

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED AMENDMENT OF THE REGULATIONS
Title 3, California Code of Regulations
Sections 4901 and 4902
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

These regulations are intended to address the obligation of the Secretary of Food and Agriculture to create timeframes, definitions, and procedures for industrial hemp registration and program eligibility determination based on controlled substance related felony convictions.

Purpose

The specific purpose of California Code of Regulation Sections (CCR) 4901 and 4902 is to create timeframes, definitions, and procedures for industrial hemp registration and program eligibility determination based on controlled substance related felony convictions, as required in Food and Agricultural Code (FAC) Section 81013.

Factual Basis

The factual basis for the determination by the Department that the adoption of these regulations is necessary is as follows:

On March 17, 2020, emergency regulations that created timeframes, definitions, and procedures for industrial hemp registration and program eligibility determination based on controlled substance related felony convictions and destruction became effective.

Senate Bill (SB) 153 was approved by the Governor on October 12, 2019 and took effect on January 1, 2020, unless otherwise specified in the provisions. SB 153 amends existing law regarding the cultivation of hemp, including registration and program eligibility

requirements, to mirror federal requirements outlined in the Agriculture Improvement Act of 2018 (2018 Farm Bill).

The 2018 Farm Bill, which was signed into law by the President on December 20, 2018, authorizes the United States Department of Agriculture (USDA) to develop national regulations pertaining to industrial hemp cultivation and requires states that allow industrial hemp cultivation to submit a state regulatory plan to USDA for approval. 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 15, 2021. The final rule provides the requirements for State and Tribal regulatory plans submitted to USDA for review and approval.

The 2018 Farm Bill outlines several requirements that state regulatory plans must incorporate, including requirements for registration and program eligibility. California law currently provides a framework for a state regulatory plan but does not currently reflect all of the requirements for a state regulatory plan outlined in the 2018 Farm Bill and the federal final rule.

Existing law, 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 (FAC Section 81004.5(h)).

Existing law, 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 (FAC Sections 81003(b), 81004(b) and 81004.5(b)).

Existing law, 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 (FAC Section 81013).

Existing law, as amended by SB 153, prohibits the cultivation of industrial hemp on premises licensed by the Department to cultivate or process cannabis (as defined by law). Industrial hemp, regardless of its THC content, that is cultivated on premises licensed by the Department for cannabis cultivation shall be considered as cannabis as defined in Section 26001(f) of the Business and Professions Code (BPC) and subject to licensing and regulatory requirements for cannabis pursuant to BPC Division 10.

Existing law, as amended by SB 153, requires that the Secretary develop and submit a state plan, consistent with FAC Division 24, pursuant to Section 297B of the federal Agricultural Marketing Act of 1946 (15-334)), including a certification that the state has the resources and personnel to carry out the practices and procedures described in clauses (i) to (iv), inclusive, of subparagraph (A) of paragraph (2) of subsection (a) of that section. (FAC Section 81015).

FAC Section 407 authorizes the Secretary to adopt “such regulations as are reasonably necessary to carry out the provisions of this code which he is directed or authorized to administer or enforce.” Additionally, FAC Section 401.5 requires the Department to “seek to enhance, protect, and perpetuate the ability of the private sector to produce food and fiber in a way that benefits the general welfare and economy of the state.”

Background

Currently, most industrial 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 past decade. Therefore, in order to benefit the agricultural sector and the population

of California in general, the Legislature crafted and approved statutes allowing production of industrial hemp in California.

However, industrial hemp, as defined by law, is a subset of cultivars of *Cannabis sativa* with THC content of no more than three-tenths of 1 percent. Thus, the Legislature included statutory provisions for registration to ensure that the resulting crops would not qualify as medical or adult-use cannabis under state law.

Without these regulations implementing FAC Sections 81003, 81004, 81004.5, 81006, 81013, and 81014, California citizens who have relied on FAC Division 24 and registration fee regulations in Title 3 CCR Section 4900, which allows registered industrial hemp cultivation, may sustain large economic losses. With these regulations, the State of California will be able to develop a well-regulated industry, high quality industrial hemp production, and avert economic losses that will occur if currently and soon-to-be planted crops must be destroyed due to the lack of statutory compliance.

The Department developed the proposed registration and program eligibility determination based on controlled substance-related felony convictions by reviewing requirements outlined in the federal final rule and various state regulatory plans approved by USDA. The Department also consulted with county agricultural commissioners and USDA. Some of the proposed regulations repeat and rephrase statutory provisions in the FAC. This duplication is necessary to centrally locate the industrial hemp registration requirements for completeness and ease of comprehension.

Project Description

These proposed amended regulations create timeframes, definitions, and procedures for industrial hemp registration and program eligibility determination based on controlled substance-related felony convictions. The purpose of the proposed regulations is to promote a well-regulated industry, allow high quality industrial hemp production, and comply with federal requirements as described in the 2018 Farm Bill and implementing final rule.

CCR Section 4901 - Registration Application for Industrial Hemp Cultivation

This section establishes timeframes and procedures for the registration application for industrial hemp cultivation, so that cultivators comply with all applicable state and federal requirements. In order to become registered for industrial hemp cultivation, growers of industrial hemp, hemp breeders, and established agricultural research institutions must register prior to cultivation with the commissioner of the county in which the cultivator intends to engage in hemp cultivation, as per FAC Sections 81003, 81004, and 81004.5.

CCR Section 4901(a) defines the term “cultivation site,” which is used throughout the section, as contiguous land area on which the applicant plans to engage in industrial hemp cultivation, storage, or both. The definition of “person,” which is also used throughout the section, is also incorporated in this section. “Person” as defined in FAC Section 38 means any individual, partnership, association, corporation, limited liability company, or any organized group of persons whether incorporated or not. These definitions are necessary to avoid ambiguity in compliance and enforcement.

In order to ensure industrial hemp is only grown by cultivators currently registered and comply with all registration requirements outlined in FAC Sections 81003, 81004, and 81004.5, CCR Section 4901(b)(1) requires a valid registration for any person cultivating industrial hemp prior to cultivation. A valid registration must be unexpired, unsuspended, and unrevoked.

In order to ensure an accurate record and traceability (FAC Section 81006(e)(3)(D)), CCR Section 4901(b)(2) establishes the application procedures for registration of growers of industrial hemp. Before cultivation begins, the grower must register with the commissioner of the county in which the grower will cultivate industrial hemp. The registration application for growers of industrial hemp shall include:

- The name, physical address, and contact information of the applicant, including mailing address, telephone number, and email (if available), so the applicant can

be contacted as needed per FAC Section 81003,

- The business type (sole proprietor, partnership, corporation, limited liability company, or specified other), business name(s), including all DBAs (“doing business as” designations), principal business address, and the employer identification number (EIN) as provided by the Internal Revenue Service of the business entity as required in title 7 of the Code of Federal Regulations (CFR) Part 990.70(a)(1),
- The name(s), email(s), and title(s) of all key participants as defined in CCR Section 4902(a)(2) for determining program eligibility as required in title 7 CFR Part 990.70(a)(1)(ii),
- The legal description, Global Positioning System coordinates, size, and map of the land area on which the applicant plans to engage in industrial hemp cultivation, storage, or both, per FAC Section 81003(a)(2)(B),
- The approved cultivar to be grown, including the state or country of origin, per FAC Section 81003(a)(2)(C) and supporting documentation to demonstrate compliance with CCR Section 4920, and
- The applicant’s signature certifying the following to ensure compliance with FAC Division 24 and Title 3 of CCR:
 - The information provided on the application is true and correct,
 - Confirmation that the cultivation site(s) to be registered for hemp cultivation is not on premises licensed by the department to cultivate or process cannabis to ensure compliance with FAC Section 81006(c),
 - The applicant shall comply with all the requirements outlined in FAC Division 24 and this chapter, and
 - Any changes to the registration shall be provided to the commissioner in accordance with CCR Section 4901(c).

In order to ensure an accurate record and traceability (FAC Section 81006(e)(3)(D)), CCR Section 4901(b)(3) establishes the application procedures for hemp breeders to register to develop cultivars. Before cultivation, a hemp breeder needs to register with the

commissioner of the county in which the hemp breeder will be growing industrial hemp. The registration application for breeders of industrial hemp shall include:

- The name, physical address, and contact information of the applicant, including mailing address and telephone number, and email (if available), so the applicant can be contacted as needed per FAC Section 81004,
- The business type (sole proprietor, partnership, corporation, limited liability company, or specified other), business name(s), including all DBAs (“doing business as”), principal business address, and the employer identification number (EIN) provided by the IRS of the business entity as required in title 7 CFR Part 990.70(a)(1)
- The name(s), email(s), and title(s) of all key participants as defined in Section 4902(a)(2) for determining program eligibility as required in title 7 CFR Part 990.70(a)(1)(ii),
- The legal description, Global Positioning System coordinates, size, and map of the land area on which the applicant plans to engage in industrial hemp cultivation, storage, or both, per FAC Section 81004(a)(2)(B),
- A variety development plan, which shall include, as per FAC Section 81004(a)(2)(C) as amended by SB 153:
 - The name of the seed-certifying agency that will be conducting the certification if a new cultivar is to be certified by a seed-certifying agency,
 - The hemp varieties that will be used and, if applicable, how those varieties will be used in the development of a new cultivar,
 - A plan for testing the THC concentration of all the plants grown,
 - The measures that will be taken to destroy any plants with THC concentrations that test above 0.3 percent to ensure compliance with 2018 Farm Bill, implementing regulations, and guidance.,
 - The measures that will be taken to prevent the unlawful use of hemp under FAC Division 24 and this chapter, and
 - A procedure for the maintenance of records documenting the development of the new cultivar, and

- The applicant’s signature certifying the following to ensure compliance with FAC Division 24 and Title 3 of CCR:
 - The information provided on the application is true and correct,
 - Confirmation that the cultivation site(s) to be registered for hemp cultivation is not on premises licensed by the department to cultivate or process cannabis to ensure compliance with FAC Section 81006(c),
 - The applicant shall comply with all the requirements outlined in FAC Division 24 and this chapter, and,
 - Any changes to the registration shall be provided to the commissioner in accordance with CCR Section 4901(c).

The sampling procedures outlined in the variety development plans are not subject to the sampling requirements in outlined in CCR Section 4941, provided that

- The hemp produced does not enter the stream of commerce, and
- The sampling method to test THC concentration has the potential to ensure, at a confidence level of 95 percent, that the plants grown will not test above the acceptable hemp THC level, and is adopted by the department and approved by the United States Department of Agriculture pursuant to Title 7990.3(a)(2)(iii).

Variety development plans must include sampling and testing procedures in accordance with sampling procedures outlined in Sections 4940 through 4941 and testing procedures outlined in Sections 4942 through 4944 for any industrial hemp that will enter the stream of commerce.

In order to ensure an accurate record, traceability, and compliance (FAC Section 81006 (e)(3)(D)), CCR Section 4901(b)(4) establishes procedures for established agricultural research institutions to register their industrial hemp cultivation. These procedures will become operative when the California state plan is approved, as it is required by the state plan. Once FAC Section 81004.5 becomes operative, before cultivation, established agricultural research institutions needs to register with the commissioner of the county in which the established agricultural research institution will be growing hemp. The registration application for established agricultural research institutions shall include:

- The name, physical address, and contact information of the applicant, including mailing address and telephone number, and email (if available), so the applicant can be contacted as needed per FAC Section 81004.5,
- The business type (sole proprietor, partnership, corporation, limited liability company, or specified other), business name(s), including all DBAs (“doing business as”), principal business address to identify the applicant,
- The name(s), email(s), and title(s) of all key participants as defined in Section 4902(a)(2) for determining program eligibility in compliance with FAC Section 81013,
- The legal description, Global Positioning System coordinates, size, and map of the land area on which the applicant plans to engage in industrial hemp cultivation, storage, or both, per FAC Section 81004.5(a)(2)(B),
- A research plan, which shall include, as per FAC Section 81004.5(a)(2)(C) as amended by SB 153:
 - the hemp varieties and, if applicable, how those varieties will be used for the purposes of agricultural or academic research
 - a plan for testing the THC concentration of all the plants grown,
 - the measures that will be taken to destroy any lots of plants with THC concentrations that test above 0.3 percent to ensure compliance with 2018 Farm Bill, implementing regulations, and guidance,
 - the measures that will be taken to prevent the unlawful use of hemp under FAC Division 24 and this chapter to ensure compliance with current California regulations, and
- a procedure for the maintenance of records documenting the agricultural or academic research as required by state and federal law, and
- The applicant’s signature to ensure compliance with FAC Division 24 and Title 3 of CCR which will certify the following:
 - The information provided on the application is true and correct,
 - Confirmation that the cultivation site(s) to be registered for hemp cultivation is not on premises licensed by the department to cultivate or process

- cannabis to ensure compliance with FAC Section 81006(c),
- The applicant shall comply with all the requirements outlined in FAC Division 24 and this chapter, and,
- Any changes to the registration shall be provided to the commissioner in accordance with CCR Section 4901(c).

The sampling procedures outlined in research plans are not subject to the sampling requirements in outlined in CCR Section 4941, provided that

- The hemp produced does not enter the stream of commerce, and
- The sampling method to test THC concentration has the potential to ensure, at a confidence level of 95 percent, that the plants grown will not test above the acceptable hemp THC level, and is adopted by the department Title 7 CFR 990.3(a)(2)(iii).

Research plans must include sampling and testing procedures in accordance with sampling procedures outlined in Sections 4940 through 4941 and testing procedures outlined in Sections 4942 through 4944 for any industrial hemp that will enter the stream of commerce.

Registered agricultural research institutions registered with the United States Drug Enforcement Administration to handle marijuana may possess industrial hemp with a laboratory test report that indicates a percentage concentration of THC that is greater than 0.3 percent until the end of the study.

In order to fund the program and ensure compliance with FAC Sections 81003(a)(3) and 81004(a)(3), CCR Section 4901(b)(4) requires registration applications, except for established agricultural research institutions, to include the registration or renewal fee in accordance with CCR Section 4900.

In order to ensure compliance with FAC Sections 81003(b), 81004(b), and 81004.5(b), CCR Section 4901(b)(5) requires a criminal history report for key participants in the

cultivation of industrial hemp be included with the registration application in accordance with CCR Section 4902.

CCR Section 4901(c) establishes procedures for alterations and changes to registration. Registrations are not transferable or assignable to any other person or property, and any person who wants a cultivation registration for a new property must submit their own application or a new application for the new property. If the registrant changes, a new registration will need to be submitted in accordance with CCR Section 4901(b).

In order to ensure an accurate record, traceability, and compliance (FAC Section 81006(e)(3)(D)), CCR Section 4901(c)(2)(A) requires the registrant submit an updated registration application to the commissioner for alterations or changes to business name, contact information, or changes to key participants as defined by CCR Section 4902(b)(2). This information must be submitted within 15 days of the change.

In order to ensure an accurate record, traceability, and compliance (FAC Sections 81003(c) through 81003(d), 81004(c) through 81004(e), and 81004.5(c) through 81004.5(d)), CCR Section 4901(c)(2)(B) requires the registrant submit an updated application to the commissioner for any alterations or changes to cultivation sites, approved cultivars, variety development plans, or research plans. These changes must be submitted and approved by the commissioner prior to planting.

If any alterations or changes are not submitted to the commissioner within the specified timeframe, the crop will not comply with state regulations and would be subject to destruction in accordance with CCR Section 4950. This is to ensure compliance with state and federal requirements.

CCR Section 4901(d) specifies a timeframe for registration renewal. The registrant shall submit the application to the commissioner in each county they intend to grow in at least 30 days prior to the expiration of any previous registration in accordance with CCR

Section 4901(b). This allows enough time for commissioners to review and approve applications for registration renewal.

In order to ensure information flow, CCR Section 4901(e) specifies that registrants will receive confirmation of registration and key participants may begin cultivating hemp using the registered cultivar(s), cultivation site(s), variety development plan(s), and research plan(s) once the commissioner has determined that the application for registration, registration amendment, or registration renewal meets the requirements outlined in FAC Division 24 and this chapter and issues registration to the applicant. Commissioners must issue such registration within 30 calendar days from the application submission date for new registrations and registration amendments, and, for registration renewals, commissioners must issue renewals prior to the registration expiration for registration renewal unless the application is received less than 30 days prior to registration expiration, in which case the commissioner shall issue the registration and notice as soon as reasonably possible but not necessarily before expiration. In order to ensure compliance, the commissioner may verify the registration application by conducting field inspections. The commissioner shall be provided with complete and unrestricted access during business hours to all hemp and other cannabis plants, whether growing or harvested, and all land, buildings, and other structures used for the cultivation, handling, and storage of all hemp and other cannabis plants, and all locations registered as a cultivation site.

Applicants will have 30 calendar days from the receipt of notification from the commissioner of any deficiencies in the registration application to provide the requested information to the commissioner. If the requested information is not provided within the timeframe, the commissioner will deny registration or changes to the registration. This timeline is to ensure a timely determination and notification regarding registration status to the applicant. If registration is denied due to deficiencies in the registration application, the applicant must submit a new registration application in accordance with CCR Sections 4901(b) to the commissioner, including a new registration fee (if applicable), in order to

register to cultivate hemp. This is necessary to ensure continued support for the program when additional work and staff time are necessary to review and approve registration.

In order to enforce accurate record maintenance, traceability, and compliance (FAC Section 81003(b), 81004(b), and 81004.5/(b)), the commissioner will determine if the applicant meets the registration requirements. If the registrant no longer meets the registration requirements or fails to comply with a corrective action plan during the registration period, the commissioner shall revoke the registration in writing, effective on date of notification.

CCR Section 4901(f) requires certain registration information to be reported to the USDA in accordance with FAC Section 81003(e), 81004(g), and 81004.5(f). The commissioner shall report the following information to the Department no more than 10 business days after the date on which it is collected:

- the name and contact information for each registrant,
- the employer identification number (EIN) of the business entity as provided by the Internal Revenue Service,
- a legal description of the land on which the registrant engages in hemp cultivation,
- the registration status of the registrant,
- the registration number for each registrant, associated with each location in the state where hemp will be produced, and
- the name, business title, and email address (if available) of all key participants for each registration.

The Department shall forward the information to the USDA no more than 30 business days after the date on which it is collected or the date of a change in registration status. This is to ensure compliance with state and federal requirements.

CCR Section 4902 - Criminal History Report for Industrial Hemp Program Eligibility

This section establishes definitions, timeframes, and procedures for submitting criminal history reports for program eligibility determination based on controlled substance related felony convictions. Any person convicted of a felony relating to a controlled substance under state or federal law before, on, or after January 1, 2020, is ineligible, during the 10-year period following the date of the conviction, to participate in the industrial hemp program as per FAC Section 81013. The amended regulation provides details and time frames to comply with state and federal law.

For clarity, CCR Section 4902(a) provides definitions for “criminal history report,” “key participants,” and “disqualifying conviction.” “Criminal history report” means the Federal Bureau of Investigation’s (FBI) Identity History Summary.

“Key participant” includes the registrant and means any person in the entity producing industrial hemp, such as a sole proprietor, a partner in a partnership, a person with executive managerial control in a corporation, or a person with executive managerial control, including persons such as a chief executive officer, chief operating officer and chief financial officer. The definition of “key participant” does not include non-executive managers such as farm, field, or shift managers. This definition mirrors the definition in the federal final rule.

“Disqualifying conviction” means any plea of guilty or *nolo contendere*, or any finding of guilt as to a State or Federal felony related to a controlled substance, except when the finding of guilt is subsequently overturned on appeal, pardoned, or expunged, or 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. This definition mirrors the definition in the federal final rule.

In order to ensure an accurate record, traceability, and compliance (FAC Section 81013), CCR Section 4902(b) outlines the requirements for criminal history reports for all key participants listed on the registration application. These criminal history reports must be submitted along with the registration application to the commissioner. Applications are

not considered complete without the required criminal history report and are subject denial per CCR Section 4901(e). All criminal history reports must be dated within 60 days of submission of the application for registration, registration amendment, or renewal to ensure accuracy.

To comply with state, an applicant or key participant found to have a qualifying felony will be ineligible to participate in the hemp program for 10 years from the date of the conviction. Once registration is issued, any changes to key participants must be reported to the commissioner as an amendment to the registration within 15 calendar days of the change. Criminal history reports for each additional key participant must accompany the amended registration application. In order to comply with state and federal law, registrants are required to notify the commissioner in writing within 48 hours of receiving a qualifying conviction against the registrant or a key participant. If any criminal history reports in an application or registration are falsified, the application will be revoked or registration will be refused and the individual will be ineligible to participate in the industrial hemp program, per FAC Section 81014.

In order to comply with state and federal law, the commissioner may require additional criminal history reports during the registration period as deemed necessary to ensure all registered key participants do not have a disqualifying conviction as defined in Section 4902(a)(3).

Economic Impact Analysis

The proposed regulation provides a regulatory framework for industrial hemp registration and program eligibility determination based on controlled substance related felony convictions. Existing law, as amended by SB 153, requires the commissioner 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 a registration to the applicant. Existing law, as amended by SB 153, also 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. Thus, it is anticipated that the regulatory framework for industrial hemp registration and program eligibility determination based on controlled substance related felony convictions will likely not support the creation of new businesses and the expansion of businesses in California.

The proposed rulemaking would require applicants to provide a FBI Identity History Summary for each key participant. A FBI Identity History Summary costs \$18 and requires fingerprinting. Fingerprinting can be taken by local, county, or state law enforcement, or private companies including an FBI-approved Channeler. Based on quotes from three options in California, estimated fingerprinting costs approximately \$10 to \$15 per set. This cost will likely be more than offset by revenue collected by the industrial hemp grower or breeder over one year. With 515 registrants, it is anticipated that complying with this state requirement will cost the California industry as a whole between \$14,400 and \$17,000 assuming one background check per registration for compliance within the first 12 months of the regulation's implementation.

It is anticipated that this regulation may limit the growth of the industrial hemp industry in California as there may be a decrease in the number of businesses eligible to produce hemp. The registration and eligibility requirements may restrict some current registrants and individuals who have a direct or indirect financial interest in a registered business from participating in the industrial hemp program. The actual number will remain unknown until the new program eligibility requirements have been in place for at least 12 months and all current registrations are eligible for registration renewal.

Anticipated Benefits from This Regulatory Action

Establishment of timeframes, definitions, and procedures for industrial hemp registration and program eligibility determination will allow cultivation of industrial hemp by hemp growers, breeders, and established agricultural research institutions to comply with federal requirements, be harvested 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; and 78,176 acres were grown in 2018.

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, industrial hemp production in California would not be in compliance with federal law and unable to contribute to the domestic hemp supply. With this regulation, the state of California will be able to promote a well-regulated industry with high quality industrial hemp production.

Assessment

Based upon the Economic Impact Analysis, the Department has made an assessment that the proposed regulation could eliminate jobs or existing businesses within California, because it may prohibit some current registrants from participating in the industrial hemp program. Based on the economic assessment, the Department has made an assessment that the proposed regulation would likely not lead to the creation of new jobs or businesses. However, without procedures for compliance with this federal law, registered growers and breeders will not be able to comply with federal requirements. This would limit the amount of domestic hemp available to product producers and result in higher prices to California consumers if California is not contributing to the domestic hemp supply.

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 industrial hemp program participants to pay for a Federal Bureau of Investigation's Identity History Summary to be licensed within the State of California. The cost to obtain a FBI Identity History Summary for each key

participant is reasonable and should be exceeded by revenue collected by the grower or breeder over the registration period of one year. There may also be a cost of losing key participants due to being disqualified by failing to meet the requirements of 81013. The agency is not aware of any additional cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The Department of Food and Agriculture has determined that the adoption of CCR Sections 4901 and 4902 has no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with FAC Section 17500) of Division 4 of the Government Code to local agencies or school districts, no 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:

- definitions, timeframes, and procedures for industrial hemp registration and program eligibility determination based on controlled substance related felony convictions. Without procedures for compliance with federal law, registered growers, breeders and established agricultural research institutions will not be able to comply with federal requirements. This would limit the amount of domestic hemp available to product producers and result in higher prices to California consumers if California is not contributing to the domestic hemp supply.
- Regulatory oversight by the county agricultural commissioners to help ensure that industrial hemp cultivation meets statutory requirements. This will result in a product that is superior to unregulated industrial hemp being available in greater quantities.

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, the current emergency action would expire and the process for industrial hemp registration and program eligibility 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 these regulations in place, the Department will not have the framework and rules necessary to conduct regulatory enforcement efforts regarding cultivation of industrial hemp. The alternative was rejected because it would limit continuation of the current Program as defined and remove quality control and oversight due to nonlegal cultivation.

Information Relied Upon

“Establishment of a Domestic Hemp Production Program” 84 Fed. Reg. 58522 (C.F.R. Part 990). October 31, 2019, pages 58522-58564

“Identity History Summary Checks”, 2019. Federal Bureau Of Investigation website at: <https://www.fbi.gov/services/cjis/identity-history-summary-checks>, Accessed 12/31/2019

“Live Scan Locations”, 2019. State of California Department of Justice website at: https://oag.ca.gov/fingerprints/locations?county=Riverside&order=field_livescan_rolling_fee&sort=asc, Accessed 12/31/2019

Section 10113, Hemp Production, Agriculture Improvement Act Of 2018, 115th Congress, 2d Session

Vote Hemp, 2018, U.S. Hemp Crop Report