

**State of California
Office of Administrative Law**

In re:
Department of Food and Agriculture

Regulatory Action:

Title 03, California Code of Regulations

Adopt sections:

Amend sections: 4890

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2024-0719-02

OAL Matter Type: Regular Resubmittal (SR)

This rulemaking action by the Department of Food and Agriculture amends the definition of "harvest" as it pertains to industrial hemp cultivation.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 8/29/2024.

Date: August 29, 2024



Kevin D. Hull
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Karen Ross, Secretary
Copy: Rachel Avila

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 10/2019)

RESUBMITTAL

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2024-0131-01	REGULATORY ACTION NUMBER 2024-0719-02	EMERGENCY NUMBER SR
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

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

AUG 29 2024
2:00 PM

OFFICE OF ADMIN. LAW
2024 JUL 19 PM 12:44

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 <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 Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE	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) Definitions, Industrial Hemp	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2024-0412-01S		
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT		
	AMEND 4890		
TITLE(S) 3	REPEAL		
3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <i>PER AGENCY REQUEST 8/25/24 KDH</i> <input 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"/> File & Print <input type="checkbox"/> Print Only <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <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) 6/17/2024-7/3/2024			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) <input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> §100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Rachel Avila	TELEPHONE NUMBER 916-698-2947	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)

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 Victoria Hornbaker <small>Digitally signed by Victoria Hornbaker Date: 2024.07.17 08:50:43 -0700</small>	DATE
TYPED NAME AND TITLE OF SIGNATORY Victoria Hornbaker, Director Plant Health & Pest Prevention Services Division	

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ENDORSED APPROVED

AUG 29 2024

Office of Administrative Law

Amend the following:

4890. Definitions

(a) For purposes of this chapter, the following definitions apply:

- (1) "Acceptable hemp THC level" means a THC concentration that falls within the distribution or range that includes three-tenths of one percent or less that is produced when the measurement of uncertainty is applied to the reported THC concentration. For example, if the reported THC concentration of a sample is 0.35% and the measurement of uncertainty is $\pm 0.06\%$, the measured THC concentration would range from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the acceptable hemp THC level.
- (2) "Cannabis" has the same meaning as defined in subdivision (e) of Section 26001 of the Business and Professions Code.
- (3) "Central cola" means a cut stem that could develop into a bud of the flowering top of the plant.
- (4) "Criminal history report" means the Federal Bureau of Investigation's Identity History Summary.
- (5) "Cultivar" means a cultivated variety of industrial hemp.
- (6) "Cultivation" means the planting, growing, irrigation, or harvesting of an industrial hemp plant or crop.
- (7) "Cultivation site" means contiguous land area on which the applicant plans to engage in industrial hemp cultivation, storage, or both.
- (8) "Cultivator" means a person, or institution planting, cultivating, growing, irrigating, or harvesting industrial hemp plants or crop.
- (9) "Destroy" or "dispose" means an activity that transitions the product into a non-retrievable or non-ingestible form. Such activities include plowing, tilling, or disking plant material into the soil; mulching, composting, chopping, or bush mowing plant material into green manure; burning plant material; burying plant material into the earth and covering with soil.
- (10) "Disqualifying conviction" means any plea of guilty or nolo contendere, or any finding of guilt for a State or Federal felony related to a controlled substance, except:

- (A) when the finding of guilt is subsequently overturned on appeal, pardoned, or expunged, or
 - (B) where an individual is allowed to withdraw an original plea of guilty or nolo contendere and enter a plea of not guilty and the case is subsequently dismissed.
- (11) "Established agricultural research institution" means an institution of higher education, as defined in Section 101 of the federal Higher Education Act of 1965 (20 U.S.C. Sec. 1001), that grows, cultivates, or manufactures industrial hemp for purposes of agricultural or academic research. If the hemp to be registered is owned, or the cultivated land is owned or leased, by a party other than an established agriculture institution, then the applicant shall register as a grower.
- (12) "Gross negligence" is defined as a lack of care that demonstrates reckless disregard for the safety or lives of others, which is so great it appears to be a conscious violation of other people's rights to safety.
- (13) "Grower" means a person that is registered with the commissioner to cultivate hemp.
- (14) "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. sampling that is noticed to the commissioner for nutrition, diseases or pests
 - 2. maintenance of stock,
 - 3. male culling,
 - 4. thinning, or
 - 5. disposal.
- (15) "Hemp breeder" means a person that is registered with the commissioner to develop cultivars intended for sale or research.
- (16) "Industrial hemp" or "hemp" means an agricultural product, whether growing or not, that is limited to types of the plant *Cannabis sativa L.* and any part of that plant, including the seeds of the plant and all derivatives, extracts, the resin extracted from any part of the plant, cannabinoids, isomers, acids, salts, and salts of isomers, with a total delta-9 tetrahydrocannabinol concentration of no more than 0.3 percent on a dry weight basis.
- (17) "Industrial hemp nursery stock" means any industrial hemp plant or any part of an industrial hemp plant for planting or propagation.

- (18) "Key participants" includes the registrant and means any person in the entity producing industrial hemp who is:
- (A) a sole proprietor, a partner in partnership, or a person with executive managerial control in a corporation producing industrial hemp, or
 - (B) a person with executive managerial control over the entity producing industrial hemp, including persons such as a chief executive officer, chief operating officer and chief financial officer.
 - (C) This definition does not include a person in a management position with no executive managerial control over the entity producing industrial hemp, such as farm, field, or shift managers.
 - (D) For established agricultural research institutions, this definition does not include a person that is a member of the leadership of the established agricultural research institution unless the member of the leadership exercises executive managerial control over the hemp production.
- (19) "Measurement of uncertainty" means the parameter associated with the result of a measurement that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.
- (20) "Person" means any individual, partnership, association, corporation, limited liability company, or any organized group of persons whether incorporated or not.
- (21) "Premises" has the same meaning as defined in subdivision (aq) of Section 26001 of the Business and Professions Code.
- (22) "Recklessness" is defined as a lack of regard for the danger or consequences of one's actions.
- (23) "Registration class" means the status of a registration as either a grower, hemp breeder, or established agricultural research institution.
- (24) "Research plan" means a strategy devised by an established agricultural research institution, or applicant established agricultural research institution, detailing its approach to growing or cultivating hemp for academic or agricultural research. Agricultural and academic purposes do not include proprietary development.
- (25) "THC concentration" or "percentage concentration of THC" or "Total THC" means the post-decarboxylated value of the percentage of delta-9 THC content derived from the sum of THC and THCA (Tetrahydrocannabinolic acid) content and reported on a dry weight basis to the nearest thousandth, or three decimal places. The percentage concentration of THC may be measured by using either:

- (A) a suitable analytical instrumentation described in Section 4942(b) that results in the decarboxylation of THC-acid to delta-9 THC, or
 - (B) a calculated value using a conversion formula of the percentage concentration of delta-9 THC plus eighty-seven and seven tenths (87.7) percent of the percentage concentration of THC-acid when a suitable analytical instrumentation described in Section 4942(b) does not result in the decarboxylation of THC-acid to delta-9 THC.
- (26) "Tissue culture" means in vitro material introduced into culture from nodal cuttings at a particular time and from a single plant and grown in aseptic conditions to be used as a source of propagative plant material.
- (27) "Valid registration" means the registration is unexpired, unsuspended, and unrevoked.
- (28) "Variety development plan" means a strategy devised by a hemp breeder, or applicant hemp breeder, detailing their approach to growing and developing a new cultivar for industrial hemp.

Note: Authority cited: Sections 407, 81003, 81004, 81004.5, 81006, and 81013, Food and Agricultural Code.
Reference: Sections 81000, 81003, 81004, 81004.5, 81006, and 81013, Food and Agricultural Code.