

## FINDING OF EMERGENCY

The Secretary of the California Department of Food and Agriculture (Department) determined that an emergency exists; timeframes, procedures, methods, and confirmation for industrial hemp sampling, laboratory testing, and destruction, as required in Food and Agricultural Code (FAC) Section 81006 need to be in place before the first legal California industrial hemp crop reaches maturity. The Department is proposing emergency adoption of Title 3 California Code of Regulations (CCR) Sections 4940, 4941, 4942, 4943, 4944, 4945, 4946, 4950, and 4950.1, the effect of which will be to create timeframes, procedures, methods, and confirmation for industrial hemp sampling, laboratory testing, and destruction.

### Emergency Defined

“Emergency’ means a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare,” Government Code Section 11342.545. If a state agency makes a finding that the adoption of a regulation is necessary to address an emergency, the regulation may be adopted as an emergency regulation. Government Code Section 11346.1(b)(1).

In this document, the Department is providing the necessary specific facts demonstrating the existence of an emergency and the need for immediate action to prevent serious harm to the general welfare of the citizens of California, pursuant to Government Code Section 11346.1(b)(2).

Government Code Section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency.

The purpose of CCR Sections 4940, 4941, 4942, 4943, 4944, 4945, 4946, 4950, and 4950.1 is to create timeframes, procedures, methods, and confirmation for industrial hemp sampling, laboratory testing, and destruction. For the purpose of promoting and protecting the agricultural

industry in California, existing law provides that, before the harvest of each crop, a registrant that grows industrial hemp shall, and as provided below, obtain a laboratory test report indicating the THC levels of a random sampling of the industrial hemp grown, except when industrial hemp is grown by an established agricultural research institution. (Food and Agricultural Code [FAC], Section 81006 (d) (1)). As per FAC 81006 (d) (3), the Department shall establish, by regulation, the sampling procedures, and as per FAC 81006 (d) (5), the Department shall establish approved testing laboratories and testing methods.

The information contained within this finding of emergency meets the requirements of Government Code Sections 11346.1 and 11346.5.

The Secretary is proposing to adopt CCR Sections 4940, 4941, 4942, 4943, 4944, 4945, 4946, 4950, and 4950.1 pursuant to the authority in FAC Section 407, “the director may 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 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.”

### Evidence of an Emergency

FAC 81006 sets forth many of the requirements for effective industrial hemp sampling, laboratory testing, and destruction. However, the regulations addressed in this finding (proposed CCR Sections 4940, 4941, 4942, 4943, 4944, 4945, 4946, 4950, and 4950.1) specify detailed protocols necessary to implement the sampling, laboratory testing, and destruction requirements mandated in FAC 81006. Statutes regarding industrial hemp cultivation became active in their current form on January 1, 2019. Drafting regulations to implement the statutes began at this time. Nevertheless, promulgating regulations establishing a new agricultural program in a shifting legal landscape is an uncertain endeavor. This is complicated by the nature of the crop as a close relative or variant of a plant classified by the United States government as a drug or other

substance with a high potential for abuse. The degree of uncertainty introduced by these factors meant that the timing of activation and the final form of CCR Section 4900 were not known until within one day of its activation.

On April 25, 2019, CCR Section 4900 was approved and became effective. This regulation established a registration fee and renewal fee for industrial hemp growers and seed breeders, and allowed for industrial hemp growers and seed breeders to register with the county agricultural commissioners and begin to grow industrial hemp. Due to the short growing period of industrial hemp under some farming practices, the crop may be harvested within two months of being planted. Without the proposed regulations in place before the upcoming harvest setting forth procedures for industrial hemp sampling, laboratory testing, and destruction, a registered industrial hemp planting cannot be sampled and tested as required by FAC 81006 and the crop may not be harvested.

As of May 16, 2019 there are 17 registered industrial hemp growers that represent a total of 2,166 acres of industrial hemp production. Dollar yields from industrial hemp vary wildly depending on the crop purpose (fiber, seed, or flowers) and the cultivation methods. Currently, an industrial hemp crop can yield \$20,000 per acre. Assuming potential yield of \$20,000 an acre, if the current California industrial hemp crop were to be destroyed because of the lack of an official industrial hemp sampling and laboratory testing protocol, it would result in a potential direct loss of over \$43,000,000 to California farmers. Associated production costs would increase this loss.

CDFA would prefer to have addressed this through non-emergency regulations. Unfortunately there were several factors that impacted the process of the creating of CCR 4900, the foundation of the Industrial Hemp program, that led to unforeseen circumstances resulting in the need for these emergency regulations. While the CDFA began the process to open regulation 4900 in November 2018, the Industrial Hemp statutes in their current form were not effective until January 1st, 2019. Likewise, federal regulations allowing cultivation of Industrial Hemp (along with information on sampling and testing) went into effect January 1st, 2019. Because details of the testing and sampling were contingent upon the details of the

registration regulation, we could not in good faith spend time and effort finalizing draft regulations that would possibly violate state or federal law and/or would be inconsistent with other hemp regulation if regulation 4900 were to be approved in time for a 2019 planting season. CDFA did not know when or in what form Section 4900 would become effective until the evening before its approval on April 25th, 2019. Any changes to the timing or the details of regulation CCR 4900 would likely have affected the rest of the program (e.g., the details of CCR 4940, 4941, 4942, 4943, 4944, 4945, 4946, 4950, and 4950.1). With the foundational regulation CCR 4900 in place, the department could finalize the remainder of the programmatic framework. If CDFA had submitted the testing and sampling regulations on April 26 as a regular rulemaking (the day after CCR 4900 became effective), it would not have resulted in a comment consideration, possible revision, and final approval and effective date in time for the first hemp harvest. It also would not have allowed consideration of the effect of the final form of CCR 4900 on the details of CCR 4940, 4941, 4942, 4943, 4944, 4945, 4946, 4950, and 4950.1. There was no viable option to allow legal harvest of the California hemp crop in 2019, aside from submitting this regulation as an emergency.

Unfortunately, the time needed to promulgate the necessary regulation under discussion via the regular rulemaking process will exceed the amount of time until the first industrial hemp harvest, which could occur as early as June 2019. Therefore, an emergency adoption is proposed to implement sampling timeframes, procedures, methods, and confirmation for industrial hemp laboratory testing in time for the first harvest.

### 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 last 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 (these statutes can be found in FAC Division 24). 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 in statute provisions for obligatory testing to confirm that the resulting crops would not qualify as adult use cannabis under state law (FAC Section 81006). Without this regulation, implementing FAC 81006, California citizens will be unable to participate in the emerging American industrial hemp industry, and citizens who have relied on Division 24 and Title 3 CCR 4900, which allows registered industrial hemp cultivation, will sustain large economic losses. With this regulation the state of California will be able to cultivate a well-regulated industry, high quality industrial hemp production, and avert economic losses that will occur if currently and soon-to-be planted crops cannot be harvested.

### Project Description

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

This section establishes that sampling for THC content shall take place no more than 30 days before harvest [as per FAC 81006 (d)(2)] and the procedures for requesting sampling, as per statute (FAC 81006). The THC sampling process begins when the registrant submits a pre-harvest report to their commissioner, this report must be submitted at least 30 days prior to harvest. 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 as per FAC 81006 (d)(3)(D). This report includes:

- A. The registrant's registration number, as proof of registration,
- B. The name and contact information of the registrant,
- C. The anticipated harvest date,
- D. The name of the seed cultivar(s),
- E. The physical address, Global Positioning System coordinates, general description of the location, and acreage of the crop,
- F. Name and contact information of the laboratory to conduct the testing for THC content.

The commissioner, or third party sampler the commissioner has designated, will then schedule a sampling date within 30 days of the harvest date, as per FAC 81006 (d)(2). If there are any changes to any information given in the preharvest report, the registrant must notify the commissioner no less than 5 calendar days before the sampling date to ensure the accuracy and

sanitation of samples and fields as per FAC 81006 (d)(3)(D). If the harvest date changes, additional testing for THC may be required to ensure compliance with FAC Section 81006 (d) (2).

### **Section 4941 Sampling Procedures for Testing Industrial Hemp for THC Content**

This section establishes the sampling procedure, as per FAC 81006 (d)(3). The sample shall be collected with the grower or seed breeder present, and the sampler shall have access to all industrial hemp plants within all registered areas and facilities used for cultivation to ensure compliance with FAC Section 81006 (d) (2). Prior to the collection of the sample(s), the commissioner or designated sampler shall verify that the sampling site corresponds to the registered location using the GPS coordinates provided to ensure compliance with FAC Section 81006 (d) (2).

To ensure the feasibility of the sample procedure and to comply with with FAC Section 81006 (d)(2),the Department reviewed sampling practices in other states, including Kentucky, Colorado, Oregon, Indiana, and Minnesota before it composed the sampling details as per FAC Section 81006 (d)(3). A composite sample will be made up of at least five primary samples from different plants, to detect any plant to plant variation. As cultivars vary in average THC content and different growing conditions in different fields can lead to different outcomes, a separate composite sample will be taken for each cultivar within each contiguous field in order to comply with FAC Section 81006 (d)(3)(D). Indoor and outdoor growing areas will be treated as separate fields, as different growing conditions affect the chemical profile of the plants. To achieve an overall measurement of plant-wide concentration of THC, primary samples will include all parts of the plant, including: stems, stalks, flowers, leaves, seeds, and buds to comply with FAC Section 81006 (d)(1) and (d)(3)(C). To ensure sampling of disparate parts of the plant to achieve a plantwise average of THC content and achieve consistency across fields and between samplers and growers, if two or more lateral branches are present on the industrial hemp plant, the primary sample shall consist of the terminal 18 inches of the top lateral branch and terminal 18 inches of one lateral branch from the lower one-third of the plant. If any branch is less than 18 inches, the whole branch shall be taken. If two lateral branches are not present, then the primary sample

shall consist of the terminal 18 inches from the terminal bud at the top of the plant. If the plant itself is less than 18 inches tall, the whole plant shall be taken. These standards are easily understood and capable of consistent application. They also ensure that the THC of the actively growing portion of the plant (the portion most likely to be used for processing) is well sampled. Other approaches have been suggested, but they are less amenable to consistent application and/or they would not result in a reasonable average THC content. When feasible, the sampler should avoid collecting samples within 10 feet of the field edge, as such plants may contain THC concentrations that are anomalous or not representative of plants in the field as a whole. The feasibility standard allows needed flexibility across varying site conditions.

To prevent spoilage, the composite samples shall be placed within a permeable bag (e.g. a brown paper bag), kept in a manner not conducive to mold, and sealed with labels to detect tampering and ensure a chain of custody. Tracking the chain of custody is important to ensure the accurate characterization of plants in a particular field as per FAC Section 81006 (d)(3)(D). To avoid confusion and ensure accuracy, the sample labels will have a unique sample ID number and be signed by both the sampler and registrant. The samples will also be accompanied by the following information, as per FAC Section 81006 (d) (4) and in compliance with FAC Section 81006 (d)(3)(D):

- A. The registrant's proof of registration,
- B. The pre-harvest report,
- C. Seed certification documentation for the seed cultivar used, and
- D. The THC testing report for each certified seed cultivar used.
- E. A sample analysis request form with chain of custody information provided by the testing laboratory.

To ensure freshness and accuracy, the samples shall be delivered to the testing laboratory within 24 hours of collection. To preserve information regarding each sample and ensure traceability when samples arrive, the testing laboratory will sign the sample labels and provide a copy of the signed label to the sampler to document chain of custody in compliance with FAC Section 81006 (d)(3)(D).

## **Section 4942 Approved Testing Method for Testing Industrial Hemp for THC Content**

## **Section 4943 Approved Laboratory for Testing Industrial Hemp for THC Content**

These sections establish the approved testing methods and laboratories for testing industrial hemp for THC content, as mandated per FAC Section 81006 (d).

Upon receiving the samples, the testing laboratory will maintain the chain of custody for each sample to avoid confusion over source. Each composite sample will be maintained and tested separately for THC to be able to connect results to origin. No plant parts in the composite sample will be removed during the sample preparation to ensure comparability and accuracy of results. Within each composite sample, all parts of the plant will be dried at a temperature that does not exceed 90° F (to avoid excess volatilization of plant compounds) until the weight of the composite sample remains constant after drying intervals. The dried sample will then be milled into a homogenous powder-like consistency and combined before analysis to ensure a standard consistency across samples.

To ensure accuracy and consistency, suitable analytical instrumentation must be used to determine tetrahydrocannabinol (THC) content in industrial hemp. Although accurate, not all of the procedures authorized by the proposed regulation result in complete decarboxylation of THC-A into  $\Delta$ 9-THC. During heating, the non-intoxicant THC-A is “decarboxylated” (transformed) into the main intoxicant variant of THC,  $\Delta$ 9-THC. Therefore, testing of Cannabis plants grown as industrial hemp is meant to distinguish hemp (defined under federal and state law as Cannabis containing a maximum of 0.3% THC) from adult use Cannabis (defined under federal and state law as Cannabis having more than 0.3% THC). Federal law requires “that a procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration to ensure levels are not more than 0.3% on a dry matter basis in hemp produced in the state or territory of the Indian tribe.” Therefore, to comply with federal law, any testing protocol not completing decarboxylation must include a conversion factor for THC-A to  $\Delta$ 9-THC. Otherwise it would not reflect the potential for psychoactive THC content in a hemp plant. The conversion factor



of 0.877 was provided by the CDFA chemistry laboratory as a credible conversion factor that should be used in “other similarly reliable” THC testing methods not incorporating effective decarboxylation. Therefore, the proposed regulation complies with current federal law in this regard.

The allowable procedures include the following:

- (1) Gas chromatography with flame ionization detector
- (2) Gas chromatography coupled with mass spectrometry
- (3) Liquid chromatography coupled with mass spectrometry
- (4) Liquid chromatography coupled with ultraviolet detector

Analytical instrumentation used must be able to establish a validated limit of quantification (LOQ) of 0.10% or lower for total THC content to ensure accuracy of results.

How long the laboratory retains the sample after tests depends on the percentage content of THC found, as that will effect the likely need for retesting at some future date in compliance with FAC Section 81006 (d)(3)(D). If the laboratory test report indicates a percentage content of THC that is equal to or less than three-tenths of 1 percent, the laboratory shall retain the sample for a minimum of 30 days from the testing date, in the unlikely case in which retesting must be done for confirmation. If the percentage content of THC that is greater than three-tenths of 1 percent and does not exceed 1 percent, the laboratory shall retain the sample for a minimum of 60 days from the testing date, as the sample violated the maximum THC content for industrial hemp and retesting would be more likely and it may take longer for the requirement to be confirmed. If the THC content is greater the 1 percent, the laboratory shall retain the sample for a minimum of 90 days from the testing date, as the sample violated the maximum THC content for industrial hemp, retesting would be more likely, and the sample may be required to be submitted to the commissioner or law enforcement for investigative or enforcement purposes.

The laboratory conducting these tests must have International Organization for Standardization (ISO) / International Electrotechnical Commission (IEC) 17025 accreditation

using a validated method for total THC analysis to ensure the accuracy and consistency of the results in compliance with FAC81006 (d)(5). The laboratory must have a copy of its ISO/IEC 17025 certificate of accreditation and make this available for the commissioner upon request to allow confirmation and enforcement of the provision.

### **Section 4944 Notification of Laboratory Test Report**

This section establishes the notifications of laboratory testing reports. The testing laboratory will provide the test report to the registrant and commissioner within 10 days of the sample collection, to ensure timely availability of results needed for enforcement of the proposed regulation. If the laboratory test report indicates a percentage content of THC that is equal to or less than three-tenths of 1 percent, the words "PASSED AS CALIFORNIA INDUSTRIAL HEMP" shall appear on the laboratory test report and the laboratory shall provide the registrant at least 10 original copies with wet signatures and the commissioner one copy. These copies will be signed by an employee authorized by the laboratory. The laboratory shall retain one or more original copies of the laboratory test report for a minimum of two years from its date of sampling (as per FAC Section 81006 (d) (5-6)) (Statutory language is duplicated for clarity)

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If the laboratory test report indicates a percentage content of THC that is greater than three-tenths of 1 percent, the words "FAILED AS CALIFORNIA INDUSTRIAL HEMP" shall appear. The laboratory shall provide both the registrant and commissioner one or more copies of the laboratory test report, signed by an employee authorized to sign by the laboratory as a record of the test results (as per FAC section 81006 (d) (5)) (Statutory language is duplicated for clarity)

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The laboratory test report for each composite sample will include, in order to ensure an accurate record and traceability in compliance with FAC Section 81006 (d)(3)(D):

- A. The registration number,
- B. The unique sample identification number,

- C. The name and contact information of the registrant,
- D. The name of the sampler,
- E. The dates of the sample collection and testing,
- F. The name of the cultivar tested,
- G. The physical address, Global Positioning System coordinates, general description of the location, and acreage of the field sampled
- H. The name of approved analytical instrumentation used and the limit of quantitation (LOQ),
- I. The name of the person receiving the sample,
- J. The name of the person testing the sample,
- K. The percentage content of THC, a post-decarboxylation value or a calculated value using a conversion formula of delta-9-THC and eighty-seven and seven tenths (87.7) percent of THC-acid, on a dry weight basis, and
- L. The words "PASSED AS CALIFORNIA INDUSTRIAL HEMP" or "FAILED AS CALIFORNIA INDUSTRIAL HEMP" at or near the top of page.

#### **Section 4945 Approved Testing Method for Retesting of Industrial Hemp for THC**

##### **Content**

This section establishes, (as per FAC Section 81006 (d) (7)) that if the laboratory test indicates the sample failed as industrial hemp, a percentage content of THC that is greater than three-tenths of 1 percent, the registrant shall submit additional samples for retesting (Statuary language is duplicated for clarity). In order to ensure uniformity, the sampling and testing procedures will be the same as outlined in Sections 4941 through 4944.

#### **Section 4946 Final Disposition for Registered Industrial Hemp Crops**

This section establishes that the registrant may harvest a crop for which a laboratory test report has been received that complies with the three-tenths of 1 percent THC limit, as per in compliance with FAC Section 81006 (d)(1).. To ensure accurate record keeping and enforcement in compliance with FAC Section 81006 (d)(3)(D), the registrant shall submit a harvest report to the commissioner within 72 hours following completion of the harvest, which they may confirm by conducting field inspections. To comply with FAC Section 81006 (d)(3)(D),

the harvest report shall include:

- A. The registration number,
- B. The name and contact information of the registrant,
- C. The anticipated destruction date(s) of the crop to be destroyed,
- D. The name of the cultivar(s) and unique sample identification number(s),
- E. The physical address, Global Positioning System coordinates, general description of the location, and acreage of the crop to be destroyed, and

This section establishes that the registrant shall destroy a crop that does not comply with the three-tenths of 1 percent THC limit, as per statute. If a laboratory test report indicates a percentage content of THC that exceeds 1 percent, the destruction shall begin within 48 hours, and be completed within 7 days, after the registrant's receipt of the laboratory test report, as per FAC Section 81006 (d) (8). If a second laboratory test report indicates a percentage content of THC that exceeds three-tenths of 1 percent but is less than 1 percent, the destruction shall take place as soon as practicable, but no later than 45 days after the registrant's receipt of the second test report, as per FAC Section 81006 (d) (8).

If the registrant does not obtain a laboratory report, the registrant may not harvest the crop, as per FAC Section 81006 (d)(1).

## **Section 4950 Destruction of Non-Compliant Industrial Hemp Crops**

### **Section 4950.1 Voluntary Destruction of Industrial Hemp Crops**

These sections establish the procedures and conditions under which a crop of industrial hemp must be destroyed. To ensure compliance, before proceeding with destruction the growers must provide a destruction plan to the commissioner for approval, and the commissioner shall confirm the destruction of the crop by conducting inspections in compliance with FAC Section 81006 (d)(3)(D).

For purposes of accurate record-keeping and enforcement in compliance with FAC Section 81006 (d)(3)(D), growers shall submit a destruction plan to the commissioner at least 24 hours

prior to the start of crop destruction, which must be approved by the commissioner prior to the start of destruction. The destruction plan shall include:

- A. The registration number, if applicable,
- B. The name and contact information of the grower,
- C. The anticipated destruction date(s) of the crop to be destroyed,
- D. The name of the cultivar(s) and unique sample identification number(s), if applicable,
- E. The physical address, Global Positioning System coordinates, general description of the location, and acreage of the crop to be destroyed, and
- F. The proposed destruction method.

The commissioner may recover the costs for conducting the crop destruction from the grower, as per FAC Section 81005 (c).

In order to ensure uniformity and consistency in enforcement, a grower that wishes to voluntarily destroy an industrial hemp crop shall follow the same procedures, notification, and oversight requirements as for a mandatory destruction in compliance with FAC Section 81006 (d)(3)(D)..

Based on recommendation from the Industrial Hemp Advisory Board, the Department is proposing an emergency regulation to adopt CCR Sections 4940, 4941, 4942, 4943, 4944, 4945, 4946, 4950, and 4950.1. The adoption of these sections will establish industrial hemp sampling, laboratory testing, and destruction protocols, as required by FAC Section 81006.

The Department also relied upon the following information:

302 KAR 50:020. Policies and procedures for growers. February 12, 2018, Kentucky Department of Agriculture

Email from Michelle Phillips, dated May 14, 2019

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

Minutes, dated February 22, 2018, Industrial Hemp Advisory Board.

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

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

Excerpt of Board Motion, dated September 26, 2018, Industrial Hemp Advisory Board.

Excerpt of Board Motion, dated October 30, 2017, Industrial Hemp Advisory Board.

Excerpt of Board Motion, dated December 12, 2018, Industrial Hemp Advisory Board.

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

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

Authority and Reference Citations:

Authority: Sections 407 Food and Agricultural Code

Reference: Sections 401.5 Food and Agricultural Code and Section 4900 of the California Code of Regulations.

### Informative Digest

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.

The existing law, FAC 81006, obligates the Secretary to adopt sampling procedures and approve laboratories and laboratory testing methods.

Existing Title 3 CCR 4900 establishes the conditions for registration and the registration fees for industrial hemp growers. This adoption 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 adoption of Title 3 CCR Sections 4940, 4941, 4942, 4943, 4944, 4945, 4946, 4950, and 4950.1 allows industrial hemp to be legally harvested.

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.

CCR Sections 4940, 4941, 4942, 4943, 4944, 4945, 4946, 4950, and 4950.1.

The Department is proposing to adopt CCR Sections 4940, 4941, 4942, 4943, 4944, 4945, 4946, 4950, and 4950.1, the effect of which will be to create timeframes, procedures, methods, and confirmation for industrial hemp sampling, laboratory testing, and destruction.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Sections 4940, 4941, 4942, 4943, 4944, 4945, 4946, 4950, and 4950.1 do not impose a mandate on local agencies or school districts. No reimbursement is required under Section 17561 of the Government Code because each county agricultural commissioner currently is reimbursed through CCR Section 4900, Industrial Hemp Registration Fees, and FAC Section 81005. There is a memorandum of understanding between the department and California Agricultural Commissioners and Sealers Association (CACASA), the respective organization of the county agricultural commissioners. Those counties that wish to participate in the Industrial Hemp program can option reimbursement for the cost of implicating the program from the department.

Economic Impact Analysis

The proposed regulation provides a regulatory framework establish procedures for sampling industrial hemp for THC content. Existing law also requires the Department to establish approved laboratories and testing methods for THC testing of industrial hemp. Currently, no procedures fee has been set, and therefore no growers can harvest their crop industrial hemp. Thus, it is anticipated that the establishment of sampling procedures will likely result in the creation of new businesses and the expansion of businesses in California.

The proposed rulemaking would require the samples to be tested by a laboratory with International Organization for Standardization (ISO) / International Electrotechnical Commission (IEC) 17025 accreditation. Based on quotes from three different cannabis

laboratories in California, estimated testing costs for THC content are approximately \$63 per sample. This cost 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.

The proposed rulemaking would require county agricultural commissioners to conduct the sampling activities. Estimated sampling costs would vary because counties generally determine costs based on a standard hourly rate and charge accordingly. The statewide average hourly rate from all counties that participated in the survey was \$84.36. An application fee providing \$900 per year each grower pays cover the state's and counties' cost to administer the program.

#### Anticipated Benefits from This Regulatory Action

Establishment of laboratory testing procedures 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.

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 regulate 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 would not eliminate jobs or existing businesses within California. Based on a



comparison with states that have implemented hemp laboratory testing, the Department has made an assessment that the proposed regulation would likely lead to the creation of new jobs or businesses, and it 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 testing for THC by industrial hemp growers, as required in statute. The cost to test as a grower 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.

It is anticipated that regulations will stimulate the creation of jobs and businesses. As of May 15, 2019, the county agricultural commissioners issued 18 registrations thus far. All of these registrants represent newly legal 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 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:

- 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 product producers and result in higher prices to California consumers if California is not contributing to the domestic hemp supply.
- Provide for regulatory oversight by the county agricultural commissioner and will help to 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.
- Allow the growth of the industrial hemp industry in California. This will create jobs and lead to the expansion of California businesses. In Kentucky the hemp program had resulted in at least 81 new full-time jobs by the end of 2017. In Kentucky, there are currently 42 registered hemp processing companies. These all represent new businesses or the expansion of preexisting businesses. Because the number of expected licensed growers in California is similar to that of Kentucky in 2017, we expect similar growth of businesses in California.