

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 proposes to adopt section 4901 and 4902 Title 3 of the California Code of Regulations (CCR) pertaining to Registration Application for Industrial Hemp and Criminal History Report for Industrial Hemp Registration.

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 July 26, 2021. The Department will consider only comments received at the Department offices by that time or postmarked no later than July 26, 2021. Submit comments to:

Dean Kelch
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 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 no public hearing is requested, the Department of Food and Agriculture, 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 adopt CCR Sections 4901 and 4902 pursuant to the authority undersections 401.5 and 407 of the Food and Agricultural Code (FAC) of California.

REFERENCE

The Department proposes this action to implement, interpret and make specific section 81003, 81004, and 81013 of the FAC .

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

The 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.”

Additionally, FAC Section 401.5 states: “The department shall also 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.”

This adoption of CCR Section 4901 and 4902 will 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, high-quality industrial hemp production, and comply with federal requirements as described in the Agriculture Improvement Act of 2018 (2018 Farm Bill).

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 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, 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, 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 (115-334)), 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).

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.

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.”

ANTICIPATED BENEFITS FROM THIS REGULATORY ACTION

Establishment of timeframes, definitions, and procedures for industrial hemp registration and program eligibility determination will allow commercial cultivation of industrial hemp 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, most 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. Without procedures for compliance with this federal law registered growers and breeders will not be able to comply with federal requirements and be forced to shutter operations. This would result in higher prices to California consumers if California is not contributing to the domestic hemp supply.

EVALUATION OF INCONSISTENCY / INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of sections 4901 and 4902 and has determined that they are not inconsistent or incompatible with existing state regulations.

Adopted Text

CCR Section 4901 Registration Application for Industrial Hemp Cultivation establishes timeframes and procedures for registration, registration amendments, and registration renewals for industrial hemp cultivation so growers of industrial hemp, hemp breeders, and established agricultural research institutions remain in compliance with all applicable state and federal requirements. The CCR Section 4901 outlines the procedures for commissioner approval, refusal, and revocation of registration. Additionally, the proposed section further specifies the type of registration information to be reported to USDA in accordance with FAC Section 81003(e), 81004(g), and 81004.5(f).

CCR Section 4902 Criminal History Report for Industrial Hemp Registration establishes timeframes, definitions, and procedures for submitting criminal history reports for program eligibility determination based on controlled substance related felony convictions.

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: None.

Cost impacts on a representative private person or business: The proposed rulemaking would require applicants to provide a Federal Bureau of Investigation's Identity History Summary for each key participant. A Federal Bureau of Investigation's 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. Given the current number of registrants, the total cost to the industry is expected to be between \$15,000 and \$18,000 in the first 12 months.

Significant effect on housing costs: None.

Results of the Economic Impact Analysis/Assessment

The Department has concluded that:

- (1) sections 4901 and 4902 will create or eliminate jobs within California. Some current registrants may become ineligible to grow industrial hemp under these regulations. The Department expects that this number will be small, as these requirements have been anticipated for some time. It is also expected that any lost acreage will be replaced by eligible growers,
- (2) will have no impact on the creation or elimination of businesses within the State of California,
- (3) will not affect the expansion of businesses currently doing business within California, except that any acreage lost due to ineligible growers is expected to be replaced by eligible growers,
- (4) is not expected to have a direct effect on the health and welfare of California, and
- (5) is not expected to have a direct impact on the state's environment.

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

- the general public
- homeowners and community gardens
- agricultural industry
- the State's general fund

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

Small Business Determination: It will cost small businesses \$33 for each background check, assuming each business will only have one key participant.

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
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
California Department of Food and Agriculture
Plant Health and Pest Prevention Services
2800 Gateway Oaks Dr, Suite #200
Sacramento, CA 95833
erin.lovig@cdfa.ca.gov
916.654.1017
916.651.2900 (FAX)

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

The Department of Food and Agriculture 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 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.

INTERNET ACCESS

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