arctotheca calendula (capeweed)

Atriplex amnicola (river saltbush)

~~*Cardaria chalepensis* (lens-podded hoary cress)~~

~~*Cardaria draba* (heart-podded hoary cress)~~

~~*Cardaria pubescens* (globe-podded hoary cress)~~

Carduus acanthoides (plumeless thistle)

Carduus crispus (welted thistle)

Carduus nutans (musk thistle)

Carthamus leucocaulos (whitestem distaff thistle)

Cenchrus echinatus (southern sandbur)

Cenchrus incertus (coast sandbur)

Cenchrus longispinus (mat sandbur)

Centaurea diffusa (diffuse knapweed)

Centaurea iberica (Iberian starthistle)

~~*Centaurea maculosa* (spotted knapweed)~~

Centaurea jacea incl *C. pratensis* (meadow knapweed)

~~*Centaurea repens* (Russian knapweed)~~

***Centaurea stoebe* (spotted knapweed)**

Centaurea sulphurea (Sicilian thistle)

Centaurea virgata (squarrose knapweed)

Cirsium arvense (Canada thistle)

Cirsium undulatum (wavyleaf thistle)

Crupina vulgaris (bearded creeper)

Cucumis melo var. *dudaim* (dudaim melon)

~~*Euphorbia esula* (leafy spurge)~~

***Euphorbia virgata* (leafy spurge)**

Euphorbia terracina (carnation spurge)

Galega officinalis (goat's rue)

Halimodendron halodendron (Russian salt tree)

Halogeton glomeratus (halogeton)

Helianthus ciliaris (blueweed)

Isatis tinctoria (dyer's woad)

***Lepidium appelianum* (lens-podded hoary cress)**

***Lepidium chalepense* (heart-podded hoary cress)**

***Lepidium draba* (globe-podded hoary cress)**

Lepidium latifolium (perennial pepperweed)

Ludwigia decurrens (winged water-primrose)

Ludwigia grandiflora ssp. *hexapetala* (Uruguayan water-primrose)

Ononis alopecuroides (foxtail restharrow)

Onopordum spp. (onopordum thistles)

Orobanche ramosa (branched broomrape)

Parthenium hysterophorus (Santa Maria feverfew)

Rhagadiolus stellatus (star endive)

***Rhaponticum (Acroptilon) repens* (Russian knapweed)**

Rorippa austriaca (Austrian fieldcress)

Salsola damascena (Damascus saltwort)

Sesbania punicea (red rattlebox)

Solanum carolinense (Carolina horsenettle)

Solanum elaeagnifolium (white horsenettle)

Sonchus arvensis (perennial sowthistle)

Tribolium oblitterum (Cape grass)

Technical, Theoretical, and/or Empirical Study, Reports, or Documents

The Department relied on the recommendation of the Seed Advisory Board in proposing the amendment to this regulation. An excerpt from the minutes of the May 7, 2014 meeting of the California Seed Advisory Board is presented to document the seed industry's support for the proposed change.

Agenda Item 7) Summary of recent activities by the Seed Services Program

- Noxious Weeds Seeds Update

Heaton provided a summary (attachment 12) of recent efforts by the Department to initiate a regulatory change about noxious weeds in the quarantine law and prohibited and restricted weed seeds in the seed law.

He briefly explained that all plant species designated as noxious weeds by the Secretary must be further categorized as either prohibited or restricted seeds when they occur incidentally in planting seed. He emphasized that the regulatory change is important because it remedies a liability the Department can face if officials enforcing the seed law clear a seed lot with noxious weed seeds but officials enforcing the quarantine law later seize or abate the seed lot for presence of noxious weed seeds.

The regulatory change will update the present list of noxious weeds to 181 species. Sixty six of the species will be categorized as prohibited weed seeds in the seed law, while the remaining 115 will be listed as restricted weed seeds in the seed law.

Heaton reviewed the analysis he performed to determine how the regulatory change might affect seed labelers. He did not believe the proposed changes will cause significant cost increases to labelers or result in more enforcements.

Member Kelly Keithly motioned for the Board to formalize their support of the proposed regulatory change concerning noxious weeds. Member Bob Prys seconded the motion. Motion carried.

Economic Impact Analysis

Department staff analyzed the potential for additional enforcements as a result of the proposed regulatory change. Out of 8,400 seed samples collected since 2003, only 35 seed samples (~0.4%) had restricted or prohibited weed seeds (33 restricted + 2 prohibited). Enforcement actions can range from relabeling the seed to disclose the presence of restricted weed seeds, to re-cleaning or destroying a seed lot, depending on the circumstances.

It is not possible to provide an estimate for the average value of a seed lot because the value and size of seed lots varies tremendously. The Department consulted with seed industry representatives about the potential economic impact of the proposed regulations (see attachment 12 from minutes of the Seed Advisory Meeting held May 5, 2014).

In short, the Seed Services Program, as well as representatives from the seed industry, do not believe the proposed regulatory changes will have any economic impact on seed labelers or consumers.

Anticipated Benefits

The proposed regulations may provide a reduction in potential liability for the Department by reducing the potential for conflicting enforcement actions concerning seeds of noxious weeds. In addition, the additional characterization of noxious weed seeds as restricted or prohibited may prevent the inadvertent introduction of invasive species that could potentially cost significant amount of money for control and eradication programs.

Results of the Economic Impact Assessment

Based upon the Economic Impact Analysis, 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; or 3) affect the expansion of businesses currently doing business within California.

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

Noxious weeds impact natural areas and rangelands by invading natural areas and excluding or out-competing native species. In some cases, noxious weeds directly impact sensitive species by competition or by altering the habitat in ways that harm resident sensitive species. Therefore, this revision would result in no negative impacts to the environment. It is possible that the proposed regulation will have a positive impact on the environment in California by resulting in fewer seeds of noxious weeds entering the state.

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 Department of Food and Agriculture has determined that the amendment of Sections 3854 and 3855 does not impose a mandate on local agencies or school districts. The Department also has determined that 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 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.

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:

Department staff demonstrated that, based on past seed enforcement, the addition of species to the prohibited and restricted seed lists would not result in a significant cost to seed labelers or consumers.

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.

No other alternatives were presented to or considered by the Department. The proposed change should reduce adverse impacts currently experienced by labelers of seed that try to understand the relationship between noxious weeds in CCR Section 4500 versus the prohibited and restricted noxious weeds in the seed law (CCR sections 3584 and 3855). The only other action would be no action and this would continue the conflict between weed seed regulation and the regulation of noxious weeds.

Information Relied Upon

The Department is relying upon the following documents in the proposed amendment of Sections 3854 and 3855.

Memorandum from John Heaton to Laura Petro dated September 18, 2015

Minutes, dated May 7, 2014, Seed Advisory Board.