

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 adopt CCR Sections 4930, 4935, 4940, 4941, 4942, 4943, 4944, 4945, 4946, 4950, and 4950.1 in the regulations in Title 3 of the California Code of Regulations pertaining to establishment of sampling procedures for laboratory testing of Industrial Hemp.

This notice is being provided to in compliance with Government Code Section 11346.4.

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 comments must be received by the board at its office by October 12, 2020. The Department will consider only comments received at the Department office by that time or postmarked no later than October 12, 2020. Submit comments to:

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

Unless there are substantial changes to the proposed regulations, the Department of Food and Agriculture may adopt the proposal as set forth in this notice without further notice to the public.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

Existing law requires the Secretary to establish timeframes, procedures, methods, and confirmation for industrial hemp sampling laboratory testing, harvest, and destruction as required (Section 81006, Food and Agricultural Code (FAC)).

The proposed adoption of CCR Sections 4930, 4935, 4940, 4941, 4942, 4943, 4944, 4945, 4946, 4950, and 4950.1 will establish timeframes, procedures, methods, and confirmation of THC concentration for industrial hemp sampling laboratory testing, harvest, and destruction as required in FAC, Section 81006.

Existing law, as amended by Senate Bill (SB) 1409, effective January 1, 2019, requires the Department to establish sampling procedures, including the number of samples to be taken and any compositing of samples, the portions of the plants to be sampled, plant parts to be included in a sample, and any additional procedures as necessary to ensure accuracy and the sanitation of the samples and fields (FAC Section 81006(e)(3)). Existing law also requires that the laboratory test report for tetrahydrocannabinol (THC) concentration be issued by a laboratory approved by the Department (FAC Section 81006(e)(5)).

The purpose of this proposed regulations is to adopt the regulations Sections 4930, 4935, 4940, 4941, 4942, 4943, 4944, 4945, 4946, 4950, and 4950.1. The adoption is based on federal requirements, various recommendations from the Industrial Hemp Advisory Board (IHAB) and county agricultural commissioners, and comments received from the emergency rulemaking comment period.

The Department has considered other possible related regulations in this area, and 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.

Anticipated Benefits from This Regulatory Action

Establishment of timeframes, procedures, methods, and confirmation of THC concentration for industrial hemp sampling laboratory testing, harvest, and destruction will allow commercial cultivation of industrial hemp to 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. Without this regulation, California citizens are unable to participate in this emerging industry.

Text

This adopted regulation action establishes timeframes, procedures, methods, and confirmation of THC concentration for industrial hemp sampling, laboratory testing, harvest,

and destruction. For the purpose of promoting and protecting the agricultural industry in California, existing law provides that before the harvest of each crop, except when industrial hemp is grown by an established agricultural research institution, a registrant that grows industrial hemp shall obtain a laboratory test report indicating the THC levels of a random sampling of the industrial hemp grown.

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:

CDFA estimates the direct costs for registered growers for registration, sampling, testing, harvest and/or destruction to be between \$1,995,000 to \$3,595,594 for the first year.

CDFA estimates the direct costs to county commissioners for training staff to collect samples and confirm the planting, testing, harvest, and destruction of industrial hemp grown by registered growers to be approximately \$68,838 each year. CDFA anticipates filling one vacant Environmental Scientist position as a 24-month limited term to handle the additional workload. The incurred cost for the additional staff member, estimated to be approximately \$67,290 a year.

Using the estimated of the benefits to accrue to the state of California due to these regulations, it is estimated that the implementation of these regulations will result in a total economic benefit between \$35,093,877 to \$310,878,294 in the first year.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: None.

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 regulation will require the payment of testing for THC by industrial hemp growers, as required in statute. The cost to test as a grower, approximately \$63 a sample, is reasonable and should be exceeded by revenue collected by the grower or seed breeder over the registration period of one year. 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.

Small Business Determination: The proposed regulation may affect small business.

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

Significant effect on housing costs: None.

Results of the Economic Impact Assessment

The Department has made an assessment that the proposed regulation would not likely eliminate jobs or existing businesses within California. The Department has made an assessment that the proposed 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.

The proposed regulation will establish sampling procedures, testing laboratories, and testing methods for registered growers and seed breeders. Without sampling procedures, registered growers and seed breeders will not be able to obtain test results. This would limit the amount of domestic hemp available to producers and manufactures and result in higher prices to California consumers due to California not contributing to the domestic hemp supply. The proposed regulation will also allow the growth of the industrial hemp industry in California. This will create jobs and lead to the creation of new businesses and expansion of California businesses.

Benefits of the Proposed Action

This regulatory action will:

- Establishes timeframes, procedures, methods, and confirmation for industrial hemp planting, sampling, laboratory testing, harvest, and destruction for registrants. Without sampling procedures, registrants will not be able to obtain test results and harvest industrial hemp crops. 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.
- Authorizes the commissioner to perform regulatory oversight and ensure that industrial hemp plantings meet statutory requirements.
- Helps protect the public and environment from non-compliant cultivation activities. This will improve the health and safety of Californians by creating environmentally safe compliant cultivation.
- Provides a framework for the growth of the industrial hemp industry in California. This will create jobs and lead to the expansion of California businesses.

Alternatives Considered

The Department must determine that no reasonable alternative considered to the proposed regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or 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 than the proposal described in this notice.

Alternative 1: CDFA considered allowing the registered grower to collect their own samples to minimize the sampling costs to registered growers. Growers would be responsible to

collect samples in accordance with the proposed sampling requirement and deliver the samples to the testing laboratory for THC analysis.

Although this alternative would, if feasible, prove more cost effective for registered growers, it was abandoned because of concerns regarding regulatory action, specifically crop destruction, based on samples not taken by a regulatory official. This alternative likely would conflict with amended federal requirements. USDA's current sampling guidelines prohibit growers from collecting testing samples themselves.

Alternative 2: CDFA considered requiring the use of testing laboratories licensed by the Bureau of Cannabis Control (BCC). This alternative was abandoned because the alternative cause an unnecessary financial burden on the testing laboratories.

AUTHORITY

The Department proposes to adopt CCR Section 4930, 4935, 4940, 4941, 4942, 4943, 4944, 4945, 4946, 4950, and 4950.1 pursuant to the authority vested by Sections 407, and 81006 of the Food and Agricultural Code of California.

REFERENCE

The Department proposes this action to implement, interpret and make specific Section 81006 of the Food and Agricultural Code.

CONTACT

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 to is:

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

In his absence, you may contact Rachel Avila at (916) 403-6813, rachel.avila@cdfa.ca.gov. Questions regarding the substance of the proposed regulation should be directed to Rachel Avila.

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>).

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

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.

If the regulations adopted by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.