

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations
Sections 4890

INITIAL STATEMENT OF REASONS/
POLICY STATEMENT OVERVIEW

The California Department of Food and Agriculture (Department) proposes to amend of Title 3 of the California Code of Regulations (CCR) Section 4890 to expand the definition of the word harvest.

Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address

The Industrial Hemp Advisory Board (IHAB) advises the Secretary and makes recommendations on all matters pertaining to Division 24 of the California Food and Agricultural Code (FAC), including, but not limited to, industrial hemp cultivation law and regulations, enforcement, annual budgets required to accomplish the purposes of this division, and the setting of an appropriate assessment rate necessary for the administration of this division. The IHAB has recommended an amendment to the definition of “harvest” that specifies which activities are to be defined as “harvest”, including exemptions.

Purpose and Factual Basis

Industrial hemp cultivation was federally authorized through the Federal Agricultural Act of 2014 (2014 Farm Bill) and the 2018 Farm Bill. The U.S. Domestic Hemp Production Program was established by the USDA through an interim final rule on October 31, 2019, and further amended through a final rule on January 19, 2021. The final rule took effect on March 22, 2021. Senate Bill 292 provided additional amendments to Division 24 of the

FAC to meet the requirements for state plan approval outlined in the federal final rule.

FAC 81001 created the IHAB, whose stated purpose is to represent and further the interest of the industrial hemp industry, and that the representation and furtherance is intended to serve the public interest. The IHAB reviews and makes recommendations on California's industrial hemp regulations. By a motion during the April 11, 2023 board meeting, the IHAB recommended a new definition of harvest

Project Description

CCR Section 4890 – Definitions

This section defines terms used throughout the industrial hemp regulations. The definition of harvest has been expanded.

“Harvest” means the collection of any portion of industrial hemp plant at the termination of the cultivation process for the purpose of processing, distribution, storage, or sale.

(A) “Harvest” does not include material removed from the plant for:

1. testing that is noticed to the commissioner and followed by documented destruction,
2. maintenance of stock,
3. male culling,
4. thinning, or
5. disposal.

The IHAB recommended this change to the definition of harvest with consideration of requirements from the federal final rule and the Department further refined these recommendations after consulting with the U.S. Domestic Hemp Production Program for any conflicts. There are multiple actions which involve removing material from a plant; this expanded definition clarifies that harvesting is only when material is removed at the

termination of the cultivation process for the purpose of processing, distribution, storage, or sale and outlines actions which are not considered harvesting. In order to harvest, the industrial hemp must be sampled and tested, which includes notifying the county agricultural commissioner, sampling from a sampling agent, and receiving a passing test report from an approved testing laboratory. A more detailed definition of “harvest” provides clarity on when the sampling and testing process must be initiated and clarifies that collection of plant material for the sampling and testing that is noticed to the commissioner and followed by documented destruction is not considered a harvest activity. Additionally, growers need to cull, thin, and dispose hemp plants to maintain a healthy field. Excluding such activities ensures that the harvesting requirements will not be initiated during these activities as the plant material will not enter the stream of commerce. This expanded definition allows the registrant to have a clearer picture of what action initiates the sampling and testing process.

Current Laws & Regulations

Existing law, FAC Section 407, provides that the Secretary may adopt such regulations as are reasonably necessary to carry out the provisions of this code which the Secretary is directed or authorized to administer or enforce.

Existing law, FAC 81003, provides that except for an established agricultural research institution subject to Section 81004.5 or a hemp breeder subject to Section 81004, and before cultivation, a grower of industrial hemp shall register with the commissioner of the county in which the grower intends to engage in industrial hemp cultivation.

Existing law, FAC 81004, provides that except when grown by an established agricultural research institution subject to Section 81004.5, and before cultivation, a hemp breeder shall register with the commissioner of the county in which the hemp breeder intends to engage in industrial hemp cultivation.

Existing law, FAC 81004.5, provides that before cultivating hemp for agricultural or academic research, an established agricultural research institution shall register with the commissioner of the county in which it intends to cultivate.

Existing law, FAC 81006, obligates the Secretary to adopt sampling procedures and approve laboratories and laboratory testing methods.

Existing law, FAC 81013, provides that any person convicted of a felony relating to a controlled substance under state or federal law before, on, or after January 1, 2020, shall be ineligible, during the 10-year period following the date of the conviction, to participate in the industrial hemp program.

As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of these regulations and has determined that it is not inconsistent or incompatible with existing state regulations.

Anticipated Benefits from This Regulatory Action

By proposing this definition expansion, the industrial hemp harvest requirements will be clearer to the public. With this regulation, the State of California will be able to continue to regulate a growing industry with high quality industrial hemp production.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that this regulation does not impose a mandate on local agencies or school districts.

Economic Impact Analysis (Government Code 11346.3(b))

A well regulated industrial hemp industry will benefit:

- the general public
- the agricultural industry
- the State's general fund

The Creation or Elimination of Jobs within the State

As the proposed modifications of the hemp regulations provide clarity to a preexisting program, the Department has determined that this regulatory proposal will not have an impact on the creation or elimination of jobs in the State of California.

The Creation or Elimination of Businesses in California

As the proposed modifications of the hemp regulations provide clarity to a preexisting program, the Department has determined that this regulatory proposal will not have an impact on the creation of new businesses in the State of California.

The Expansion of Businesses in California

As the proposed modifications of the hemp regulations provide clarity to a preexisting program, the Department has determined that this regulatory proposal will not have an impact on the expansion of businesses currently doing business in the State of California.

Worker Safety

This regulation is not expected to have any effect on worker safety.

Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that changes to Sections 4890 does not impose a mandate on local agencies or school districts. This amended regulation will not result in additional monetary tasks. Therefore, no reimbursement is required under Section 17561 of the Government Code.

The Department also has determined that 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 and no nondiscretionary costs or savings to local agencies or school districts, will result from the amendment of Section 4890.

There are 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 and no nondiscretionary costs or savings to local agencies or school districts anticipated from the amendment.

The Department has determined that the proposed actions will not have a significant adverse economic impact on housing costs or California business, including the ability of California businesses to compete with businesses in other states.

Potential Impact to Homeowners and Community Gardens

This regulation is not expected to have an effect on homeowners and community gardens.

Potential Impacts to General Fund and Welfare

The proposed amendment does not have immediate or definitive impact to the general fund or general welfare. Having a well-regulated industrial hemp industry will allow current businesses to continue operations.

As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of these regulations and has determined that it is not inconsistent or incompatible with existing state regulations.

Assessment

The Department has concluded that the Sections 4890 amendment (1) will have no impact on the creation or elimination of jobs in the State of California, (2) will have no impact on the creation or elimination of businesses within the State of California, (3) will have no impact on the expansion of businesses within the State of California, (4) will have no impact on the health and welfare of California residents, (5) will have no impact on the state's environment,

and (6) is not expected to benefit workers' safety.

Alternatives Considered

The Department has determined that no reasonable alternative has been identified and brought to the attention of the agency that would be more effective in carrying out the purpose for which the action is proposed, or is as effective and less burdensome to affected private persons than the proposed action, or is as cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department considered taking no action. If no action is taken, California would continue to have clarity issues surrounding the definition of the term "harvest." Clarity issues can harm a growing industry and consumers within and outside the state.

Information Relied Upon

The Department is relying upon the following reports, and documents in the amendment of Section 4890:

California Department of Food and Agriculture (CDFA) Minutes of the Industrial Hemp Advisory Board (IHAB) Meeting Held on Thursday, May 5, 2022

U.S. Domestic Hemp Production Program Final Rule, issued January 19, 2021, United States Department of Agriculture