

**State of California
Office of Administrative Law**

In re:
Department of Food and Agriculture

Regulatory Action:

Title 03, California Code of Regulations

Amend sections: 4940, 4944, 4946

**NOTICE OF APPROVAL OF CERTIFICATE OF
COMPLIANCE**

**Government Code Sections 11349.1 and
11349.6(d)**

OAL Matter Number: 2021-1118-01

**OAL Matter Type: Certificate of Compliance
(C)**

This certificate of compliance action by the Department of Food and Agriculture makes permanent emergency regulations that amend the harvest timeframe for industrial hemp from within 15 days after sampling to within 30 days and amend the timeframes for pre-harvest and laboratory testing notifications.

OAL approves this regulatory action pursuant to section 11349.6(d) of the Government Code.

Date: December 30, 2021



Nicole C. Carrillo
Attorney

**For: Kenneth J. Pogue
Director**

**Original: Karen Ross, Secretary
Copy: Rachel Avila**

NOTICE PUBLICATION/REGULATION SUBMISSION

CERT

STD. 400 (REV. 10/2019)

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2021-1118-01C	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

DEC 30 2021,
1:26 PM

OFFICE OF ADMIN. LAW
2021 NOV 18 PM2:11

NOTICE	REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY
Department of Food and Agriculture

AGENCY FILE NUMBER (If any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY		ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Industrial Hemp Harvesting		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2021-0330-04E,
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SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 4940, 4944, 4946
	REPEAL 3

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input checked="" type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify) _____		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) Effective on filing with Secretary of State \$100 Changes Without Regulatory Effect Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) (SAM §6660) Fair Political Practices Commission State Fire Marshal

Other (Specify) _____

7. CONTACT PERSON Rachel Avila	TELEPHONE NUMBER 916-698-2947	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) rachel.avila@cdfa.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE Mark A. McLoughlin <small>Digitally signed by Mark A. McLoughlin Date: 2021.11.18 10:11:07 -0800</small>	DATE 11/18/21
TYPED NAME AND TITLE OF SIGNATORY Mark A. McLoughlin, Director, Plant Health and Pest Prevention Services	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

DEC 30 2021

Office of Administrative Law

In Title 3, California Code of Regulations, Division 4, Chapter 8, Article 2, amend:

§ 4940 Sampling Timeframe and Pre-Harvest Notification for Industrial Hemp

(a) Sampling Timeframe.

- (1) Samples shall be collected no more than 11 calendar days prior to the anticipated harvest start date listed on the pre-harvest report.
- (2) Any changes to the harvest date that result in harvest activities to occur more than 30 calendar days after the sample collection date shall require additional sampling for THC concentration prior to harvest.

(b) Sampling Request and Pre-Harvest Report.

- (1) In order to request sampling, registrants shall submit a signed pre-harvest report to the commissioner at least 30 calendar days before the anticipated harvest start date to initiate the sampling process.
- (2) A separate pre-harvest report shall be completed for each planting to be harvested. The pre-harvest report shall include the:
 - (A) registrant's registration number,
 - (B) name and contact information of the registrant,
 - (C) anticipated harvest start date,
 - (D) name(s) of the cultivar(s) to be harvested,
 - (E) physical address, Global Positioning System coordinates, general description of the planting location, and total acreage or square footage of the planting to be harvested, and
 - (F) name and contact information of the laboratory to conduct the testing for THC concentration.
- (3) The pre-harvest report shall be accompanied by a sample analysis request form for each composite sample to be taken. The sample analysis request form shall be used to record the:
 - (A) name, contact information, and signature of the sample analysis requester,
 - (B) registration number,
 - (C) name and contact information of the commissioner,
 - (D) physical address, general description of the planting location, and total acreage or square footage of the planting sampled,
 - (E) lot identification number as provided by U.S. Department of Agriculture Farm Service Agency,
 - (F) name of the cultivar sampled,
 - (G) description of the planting to be sampled including estimated average height, appearance, approximate density, homogeneity, condition of the plants, and degree of maturity of flowering material,
 - (H) unique sample identification number for the composite sample,
 - (I) number of the samples taken,
 - (J) date and time of the sample collection,
 - (K) name and signature of the sampler,
 - (L) name and contact information of the approved laboratory conducting the THC testing,
 - (M) name and signature of the person testing the sample,
 - (N) date and time of the sample testing,
 - (O) testing instrumentation used to analyze the sample for THC concentration,

- (P) laboratory determination of THC concentration in accordance with Section 4942(c) and limit of detection (LOD), and
- (Q) chain of custody information including the name and signature of the person who received and delivered the sample, and the date, time, and location of each possession or transfer of the sample.
- (4) The Department shall make a template of a pre-harvest report and sample analysis request form available on the Department's website.
- (5) The sampler, as described in Section 4941(a)(1), shall schedule a sampling date.
- (6) Registrants shall notify the commissioner of any changes to the above information no less than two calendar days prior to the scheduled sampling date.

Note: Authority cited: Sections 407 and 81006, Food and Agricultural Code Reference: Section 81006, Food and Agricultural Code

§ 4944 Notification of Laboratory Test Report

- (a) Laboratories shall issue a separate laboratory test report for each composite sample.
- (b) The laboratory test report shall include the:
 - (1) registration number,
 - (2) unique sample identification number as assigned on the sample analysis request form,
 - (3) name and contact information of the registrant,
 - (4) name of the sampler,
 - (5) dates and times of the sample collection, testing, and test report,
 - (6) name of the cultivar tested,
 - (7) physical address, Global Positioning System coordinates, general description of the planting location, and total acreage or square footage of the planting sampled,
 - (8) name and contact information of the laboratory,
 - (9) name of approved analytical instrumentation used and the limit of detection (LOD),
 - (10) name of the person who received the sample,
 - (11) name of the person who tested the sample
 - (12) DEA registration number of the laboratory, if applicable,
 - (13) identification of a retest, if applicable,
 - (14) percentage concentration of THC in accordance with Section 4942,
 - (15) measurement of uncertainty as a \pm percentage value to the nearest thousandth, or three decimal places, at 95% confidence level,
 - (16) the words "OFFICIAL CALIFORNIA REGULATORY SAMPLE",
 - (17) and words "PASSED AS CALIFORNIA INDUSTRIAL HEMP" or "FAILED AS CALIFORNIA INDUSTRIAL HEMP" at or near the top of page.
 - (A) If the laboratory test report indicates a percentage concentration of THC that is within the acceptable hemp THC level, the words "PASSED AS CALIFORNIA INDUSTRIAL HEMP" shall appear.
 - (B) If the laboratory test report indicates a percentage concentration of THC that is greater than the acceptable hemp THC level, the words "FAILED AS CALIFORNIA INDUSTRIAL HEMP" shall appear.
- (c) Laboratories shall provide an electronic copy of the laboratory test report to the registrant and commissioner concurrently within 10 calendar days of the collection of samples.
- (d) Following the electronic notification of the laboratory test report, the laboratory shall:

- (1) report the test results for all samples tested to USDA.
 - (2) provide the registrant no fewer than ten original paper copies with wet signatures of a passing laboratory test report, signed by an employee authorized to sign by the laboratory.
 - (3) provide the registrant one or more paper copies of a failed laboratory test report, signed by an employee authorized to sign by the laboratory.
- (e) Upon request from the commissioner, the laboratory shall provide a copy of the completed sample analysis request form.
- (f) The laboratory shall retain one or more original copies of each laboratory test report and the completed sample analysis request form for a minimum of three years from the date of sampling.

Note: Authority cited: Sections 407 and 81006, Food and Agricultural Code Reference: Section 81006, Food and Agricultural Code

§ 4946 Final Disposition for Registered Industrial Hemp Crops

- (a) Registrants may harvest the sampled crop upon receipt of an electronic copy of a passing laboratory test report.
- (1) Registrants shall submit a harvest report to the commissioner within 72 hours following the completion of the harvest. The harvest report shall include the:
 - (A) registration number,
 - (B) name and contact information of the registrant,
 - (C) harvest timeframe including start and end dates,
 - (D) name(s) of the cultivar(s),
 - (E) unique sample identification number(s) as assigned on the sample analysis request form and the percentage concentration of THC for each cultivar as reported on the laboratory test report,
 - (F) physical address, Global Positioning System coordinates, general description of the planting location, and total acreage or square footage of the harvested planting, and
 - (G) description and quantity of the material harvested.
 - (2) The Department shall make a template of a harvest report form available on the Department's website.
 - (3) Harvest shall be completed within 30 calendar days from the sampling date.

Note: Authority cited: Sections 407 and 81006, Food and Agricultural Code Reference: Section 81006, Food and Agricultural Code