

DEPARTMENT OF FOOD AND AGRICULTURE  
PROPOSED AMENDMENT OF THE REGULATIONS

Title 3, California Code of Regulations

Section 4900

INITIAL STATEMENT OF REASONS/  
PLAIN ENGLISH POLICY STATEMENT OVERVIEW

Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulations are Intended to Address

This regulation is intended to address the obligation of the Secretary of Food and Agriculture to establish a registration fee and renewal fee for industrial hemp growers and seed breeders.

Specific Purpose and Factual Basis

The specific purpose of Section 4900 is to establish fees for registration and registration renewal for growers of industrial hemp for commercial purposes and seed breeders, as required in Food and Agricultural Code (FAC), Section 81005.

The proposed adoption of Section 4900 pertaining to registration for growers of industrial hemp for commercial purposes and seed breeders will establish annual registration and registration renewal fees as required in statute amended by SB 1409, effective January 1, 2019.

Existing law, as amended as of January 1, 2019 requires, prior to cultivation, a grower of industrial hemp for commercial purposes to register with the county agricultural commissioner and outlines the application and fee requirements. Such registration is valid for one year, after which the registrant is required to renew his/her registration and pay a renewal fee. An established agricultural research institution is exempt from this requirement for registration and payment of fees (FAC Section 81003).

Existing law, as amended as of January 1, 2019, also requires, prior to cultivation, an industrial hemp seed breeder to register with the county agricultural commissioner and outlines the application and fee requirements. Such registration is valid for one year, after which the registrant is required to renew his/her registration and pay a renewal fee. An established agricultural research institution is exempt from this requirement for registration and payment of fees (FAC Section 81004).

Existing law also establishes an Industrial Hemp Advisory Board in FAC Section 81001. The Industrial Hemp Advisory Board is composed of 11 members that represent and further the interests of the industrial hemp industry. The Industrial Hemp Advisory Board's purpose is to advise the Secretary and make recommendations on matters pertaining to Division 24, including the establishment of registration fees.

Existing law also allows the Department to reimburse counties for necessary expenses incurred when serving the Department in a collaborative capacity (FAC Section 483).

Based on recommendation from the Industrial Hemp Advisory Board, the Department is proposing to adopt CCR Section 4900. The adoption of Section 4900 will establish registration and renewal fees for commercial growers of industrial hemp and seed breeders, as required by FAC Section 81005. The adoption of Section 4900 will refine the registration and testing requirements outlined in FAC Division 24.

From the registration and renewal fee, an amount of \$500 will be used by the Department to cover the Department's actual costs of enforcing and administering the provisions of Division 24. The portion of the fee to cover the Department's cost is based on current program costs with the consideration that there will be more participation beyond the expected 300 registrants in the next three years as the industry grows. A fee of \$500 is comparable to programs in other states with industrial hemp regulations. The remaining \$400 will be used by the Department to reimburse the county's costs to implement, administer, and enforce the provisions of Division 24. At its meeting on May 30, 2018, the Industrial Hemp Advisory Board estimated that each applicant would

require an average of five hours of work by county staff for registration and enforcement activities. The average county staff hourly rate was estimated at \$84.36. The Board estimated that most of the counties where industrial hemp cultivation will occur will be rural, where county hourly rates are generally lower, and thus recommended rounding the fee to \$400 per applicant.

In accordance with FAC Section 483, the Department will enter into a Memorandum of Understanding (MOU) with the California Agricultural Commissioners and Sealers Association (CACASA) that will define the enforcement and administration responsibilities of both the Department and the commissioners, and the method for reimbursement of county costs.

Based on the Department's survey results, year-by-year growth seen in other states, and existing resources and infrastructure in California's agricultural and growing cannabis industries, the Department expects approximately 300 registrants and enforcement activities in all 58 counties in the first year registration becomes available.

The Department has estimated that its costs for enforcing and administering the provisions of Division 24 will be \$183,743 in the first year of registration (\$612.48 per projected applicant).

The Industrial Hemp Advisory Board has estimated that each applicant would require an average of five hours of work by county staff for registration and enforcement activities. It estimated a statewide average hourly rate for county staff of \$80, for a total average cost of \$400 per applicant per county per year.

A penalty amount of 15% is sufficient to discourage late payments, without being punitive, and is similar to penalty amounts for existing fees at CDFA.

### Economic Impact Analysis

The proposed regulation provides a regulatory framework for establishing fees for registration. Currently, no registration fee has been set, and therefore no growers have been registered for the cultivation of industrial hemp. Thus, it is anticipated that the establishment of a registration fee will likely result in the creation of new businesses and the expansion of businesses in California.

The \$900 cost to register as a grower or seed breeder is reasonable and will likely be more than offset by revenue collected by the grower or seed breeder over one year. It is anticipated that this regulation will allow the growth of the industrial hemp industry in California, with an increase in the number of businesses dedicated to producing hemp and the concomitant increase in jobs. There are no anticipated eliminations of jobs and businesses within California.

An application fee providing \$900 per year to cover the state's and counties' cost to administer the program is comparable to that in other states' application fees for industrial hemp registration. Other states charge fees in addition to the application fee for administering an industrial hemp program, and each state's fee schedule is different and complex.

#### Anticipated Benefits from This Regulatory Action

Establishment of a registration fee will allow commercial cultivation of industrial hemp to begin in California and allow the growth of the industrial hemp industry in California. According to Vote Hemp, the United States has seen significant growth in acreage of industrial hemp cultivation: 9,770 acres of industrial hemp were grown in 2016; 25,713 acres were grown in 2017.

Currently, most hemp products processed and manufactured in the United States heavily rely on imported material, according to the Congressional Research Service. Imports of industrial hemp material into the United States have increased over the last decade. Without this regulation, California citizens are unable to participate in this emerging industry. With this regulation, the state of California will be able to cultivate a

well-regulated industry, with high quality industrial hemp production.

The proposed regulation also serves to provide the state and counties with funding to cover the actual costs of implementing, administering, and enforcing the provisions of FAC Division 24. The regulation will help protect the public and the state's natural resources from illegal cultivation activities by providing resources to the county agricultural commissioner to provide regulatory oversight, ensuring that industrial hemp plantings meet statutory requirements.

### Assessment

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. Based on a comparison with states that have implemented hemp cultivation, the Department has made an assessment that the proposed regulation would likely lead to the creation of new jobs or businesses, and would positively affect the expansion of businesses currently doing business within California.

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

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

The proposed regulation will require the payment of registration fees by industrial hemp growers and seed breeders, as required in statute. The direct cost that a registered grower or seed breeder will necessarily incur in reasonable compliance with the registration requirement is \$900 a year. The cost to register as a grower or seed breeder is reasonable and should be exceeded by revenue collected by the grower or seed breeder over the registration period of one year.

The proposed regulation may affect small businesses. It is anticipated that regulations will stimulate the creation of jobs and businesses. The Department anticipates 300

registrants and enforcement activities in all 58 counties in the first year registration becomes available. All of these registrants will represent newly legal hemp and hemp seed producers. There is no anticipated elimination of jobs and businesses within California.

The Department of Food and Agriculture has determined that the adoption of Section 4900 has no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no cost to any local agencies or school districts, and no other nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

The Department has determined that the proposed action will not have a significant adverse economic impact on housing costs or California businesses, including the ability of California businesses to compete with businesses in other states. The Department's determination that this action will not have a significant adverse economic impact on businesses was based on the following effects of the proposed regulation:

- Establish a registration and renewal fee in order to allow prospective growers of industrial hemp to begin cultivation. Without establishment of this fee, registration to grow industrial hemp is not available. This would limit the amount of domestic hemp available to hemp processors and result in higher prices to California consumers if California is not contributing to the domestic hemp supply.
- Provide the state and counties with funding to cover the actual costs of implementing, administering, and enforcing the provisions of FAC Division 24. This will allow the state and counties to implement the dictate of the legislature as expressed in FAC Division 24, while suffering no net fiscal impact.
- Provide for regulatory oversight by the county agricultural commissioner and help ensure that industrial hemp plantings meet statutory requirements. This will result in a superior product being available in greater quantities.

- Protect the public and environment from illegal cultivation activities. This will improve the health and safety of Californians.

#### Alternatives Considered

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

The Department considered taking no action. If no action is taken, registration for the cultivation of industrial hemp would not be available; this would continue to encourage illegal cultivation of this in-demand crop or result in hemp being imported from other markets. Without registration and renewal fees, counties and the Department will not have the resources to conduct regulatory enforcement efforts regarding legal cultivation of Industrial hemp. The alternative was rejected because it would prevent the implementation of the Program creating a new industry in California.

#### Information Relied Upon

The Department is relying upon the following studies, reports, and documents in proposing the adoption of Section 4900:

“Economic Impact Analysis: Registration of Industrial Hemp Growers – Registration Fees”, dated October 9, 2018, CDFA Hemp Program

Minutes, dated June 29, 2017, Industrial Hemp Advisory Board.

Minutes, dated October 19, 2017, Industrial Hemp Advisory Board.

Minutes, dated April 24, 2018, Industrial Hemp Advisory Board.

Minutes, dated May 30, 2018, Industrial Hemp Advisory Board.

Hemp as an Agricultural Commodity, Congressional Research Service, June 22, 2018.

“2017 Annual Retail Sales for Hemp Products Estimated at \$820 Million,” Vote Hemp press release, June 28, 2018.

2017 US Hemp Crop Report, Vote Hemp, June 5, 2018.

Press release dated April 3, 2018 "Commissioner Quarles Hails Industrial Hemp Research Pilot Program's Multi-Million-Dollar Economic Impact."