

DEPARTMENT OF FOOD AND AGRICULTURE

Title 3 of the California Code of Regulations Sections 4890, 4900, 4901, 4902, 4930, 4934, 4935, 4936, 4940, 4941, 4942, 4943, 4944, 4946, 4950, 4950.1, 4951, and 4952

**Notice of Proposed Rulemaking  
45 – Day Notice**

The Department of Food and Agriculture (Department) proposes to make permanent emergency rulemaking approved on July 11, 2022, for Title 3 California Code of Regulations (CCR) Sections 4890, 4900, 4901, 4902, 4930, 4934, 4935, 4936, 4940, 4941, 4942, 4943, 4944, 4946, 4950, 4950.1, 4951, and 4952, pertaining to the Industrial Hemp.

**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 regulations to the Department. Comments may be submitted by USPS, FAX or email. The written comment period closes on December 19, 2022. The Department will consider only comments received at the Department offices by that date or postmarked no later than December 19, 2022. Submit comments to:

Erin Lovig, Senior Environmental Scientist Supervisor  
California Department of Food and Agriculture Plant Health and  
Pest Prevention Services  
1220 N St,  
Sacramento, CA 95814  
[Erin.Lovig@cdfa.ca.gov](mailto:Erin.Lovig@cdfa.ca.gov)  
916.403.6650

Questions regarding the substance of the proposed regulation should be directed to Erin Lovig. In her absence, you may contact Rachel Avila at (916) 698-2947 or [rachel.avila@cdfa.ca.gov](mailto:rachel.avila@cdfa.ca.gov).

Unless there are substantial changes to the proposed regulations prior to adoption, the Department of Food and Agriculture may adopt the proposal as set forth in this notice without further notice to the public. Following the public hearing, if one is requested, or following the written comment period if none is requested, the Department, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

## **AUTHORITY**

The Department proposes to make permanent Sections 4890, 4900, 4901, 4902, 4930, 4934, 4935, 4936, 4940, 4941, 4942, 4943, 4944, 4946, 4950, 4950.1, 4951, and 4952, pursuant to the authority vested by Sections 407 and 5322 of the Food and Agricultural Code.

## **REFERENCE**

The Department proposes this action to implement, interpret and make specific Sections 407, 81003, 81004, 81004.5, 81006, and 81013 of the Food and Agricultural Code.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The purpose of CCR Sections 4890, 4900, 4901, 4902, 4930, 4934, 4935, 4936, 4940, 4941, 4942, 4943, 4944, 4946, 4950, 4950.1, 4951, and 4952 is to comply with the California State Regulatory Plan for Hemp Production, the USDA, and the approved state regulatory plan adopted by the Department for compliance with the USDA final federal rule on industrial hemp production. On September 18, 2020, the Department submitted the California State Regulatory Plan for Hemp Production to the USDA in accordance with the interim final rule, which was adopted by the USDA to implement the Agriculture Improvement Act of 2018. On January 19, 2021, the USDA published the final federal rule, Document number AMS-SC-19-0042, SC19-990-2 FR, Establishment of a Domestic Hemp Program.

Senate Bill (SB) 292 was approved by the Governor on October 4, 2021 and took effect on January 1, 2022. SB 292 amends existing law regarding hemp production reporting to the Farm Service Agency of the United States Department of Agriculture (USDA FSA) for registered established agricultural research institutions, hemp breeders, and growers of industrial hemp and made other minor changes to meet the requirements outlined in 2018 Farm Bill and the federal final rule.

The Department revised its proposed state regulatory plan based on the federal final rule and submitted it to the USDA for review and approval on December 20, 2021. The USDA approved the state regulatory plan, effective January 1, 2022. To stay in compliance with the federal final rule, these regulations were implemented as emergencies on July 11, 2022. The Department is now making these regulations permanent.

## **EXISTING 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 that the Secretary is directed or authorized to administer or enforce.

Existing law 81004.5(h), as amended by SB 153, requires that before the cultivation, growers of industrial hemp, hemp breeders, and established agricultural research

institutions shall register with the commissioner of the county in which the cultivator intends to engage in hemp cultivation (FAC Sections 81003(a)(1), 81004(a)(1), and 81004.5(a)(1)). However, the registration requirement for established agricultural research institutions is not operative until California's state regulatory plan is approved.

Existing law 81003(b), 81004(b) and 81004.5(b), as amended by SB 153, requires the county agricultural commissioners to determine that the requirements for registration pursuant to FAC Division 24 are met and that the applicant is eligible to participate in the industrial hemp program before issuing registration to the applicant.

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

Existing law 81013, as amended by SB 153, restricts any person convicted of a felony related to a controlled substance under state or federal law before, on, or after January 1, 2020 from participating in the industrial hemp program for 10 years from the date of the conviction.

### **ANTICIPATED BENEFITS OF THE PROPOSED AMENDMENT**

By proposing state regulations for industrial hemp cultivation that are in compliance with the federal final rule, the industrial hemp industry can continue to grow. With this regulation, the State of California will be able to continue to regulate a growing industry with high quality industrial hemp production.

There is no existing, comparable federal regulations or statute regulating industrial hemp.

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

### **EVALUATION OF INCONSISTENCY / INCOMPATIBILITY WITH EXISTING STATE REGULATIONS**

The Department considered any other possible regulations addressing industrial hemp, and it found that these are the proposed amendments are the only regulations dealing with this subject. As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of Sections 4890, 4900, 4901, 4902, 4930, 4934, 4935, 4936, 4940, 4941, 4942, 4943, 4944, 4946, 4950, 4950.1, 4951, and 4952 and has determined that it is not inconsistent or incompatible with existing state regulations.

## **DISCLOSURES REGARDING THE PROPOSED ACTION**

*The Department has made the following initial determinations:*

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: No reimbursement is required under Section 17561 of the Government Code because each county agricultural commissioner currently is reimbursed through CCR Section 4900, Industrial Hemp Registration Fees, and FAC Section 81005. There is a memorandum of understanding between the Department and California Agricultural Commissioners and Sealers Association (CACASA), the respective organization of the county agricultural commissioners. The MOU sets forth enforcement responsibilities for Division 24 among the Department and county agricultural commissioners. The MOU is intended to facilitate uniformity among county systems of enforcement, and between counties and the Department.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None and no nondiscretionary costs or savings to local agencies or school districts.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative private person or business: 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. Without the amendment and adoption of Sections 4890, 4900, 4901, 4902, 4930, 4934, 4935, 4936, 4940, 4941, 4942, 4943, 4944, 4946, 4950, 4950.1, 4951, and 4952 current representative private person or business would not be able to continue operations.

Significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states: The action will not have a significant statewide adverse economic impact on business as the amendment and adoption of Sections 4890, 4900, 4901, 4902, 4930, 4934, 4935, 4936, 4940, 4941, 4942, 4943, 4944, 4946, 4950, 4950.1, 4951, and 4952 will allow industrial hemp cultivators to continue growing their crops with regulations that are harmonized with the USDA federal final rule, which is required to allow the industry to continue operations.

Significant effect on housing costs: The Department has determined that the proposed actions will not have a significant adverse economic impact on housing costs.

Small business determination: The Department's determination that the action will not have a significant statewide adverse economic impact on small business as amendment and adoption of Sections 4890, 4900, 4901, 4902, 4930, 4934, 4935, 4936, 4940, 4941, 4942, 4943, 4944, 4946, 4950, 4950.1, 4951, and 4952 will allow industrial hemp cultivators to continue growing their crops with regulations that are harmonized with the USDA federal final rule, which requires the industry to comply with state and federal law regarding hemp cultivation. This will allow these business to continue operations.

### **RESULTS OF THE ECONOMIC IMPACT ANALYSIS / ASSESSMENT**

The Department has concluded that the Sections 4890, 4900, 4901, 4902, 4930, 4934, 4935, 4936, 4940, 4941, 4942, 4943, 4944, 4946, 4950, 4950.1, 4951, and 4952 adoption and amendment (1) will have no significant 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.

### **CONSIDERATION OF ALTERNATIVES**

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, 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.

The Department invites interested persons to present alternatives during the written comment period.

### **AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE**

The Department has prepared an initial statement of reasons for the proposed action, and has made available all the information upon which its proposal is based and the express terms of the proposed action. The Department has posted the information regarding this proposed regulatory action on its Internet website

([www.cdfa.ca.gov/plant/Regulations.html](http://www.cdfa.ca.gov/plant/Regulations.html)). 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.

### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After the comment period and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer named herein. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the agency officer named herein.