

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 (Department) amended CCR Sections 4935, 4940, 4941, 4942, 4943, 4944, 4945, 4946, 4950, and 4950.1 in the regulations in Title 3 of the California Code of Regulations pertaining to establishment of sampling procedures for laboratory testing of Industrial Hemp as an emergency action, which was effective on June 10, 2019, and readopted on 3/24/2020. The Department proposes to continue the regulation, as amended, to complete the amendment process by submission of a Certificate of Compliance no later than June 22, 2020.

This notice is being provided to comply with Government Code Section 11346.4.

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 comments must be received by the board at its office by June 22, 2020. The Department will consider only comments received at the Department office by that time or postmarked no later than June 22, 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 regulations, the Department of Food and Agriculture may amend the proposal as set forth in this notice without further notice to the public.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

Existing law requires the Secretary to establish timeframes, procedures, methods, and confirmation for industrial hemp sampling laboratory testing, harvest, and destruction as required (Food and Agricultural Code (FAC) Section 81006(e)(3)).

The proposed amendment of CCR Sections 4935, 4940, 4941, 4942, 4943, 4944, 4945, 4946, 4950, and 4950.1 will establish timeframes, procedures, methods, and confirmation for industrial hemp sampling laboratory testing, harvest, and destruction as required in FAC Section 81006.

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 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

Establishment of timeframes, procedures, methods, and confirmation for industrial hemp sampling laboratory testing, harvest, and destruction will allow commercial cultivation of industrial hemp to be harvested in California and allow the growth of the industrial hemp industry in California. 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 and 78,176 acres were grown in 2018. Currently, most hemp products processed and manufactured in the United States heavily rely on imported material, according to the Congressional Research Service. Without this regulation, California citizens are unable to participate in this emerging industry.

Amended Text

This amended regulation action establishes timeframes, procedures, methods, and confirmation for industrial hemp sampling, laboratory testing, harvest, and destruction. For the purpose of promoting and protecting the agricultural industry in California, existing law provides that before the harvest of each crop, except when industrial hemp is grown by an established agricultural research institution, a registrant that grows industrial hemp shall obtain a laboratory test report indicating the THC levels of a random sampling of the industrial hemp grown.

Disclosures Regarding the Proposed Action

The Department has made the following initial determinations:

Mandate on local agencies or school districts: None.

Non-discretionary costs or savings to local agencies or school districts: None.

Cost or savings to any state agency: The hourly rate of the state at an average of \$84.36. These costs will more than likely be offset by the revenue collected by the registrant over one year.

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: The proposed regulation will require the payment of testing for THC by industrial hemp growers, as required in statute. In cases in which the crop fails to meet the THC content ceiling for industrial hemp, there will be a cost of crop destruction and loss of crop. The cost to test as a grower, approximately \$63 a sample, is reasonable and should be exceeded by revenue collected by the grower or seed breeder over the registration period of one year. Any potential crop destruction and loss costs due to state and federal compliance could be recouped in the next growing season. 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.

Small Business Determination: The proposed regulation may affect small business.

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 would not likely eliminate jobs or existing businesses within California. The Department has made an assessment that the proposed regulation will allow the growth of the industrial hemp industry in California, with an increase in the number of businesses dedicated to producing hemp and the concomitant increase in jobs.

The proposed regulation will establish sampling procedures, testing laboratories, and testing methods for registered growers and seed breeders. Without sampling procedures, registered growers and seed breeders will not be able to obtain test results. This would limit the amount of domestic hemp available to producers and manufacturers and result in higher prices to California consumers due to California not contributing to the domestic hemp supply. The proposed regulation will also allow the growth of the industrial hemp industry in California. This will create jobs and lead to the expansion of California businesses.

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 then sampling procedures, testing laboratories, and testing methods for registered growers and seed breeders of industrial hemp would not be available; and this would encourage illegal

cultivation of this in demand crop. The Department and counties will not have the resources for regulatory enforcement activities to address illegal cultivation.

AUTHORITY

The Department proposes to amend CCR Section 4935, 4940, 4941, 4942, 4943, 4944, 4945, 4946, 4950, and 4950.1 pursuant to the authority vested by Sections 407, and 81006 of the Food and Agricultural Code of California.

REFERENCE

The Department proposes this action to implement, interpret and make specific Section 81006 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
916.403.6650
916.651.2900 (FAX)

In his absence, you may contact Karen Olmstead at (916) 403-6879 or karen.olmstead@cdfa.ca.gov. Questions regarding the substance of the proposed regulation should be directed to Karen Olmstead.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website (<https://www.cdfa.ca.gov/plant/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 amended by contacting the agency officer (contact) named herein.