

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) proposes to amend sections 4940, 4944 and 4946 Title 3 of the California Code of Regulations (CCR) pertaining to Sampling Timeframe and Pre-Harvest Notification for Industrial Hemp, Notification of Laboratory Test Report, and Final Disposition for Registered Industrial Hemp Crops.

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 comment period closes on November 8, 2021. The Department will consider only comments received at the Department offices by that time or postmarked no later than November 8, 2021. Submit comments to:

Dean Kelch, Environmental Program Manager
Department of Food and Agriculture
Plant Health and Pest Prevention Services
2800 Gateway Oaks Dr, Suite #200
Sacramento, CA 95833
dean.kelch@cdfa.ca.gov
916.403.6650
916.651.2900 (FAX)

In Mr. Kelch's absence, you may contact Erin Lovig at (916) 654-1017 or erin.lovig@cdfa.ca.gov.

Unless there are substantial changes to the proposed regulation prior to amendment, the Department may amend 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 no public hearing is requested, the Department of, at its own motion, or at the suggestion of any interested person, may amend the proposal substantially as set forth without further notice.

AUTHORITY

The Department proposes to amend Sections 4940, 4944 and 4946 pursuant to the authority under Sections 407 and 81006 of the Food and Agricultural Code (FAC) of California.

REFERENCE

The Department proposes this action to implement, interpret and make specific section 81006 of the FAC.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

The specific purpose of the amendments to Title 3 CCR Sections 4940, 4944, and 4946 is to change the harvest period from within 15 days after sampling to within 30 days, as allowed by recent amendments to the United States Department of Agriculture's industrial hemp production regulations, and increase related timeframes for registered hemp growers to request sampling and for laboratories to test samples for THC concentrations.

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 (Gov. 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.

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 which the Secretary is directed or authorized to administer or enforce.

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

Existing Title 3 CCR Section 4900 establishes the conditions for registration and the registration fees for industrial hemp growers. This amendment provides the necessary regulatory mechanism to allow the laboratory testing of industrial hemp.

FAC Section 401.5 states: "The department shall seek to protect the general welfare and economy of the state and seek to maintain the economic well-being of agriculturally dependent rural communities in this state." The amendment of Title 3 CCR Sections 4940 and 4946 allows industrial hemp to be legally harvested.

ANTICIPATED BENEFITS FROM THIS REGULATORY ACTION

There is a potential savings to the growers of industrial hemp as the extended period to harvest industrial hemp after sampling will allow for more time to harvest, resulting in less frequent retesting and allowing for fewer crops to be destroyed due to an inability to meet the regulatory deadlines. With this regulation, the State of California will be able to continue to regulate a growing industry, with high quality industrial hemp production.

EVALUATION OF INCONSISTENCY / INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

As required by Gov. Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of sections 4940, 4944, and 4946 and has determined that they are not inconsistent or incompatible with existing state regulations.

Amended Text

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

This section establishes that sampling for THC concentration shall take place no later than 11 calendar days before the anticipated harvest start date listed on the pre-harvest report instead of six days. Additional sampling and testing will be required for any changes to the harvest date that results in harvest activities to occur more than 30 calendar days after the sample collection date. The requirement in CCR Section 4940(a)(1), as amended, will allow the sample to be collected earlier to accommodate the timeframe for sample delivery and laboratory testing for THC concentration.

Furthermore, CCR Section 4940(a)(2), as amended, will change the harvest timeframe from 15 to 30 days. This is necessary because the current timeframe prescribed by state regulation is the minimum needed under ideal conditions and leaves no margin of time for common or uncommon contingencies.

The THC sampling process begins when the registrant submits a signed pre-harvest report to their commissioner at least 30 calendar days prior to the anticipated harvest start date. This will allow enough time for the commissioner to schedule a staff member to oversee the sampling to ensure the accuracy and sanitation of samples and fields (FAC 81006(e)(3)(D)). The requirement in CCR Section 4940(b)(1), as amended, will provide

commissioners additional notice of any sampling needs ahead of the anticipated harvest start date.

Section 4944 Notification of Laboratory Test Report

This section establishes the notification requirements for laboratory testing reports. The laboratory shall concurrently provide registrants and the commissioner an electronic copy of the laboratory test report within 10 calendar days from the sample collection date instead of 5 days. The requirement in CCR Section 4944(c), as amended, will provide 10 calendar days for laboratories to prepare and test the samples for THC concentration. This is necessary, as the current time frame prescribed by state regulation is the minimum needed under ideal conditions and leaves no margin of time for common or uncommon contingencies.

Section 4946 Final Disposition for Registered Industrial Hemp Crops

This section establishes that the registrant may harvest a crop for which a passing laboratory test report has been received (FAC 81006(e)(1)). The requirement in Section 4946(a)(3) is being amended from within 15 days to harvest after sampling to within 30 days to mirror current federal regulations. This is necessary, as the current time frame prescribed by state regulation is the minimum needed under ideal conditions and leaves no margin of time for common or uncommon contingencies.

Disclosures Regarding the Proposed Action

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None

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.

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: Based upon the Economic Impact Analysis, the Department has made an assessment that the proposed regulation would not eliminate jobs or existing businesses within California. The Department has made an assessment that the proposed amendment would likely

lead to the creation of, and would positively affect the expansion of businesses currently doing business within California. The Department makes the initial determination that the proposed action will not have a significant, statewide adverse economic impact.

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.

Significant effect on housing costs: None.

Results of the Economic Impact Analysis/Assessment

The Department has concluded that the amendment of CCR Sections 4940, 4944 and 4946:

- (1) will not eliminate jobs within California
- (2) will likely lead to the creation of new jobs within California;
- (3) will have no impact on the creation or elimination of businesses within the State of California;
- (4) will positively affect the expansion of businesses currently doing business within California; and
- (5) is not expected to have a direct effect on the health and welfare of California;

The Benefits of the Proposed Action: The Department has determined the amendment of this regulation would benefit:

- Growers of industrial hemp
- County agricultural commissioners

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

Small Business Determination: The amendment will positively affect the expansion of small hemp growing businesses currently doing business within California.

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.

CONTACT PERSONS

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 is:

Dean Kelch, Environmental Program Manager
California Department of Food and Agriculture
Plant Health and Pest Prevention Services
2800 Gateway Oaks Dr, Suite #200
Sacramento, CA 95833
dean.kelch@cdfa.ca.gov
916.403.6650
916.651.2900 (FAX)

The backup contact person for these inquiries is:

Erin Lovig, Senior Environmental Scientist
California Department of Food and Agriculture
Plant Health and Pest Prevention Services
2800 Gateway Oaks Dr, Suite #200
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916.654.1017
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AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department 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.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the comment period and considering all timely and relevant comments received, the Department may amend 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 amends the regulations as revised. Any person interested may obtain a copy of said regulations prior to the date of amendment 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.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its website (<https://www.cdfa.ca.gov/plant/Regulations.html>).