



CALIFORNIA DEPARTMENT OF  
FOOD & AGRICULTURE

Karen Ross, Secretary

September 17, 2020

William Richmond  
Chief, U.S. Domestic Hemp Production Program  
Specialty, Crops Program, Agricultural Marketing Service  
United States Department of Agriculture  
1400 Independence Avenue SW  
Washington, DC 20250-0237

Dear Mr. Richmond:

The California Industrial Hemp Farming Act (Senate Bill 566, Chapter 398, Statutes of 2013) authorized the commercial production of industrial hemp in California and became effective on January 1, 2017 due to a provision in the Adult Use of Marijuana Act (Proposition 64, November 2016). As directed by this Act, the California Department of Food and Agriculture (CDFA) developed an industrial hemp cultivation program and opened registration on April 30, 2019.

Since then, California's industrial hemp law has been amended to conform to the requirements for a state regulatory plan outlined in the Agriculture Improvement Act of 2018 (2018 Farm Bill). CDFA also adopted and proposed amendments to regulations to align California's registration and cultivation requirements with the final interim rule adopted by the United States Department of Agriculture to implement the 2018 Farm Bill.

Enclosed is a copy of California's industrial hemp law and regulations as well the Outline of California's State Hemp Plan, which demonstrates California's compliance with the final interim rule. Please consider CDFA's proposed regulations as part of California's state plan.

Additionally, I certify that California has the resources and personnel to carry out the practices and procedures described in clauses (i) through (vi) of Sec. 297B(2)(A) in Sec. 10113 of the 2018 Farm Bill.



Mr. William Richmond  
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If you have any questions or need additional information regarding California's state plan, please do not hesitate to contact Michelle Phillips, Senior Environmental Scientist, at 916-654-0435 or [michelle.phillips@cdfa.ca.gov](mailto:michelle.phillips@cdfa.ca.gov).

Yours truly,

A handwritten signature in blue ink that reads "Karen Ross". The signature is written in a cursive, flowing style.

Karen Ross  
Secretary

Enclosures

## California State Regulatory Plan for Hemp Production

The following is a summary of California's hemp production program, based on the requirements found in the Code of Federal Regulations, Title 7, Sections 990.3 and 990.6, and the [basic summary of requirements for State and Tribal hemp production programs](#) provided by the U.S. Department of Agriculture (USDA). All provisions of the state regulatory plan are extracted from current, proposed, and pending sections of the California Food and Agricultural Code (FAC) and Title 3 of the California Code of Regulations (3 CCR). The full text of all referenced sections, and the status of those sections, can be found in the annex to this plan.

### 1. Definition of "hemp"

"Industrial hemp" or "hemp" means an agricultural product, whether growing or not, that is limited to types of the plant *Cannabis sativa* L. and any part of that plant, including the seeds of the plant and all derivatives, extracts, the resin extracted from any part of the plant, cannabinoids, isomers, acids, salts, and salts of isomers, with a delta-9 tetrahydrocannabinol concentration of no more than 0.3 percent on a dry weight basis. (FAC § 81000(a)(6))

### 2. Plan to maintain relevant producer and land information

California law provides for three categories for registration with the county agricultural commissioner: growers of industrial hemp (FAC § 81003), hemp breeders (FAC § 81004), and established agricultural research institutions (FAC § 81004.5). Application requirements are further specified in corresponding regulations (3 CCR § 4901), and are outlined as follows:

A grower of industrial hemp shall register with the commissioner of the county in which the grower intends to engage in hemp cultivation before cultivation. The registration application for growers of industrial hemp shall include:

- (A) the name, physical address, and contact information of the applicant, including mailing address, telephone number, and email (if available),
- (B) the business type, business name(s), including all DBAs ("doing business as"), and the employer identification number (EIN) of the business entity as provided by the Internal Revenue Service,
- (C) the name(s), title(s), and email(s) (if available) of all key participants,
- (D) the legal description, Global Positioning System coordinates, and map of the cultivation site(s), and
- (E) the approved cultivar to be grown, including the state or country of origin, and supporting documentation.

A hemp breeder shall register with the commissioner of the county in which the hemp breeder intends to engage in industrial hemp cultivation before cultivation. The registration application for hemp breeders shall include:

- (A) the name, physical address, and contact information of the applicant, including mailing address, telephone number, and email (if available),
- (B) the business type, business name(s) including all DBAs ("doing business as"), and the employer identification number (EIN) of the business entity,
- (C) the name(s), title(s), and email(s) (if available) of all key participants,
- (D) the legal description, Global Positioning System coordinates, and map of the cultivation site(s), and

- (E) a variety development plan, which shall include:
  - (i) 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,
  - (ii) the hemp varieties that will be used and, if applicable, how those varieties will be used in the development of a new cultivar,
  - (iii) a plan for testing the THC concentration of all of the plants cultivated,
  - (iv) the measures that will be taken to destroy or dispose of any plants with THC concentrations that test above 0.3 percent,
  - (v) the measures that will be taken to prevent the unlawful use of hemp, and
  - (vi) a procedure for the maintenance of records documenting the development of the new cultivar.

An established agricultural research institution shall register with the commissioner of the county in which the established agricultural research institution intends to engage in industrial hemp cultivation before cultivation. The registration application for established agricultural research institutions shall include:

- (A) the name, physical address, and contact information of the applicant, including mailing address, telephone number, and email (if available),
- (B) the business type, business name(s) including all DBAs (“doing business as”),
- (C) the name(s), title(s), and email(s) (if available) of all key participants,
- (D) the legal description, Global Positioning System coordinates, and map of the cultivation site(s), and
- (E) a research plan, which shall include:
  - (i) the hemp varieties that will be used and, if applicable, how those varieties will be used for the purposes of agricultural or academic research,
  - (ii) a plan for testing the THC concentration of all of the plants cultivated,
  - (iii) the measures that will be taken to destroy or dispose of any plants with THC concentrations that test above 0.3 percent, and
  - (iv) a procedure for the maintenance of records documenting the agricultural or academic research.

All registration applications shall be accompanied by any applicable registration or renewal fees and criminal history reports for all key participants, and all applicants shall sign the application certifying that:

- (A) the information provided on the application is true and correct,
- (B) the cultivation site(s) to be registered for hemp cultivation is not on premises licensed by the department to cultivate or process cannabis,
- (C) the applicant shall comply with all the requirements outlined in Division 24 of the Food and Agricultural Code and corresponding regulations, and
- (D) any changes to the registration shall be provided to the commissioner as outlined below.

Registration is non-transferrable to another person as defined in Section 38 of the Food and Agricultural Code. A new registration application shall be submitted for any change in the registrant.

All registrants shall submit an updated registration application to the commissioner for any of the following alterations or changes:

- (A) Any alterations or changes to business name, contact information, or key participants must be submitted within 15 calendar days of the change.
- (B) Any alterations or changes to cultivation sites, approved cultivars, variety development plans, or key participants must be approved by the commissioner prior to planting.
- (C) Any alterations or changes not submitted to the commissioner within the specified timeframe may result in the existing crop to be considered non-compliant and subject to destruction.

Registration is valid for one year from the date of issuance, after which the registrant shall renew the registration and pay the accompanying renewal fee.

All registrants shall submit a registration application to the commissioner in each county in which the applicant intends to renew the registration at least 30 calendar days prior to the expiration of registration. Renewal applications received less than 30 calendar days from registration expiration may result in noncompliance.

Once the commissioner receives the application for registration, registration amendment, or renewal and determines that the registration requirements are met, the commissioner shall issue a registration to the applicant and notify the registrant that the registrant may cultivate hemp using the registered cultivar(s), cultivation site(s), and variety development plan(s).

If the commissioner determines that the application for registration or renewal does not meet the registration requirements, the commissioner shall provide written notification to the applicant of the deficiencies in the application. The applicant shall have 30 calendar days from the receipt of the notification to provide the requested information to the commissioner. If the requested information is not provided within the timeframe, the commissioner will deny registration. If registration is denied due to deficiencies in the application for registration or renewal, the applicant must submit a new application and registration or renewal fee to the commissioner in order to register to cultivate hemp.

If the commissioner determines that the registrant no longer meets the registration requirements, the commissioner shall revoke the registration and provide written notification to the applicant regarding the registration revocation. The revocation is effective as of the date on the notification.

The commissioner shall transmit registration information collected to the department no more than 10 business days after the date on which it is collected or the date of a change in registration status occurred.

The department shall submit the information described in paragraph (a) of Section 990.70 of Title 7 of the Code of Federal Regulations to the United States Department of Agriculture for hemp growers and breeders no more than 30 business days after the date on which it is collected or the date of a change in registration status occurred. The department shall submit the following information to the United State Department of Agriculture for established agricultural research institutions no more than 30 business days after the date on which it is collected or the date of a change in registration status occurred:

- (A) Name and contact information for each registered established agricultural research institution,
- (B) A legal description of the land on which the established agricultural research institution engages in hemp cultivation, and

(C) Registration status of the established agricultural research institution.

### **3. Plan for accurate and effective sampling testing using post decarboxylation or similar reliable methods**

California law establishes sampling and testing requirements and provides that harvest may not occur until a passing laboratory test report is received (FAC § 81006(e)). The process of obtaining a laboratory test report and harvest requirements are further specified in corresponding regulations (3 CCR §§ 4940-4946), and are outlined as follows:

In order to receive a laboratory test report, the registrant shall provide to the commissioner a pre-harvest report along with a sample analysis request form at least 20 days before the anticipated harvest start date to initiate the sampling process. The pre-harvest report comprises of the:

- (A) registrant's registration number,
- (B) name and contact information of the registrant,
- (C) anticipated harvest start date,
- (D) name(s) of the cultivar(s) to be harvested,
- (E) physical address, Global Positioning System coordinates, general description of the planting location, and total acreage or square footage of the planting to be harvested, and
- (F) name and contact information of the laboratory to conduct the testing for THC concentration.

The sample shall be collected by the commissioner, an USDA-approved sampling agent, or a federal, state, or tribal law enforcement agent authorized by USDA to collect the samples. The sampler shall schedule a sampling date and verify that the planting to be sampled corresponds to the registered cultivation site. Any changes must be provided no less than two calendar days before the scheduled sampling date and the sampling shall occur no more than six calendar days prior to the anticipated harvest start date as shown on the pre-harvest report.

The registrant shall be present to observe the collection of the samples and allow the sampler to have complete and unrestricted access during business hours to all hemp and cannabis plants and land and buildings, and other structures used for hemp and cannabis plants and, and all locations registered as a cultivation site.

The sampler shall take a separate composite sample for each cultivar within each contiguous planting, where outdoor and indoor growing areas are considered separate plantings, to ensure that the sample collected represents a homogenous composition of the lot. The composite sample must consist of the following:

- (A) six samples for plantings that are less than or equal to six acres.
- (B) one sample from each acre for plantings that are greater than six acres but less than 10 acres.
- (C) for plantings equal to or greater than 10 acres, the number of samples shall be calculated using the following formula where n is the number of plants to be selected and N is the planting acreage:

$$n = 299 / (1 + (298 / N))$$

Each sample must be taken from different plants and must be the terminal eight inches from the top of the plant or the whole plant above ground if the plant is less than eight inches tall. Each composite sample will be stored in separate bags and sealed/labeled to detect tampering. The samples must be accompanied with the registrant's proof of registration, pre-harvest report, and sample analysis request form and delivered to the testing laboratory within 24 hours.

The testing of the composite sample for THC concentration shall be conducted by International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) 17025 accreditation using a validated method in accordance with CCR § 4942, 4944, and 4945 for THC analysis on plant material. The laboratories must meet all laboratory registration requirements outlined in Part 990.3 in Title 7 of the Code of Federal Regulations and any corresponding guidance and have approval from CDFA to test industrial hemp for THC concentration. The laboratory must provide a laboratory approval application along with copy of the DEA registration certification (if applicable), ISO/IEC 17025 certificate of accreditation, and standard operating procedures for THC testing for CDFA to review and approve.

The laboratory must maintain the chain of custody upon receiving the samples and document any chain of custody information on the sample analysis request form. The laboratory must check the samples for any signs of tampering before preparing the sample for testing. Any evidence of tampering will require the laboratory to notify the commissioner and will not test the sample.

The laboratory shall maintain and test each composite sample separately for THC concentration. All plant materials in the composite sample shall be processed and tested as a single sample, and shall be dried until the weight of the composite sample remains constant after drying intervals. Drying temperature must not exceed 90 degrees Celsius. The dried plant material shall then be manicured through a wire screen no longer than 1.5 mm x 1.5 mm to remove all mature seeds and larger twigs and stems and milled to a homogenous powder-like consistency and combined before analysis.

Suitable analytical instrumentation used to determine THC concentration in industrial hemp includes the following:

- (A) Gas chromatography with flame ionization detector,
- (B) Gas chromatography coupled with mass spectrometry,
- (C) Liquid chromatography coupled with mass spectrometry, or
- (D) Liquid chromatography coupled with diode-array or variable wavelength detector.

"THC concentration" or "percentage concentration of THC" is defined as the post-decarboxylated value of the percentage of delta-9 THC on a dry weight basis to the nearest thousandth, or 3 decimal places. The THC concentration may be measured by using either:

- (A) a suitable analytical instrumentation listed above that results in the decarboxylation of THC-acid to delta-9 THC, or
- (B) a calculated value using a conversion formula of the percentage concentration of delta-9 THC plus eighty-seven and seven tenths (87.7) percent of the percentage concentration of THC-acid when a suitable analytical instrumentation listed above does not result in the decarboxylation of THC-acid to delta-9 THC.

The “acceptable hemp THC level” is defined as a THC concentration that falls within the distribution or range that includes three-tenths of one percent or less that is produced when the measurement of uncertainty is applied to the report THC concentration.

The measurement of uncertainty refers to the parameter associated with the result of a measurement that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.

The testing laboratory shall provide a separate test report for each composite sample that includes the following:

- (A) registration number,
- (B) unique sample identification number as assigned on the sample analysis request form,
- (C) name and contact information of the registrant,
- (D) name of the sampler,
- (E) dates and times of the sample collection, testing, and test report,
- (F) name of the cultivar tested,
- (G) physical address, Global Positioning System coordinates, general description of the planting location, and total acreage or square footage of the planting sampled,
- (H) name and contact information of the laboratory,
- (I) name of approved analytical instrumentation used and the limit of detection (LOD),
- (J) name of the person who received the sample,
- (K) name of the person who tested the sample,
- (L) DEA registration number of the laboratory, if applicable,
- (M) Identification of a retest, if applicable,
- (N) percentage concentration of THC in accordance with Section 4942,
- (O) measurement of uncertainty as a  $\pm$  percentage value to the nearest thousandth, or three decimal places, at 95% confidence level,
- (P) the words “OFFICIAL CALIFORNIA REGULATORY SAMPLE”,
- (Q) and words “PASSED AS CALIFORNIA INDUSTRIAL HEMP” or “FAILED AS CALIFORNIA INDUSTRIAL HEMP” at or near the top of page.
  - (i) if the laboratory test report indicates a percentage content of THC that is within the acceptable hemp THC level, the words “PASSED AS CALIFORNIA INDUSTRIAL HEMP” shall appear.
  - (ii) if the laboratory test report indicates a percentage content of THC that is greater than the acceptable hemp THC level, the words “FAILED AS CALIFORNIA INDUSTRIAL HEMP” shall appear.

The laboratory shall provide an electronic copy of the laboratory test report to the registrant and commissioner concurrently within five calendar days of the date of sampling. The laboratory shall retain copies of all laboratory test reports and sample analysis request forms for a minimum of three years from the date of sampling.

Registrants may harvest the sampled crop upon the receipt of an electronic copy of a passing laboratory test report, and the harvest must be completed within 15 calendar days from the sampling date. The registrant shall provide a harvest report to the commissioner within 72 hours following the completion, which shall include the following:

- (A) registration number,
- (B) name and contact information of the registrant,
- (C) harvest timeframe including start and end dates,

- (D) name(s) of the cultivar(s),
- (E) unique sample identification number(s) as assigned on the sample analysis request form and the percentage concentration of THC for each cultivar as reported on the laboratory test report,
- (F) physical address, Global Positioning System coordinates, general description of the planting location, and total acreage or square footage of the harvested planting, and
- (G) description and quantity of the material harvested.

The commissioner may confirm the completion of the harvest by conducting field inspections where the commissioner is provided complete and unrestricted access during business to all hemp and other cannabis plants (growing or harvested) and all land, building, and other structures for hemp and other cannabis plants, and all locations registered as a cultivation site.

The registrant shall destroy a crop that received a failed laboratory test report within the following timeframes:

- (A) if a laboratory test report indicates the percentage concentration of THC exceeds one percent, the destruction shall begin within 48 hours, and be completed within seven calendar days, after the registrant's receipt of an electronic copy of the laboratory test report.
- (B) if a second laboratory test report from retesting indicates the percentage concentration of THC exceeds the acceptable hemp THC level but is less than one percent, the destruction shall take place as soon as practicable, but no later than 45 calendar days after the registrant's receipt of an electronic copy of the second laboratory test report.

The registrant may request additional sampling and testing to extend the harvest timeframe. All previous laboratory test reports shall be invalid upon the commissioner's receipt of the electronic copy of the most recent laboratory test report. If the laboratory test report indicates a THC concentration that is greater than the acceptable hemp THC level but does not exceed one percent, the registrant may request one additional retest.

#### **4. Plan for disposal procedures**

Except when industrial hemp is grown by a registered established agricultural research institution and tested in accordance with an approved research plan or by a registered hemp breeder and tested in accordance with an approved variety development plan, California law requires the destruction or disposal of hemp crops that do not meet THC testing requirements (FAC § 81006). Destruction requirements are further specified in corresponding regulations (3 CCR §§ 4946, 4950, and 4950.1), and are outlined as follows:

Except when industrial hemp is grown by a registered established agricultural research institution and tested in accordance with an approved research plan or by a registered hemp breeder and tested in accordance with an approved variety development plan, registrants shall destroy a crop that receives a failed laboratory test report within the following timeframes:

- (A) If a laboratory test report indicates the percentage concentration of THC exceeds one percent, the destruction shall begin within 48 hours, and be completed within seven calendar days, after the registrant's receipt of an electronic copy of the laboratory test report.

- (B) If a second laboratory test report from retesting indicates the percentage concentration of THC exceeds the acceptable hemp THC level but is less than one percent, the destruction shall take place as soon as practicable, but no later than 45 calendar days after the registrant's receipt of an electronic copy of the second laboratory test report.

Except when industrial hemp is grown by a registered established agricultural research institution and tested in accordance with an approved research plan or by a registered hemp breeder and tested in accordance with an approved variety development plan, registrants shall not harvest a sampled crop that received failed laboratory test report. If the initial laboratory test report indicates a percentage content of THC that is greater than the acceptable hemp THC level but does not exceed one percent, the registrant may request one retest.

Except for industrial hemp crop grown by established agricultural research institutions, any industrial hemp crop that does not meet the requirements for California's hemp production program shall be destroyed in a manner compliant with Section 297B of the federal Agricultural Marketing Act of 1946 (added by Section 10113 of the federal Agriculture Improvement Act of 2018 (Public Law 115-334), implementing regulations, and guidance.

- (A) Except as specified above, any non-compliant industrial hemp crop shall be destroyed as soon as practical, but destruction must be completed no later than 45 calendar days after the cultivator's receipt of notification of abatement from the commissioner.
- (B) If the cultivator does not complete destruction of the crop within the timeframe specified by the commissioner, the county or city within which the crop is located may undertake destruction of the crop in accordance with a duly-adopted local abatement procedure.

Except for established agricultural research institutions, a cultivator may request to voluntarily destroy a crop, and shall destroy the crop in a manner compliant with Section 297B of the federal Agricultural Marketing Act of 1946 (added by Section 10113 of the federal Agriculture Improvement Act of 2018 (Public Law 115-334), implementing regulations, and guidance.

The cultivator of the industrial hemp crop shall submit a signed destruction plan to the commissioner at least 24 hours prior to the start of the destruction, unless a shorter timeframe is allowed by the commissioner. The destruction plan shall include the:

- (A) registration number, if applicable,
- (B) name and contact information of the cultivator,
- (C) anticipated destruction date(s) of the crop to be destroyed,
- (D) name(s) of the cultivar(s) to be destroyed,
- (E) unique sample identification number(s) as assigned on the sample analysis request form and percentage concentration of THC for each cultivar as reported on the laboratory test report, if applicable,
- (F) physical address, Global Positioning System coordinates, general description of the planting location, and total acreage or square footage of the crop to be destroyed, and
- (G) destruction method compliant with Section 297B of the federal Agricultural Marketing Act of 1946 (added by Section 10113 of the federal Agriculture Improvement Act of 2018 (Public Law 115-334), implementing regulations, and guidance.

The destruction plan shall be approved by the commissioner prior to the start of the destruction.

The cultivator shall submit a signed destruction report to the commissioner within 72 hours following the completion of the destruction. The destruction report shall include the:

- (A) registration number, if applicable,
- (B) name and contact information of the cultivator,
- (C) date(s) and time(s) of destruction,
- (D) name of the cultivar(s) destroyed,
- (E) unique sample identification number(s) and percentage concentration of THC for each cultivar as reported on the laboratory test report, if applicable,
- (F) physical address, Global Positioning System coordinates, general description of the planting location, and total square footage or acreage of the destroyed planting, and
- (G) description and quantity of the material destroyed.

The commissioner shall confirm the destruction of the crop 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.

The Department shall promptly notify the USDA by certified mail or electronically of any occurrence of non-compliant plants or plant material and provide a disposal record for those plants and materials in accordance with the procedure outlined in Part 990.70(b) in Title 7 of the Code of Federal Regulations.

## **5. Plan for inspection procedures**

California regulations specify that the commissioner shall conduct annual inspections of a random sample of registrants to verify registration information, confirm crop destruction, and ensure appropriate recordkeeping (3 CCR § 4930).

The commissioner may confirm the planting of crops, the completion of harvest, and the destruction of crops 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 (3 CCR §§ 4935(c), 4946(a)(4), and 4950(d)).

## **6. Plan for collection of information**

California regulations requires CDFA to collect from the commissioners the information described in paragraph (a) of Section 990.70 of Title 7 of the Code of Federal Regulations for all hemp growers and breeders and to submit the information to the United States Department of Agriculture no more than 30 business days after the date on which it is collected or the date of a change in registration status occurred (FAC § 81003(e), 81004(g), and 81004.5(f)). CDFA plans to provide the collected information to USDA by the first of each month.

The department shall collect the following information from the commissioners for established agricultural research institutions and to submit the information to the United States Department of Agriculture no more than 30 business days after the date on which it is collected or the date

of a change in registration status occurred (FAC § 81004.5(f)). CDFA plans to provide the collected information to USDA by the first of each month:

- (A) Name and contact information for each registered established agricultural research institution,
- (B) A legal description of the land on which the established agricultural research, institution engages in hemp cultivation, and
- (C) Registration status of the established agricultural research institution.

Except for established agricultural research institutions, California regulations require each grower of industrial hemp and hemp breeder to report on its hemp production in the state and any changes to the location where it will produce hemp to the Farm Service Agency of the USDA and provide, at minimum, all of the following information:

- (A) registrant's registration number,
- (B) physical address, Global Positioning System coordinates, general description of the planting location, and
- (C) acreage dedicated to the production of hemp, or greenhouse or indoor square footage dedicated to the production of hemp.

## **7. Plan to comply with enforcement procedures**

California law requires that enforcement of California's hemp production program comply with subdivision (e) of Section 297B of the federal Agricultural Marketing Act of 1946 (FAC § 81012), and further specifies the following:

A registrant that CDFA determines has violated a provision of California's hemp production program, including, but not limited to, by failing to provide a legal description of the land on which industrial hemp is grown, failing to register as required, or exceeding the acceptable hemp THC level, shall be subject to the following consequences:

- (A) For a negligent violation, as determined by the secretary, the consequences shall be as follows:
  - (i) If the violation is not a repeat violation subject to subparagraph (B), the registrant shall comply with a corrective action plan, to be established by the secretary, that includes both of the following:
    - (1) A reasonable date by which the registrant shall correct the negligent violation.
    - (2) A requirement that the registrant shall periodically report to the secretary, for a period of at least the next two calendar years, on its compliance with California's hemp production program.
  - (ii) A registrant that commits a negligent violation three times in a five-year period shall be ineligible to participate in the hemp production program for a period of five years beginning on the date of the finding of the third violation.
- (B) For a violation committed intentionally, or with recklessness or gross negligence, the secretary shall immediately report the registrant to the Attorney General of the United States and the Attorney General of this state, as applicable.

California law establishes that a person that materially falsifies any information contained in an application or registration shall be ineligible to participate in the hemp production program (FAC § 81014).

California law establishes that any person convicted of a felony relating to a controlled substance under state or federal law before, on, or after January 1, 2020, shall be ineligible, during the 10-year period following the date of the conviction, to participate in the hemp production program (FAC § 81013). Procedures to confirm this requirement are further specified in corresponding regulations (3 CCR § 4902), and are outlined as follows:

“Criminal history report” is defined as the Federal Bureau of Investigation’s Identity History Summary.

“Key participant” is defined as any person in the entity producing industrial hemp who is:

- (A) a sole proprietor, a partner in partnership, or a person with executive managerial control in a corporation producing industrial hemp, or
- (B) a person with executive managerial control over the entity producing industrial hemp, including persons such as a chief executive officer, chief operating officer and chief financial officer.
- (C) This definition does not include a person in a management position with no executive managerial control over the entity producing industrial hemp, such as farm, field, or shift managers.

“Disqualifying conviction” is defined as any plea of guilty or nolo contendere, or any finding of guilt for a State or Federal felony related to a controlled substance, except:

- (A) when the finding of guilt is subsequently overturned on appeal, pardoned, or expunged, or
- (B) 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.

A criminal history report for each key participant listed pursuant to Section 4901 shall be submitted along with the registration application to the commissioner. A registration application will not be considered complete without all required criminal history reports.

Any changes to key participants must be reported along with criminal history reports for any additional key participants to the commissioner as an amendment to the registration within 15 calendar days of the change.

All criminal history reports must be dated within 60 calendar days of submission of the registration application.

Registrants shall notify the commissioner in writing within 48 hours of the registrant or a key participant receiving a disqualifying conviction.

If an applicant, registrant, or key participant is found to have a disqualifying conviction, the applicant or key participant shall be ineligible to participate in the hemp program for ten years from the date of the conviction.

Any falsification of criminal history reports shall be considered as materially falsifying information in an application or registration and shall result in revocation or refusal of registration and ineligibility to participate in the hemp production program.

**8. Certification that the state has resources and personnel to carry out required Farm Bill practices and procedures.**

CDFA's Secretary has certified in the cover letter attached to this plan that California has the resources and personnel to carry out the practices and procedures described in clauses (i) through (vi) of Sec. 297B(2)(A) of the Agricultural Marketing Act of 1946 as amended in Sec. 10113 of the 2018 Farm Bill.

PROPOSED



CALIFORNIA DEPARTMENT OF  
FOOD & AGRICULTURE

**CALIFORNIA  
STATE REGULATORY PLAN  
FOR HEMP PRODUCTION**

PROPOSED

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PROPOSED

**California State Regulatory Plan for Hemp Production**  
**Annex: Extracts from the California Business and Professions Code, California**  
**Food and Agricultural Code, and the California Code of Regulations**

**Business and Professions Code**  
**Division 10. Cannabis**  
**General Provisions and Definitions**

**26001. For purposes of this division, the following definitions apply:**

(ap) "Premises" means the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one licensee.<sup>1</sup>

**California Food and Agricultural Code**  
**General Provisions and Definitions**

**38. "Person"** means any individual, partnership, association, corporation, limited liability company, or any organized group of persons whether incorporated or not.<sup>2</sup>

**Division 24. Industrial Hemp**

**81000. Definitions.**

(a) For purposes of this division, the following terms have the following meanings:

- (1) "Approved state plan" means a state plan for California that is approved pursuant to Section 297B of the federal Agricultural Marketing Act of 1946 (added by Section 10113 of the federal Agriculture Improvement Act of 2018 (Public Law 115-334)) and in effect.
- (2) "Board" means the Industrial Hemp Advisory Board.
- (3) "Cultivar" means a variety of industrial hemp.
- (4) "Established agricultural research institution" means an institution of higher education, as defined in Section 101 of the federal Higher Education Act of 1965 (20 U.S.C. Sec. 1001), that grows, cultivates, or manufactures industrial hemp for purposes of agricultural or academic research.
- (5) "Hemp breeder" means an individual or a public or private institution or organization that is registered with the commissioner to develop cultivars intended for sale or research.
- (6) "Industrial hemp" or "hemp" means an agricultural product, whether growing or not, that is limited to types of the plant *Cannabis sativa* L. and any part of that plant, including the

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<sup>1</sup> Current, effective January 1, 2020.

<sup>2</sup> Current, effective January 1, 1995.

seeds of the plant and all derivatives, extracts, the resin extracted from any part of the plant, cannabinoids, isomers, acids, salts, and salts of isomers, with a delta-9 tetrahydrocannabinol concentration of no more than 0.3 percent on a dry weight basis.

- (7) "Industrial hemp program" means growth of industrial hemp pursuant to this division and, if in effect, an approved state plan.
  - (8) "Premises" has the same meaning as defined in subdivision (ap) of Section 26001 of the Business and Professions Code.
  - (9) "Research plan" means a strategy devised by an established agricultural research institution, or applicant established agricultural research institution, detailing its planned approach to growing or cultivating hemp for academic or agricultural research.
  - (10) "THC" means delta-9 tetrahydrocannabinol.
  - (11) "Variety development plan" means a strategy devised by a hemp breeder, or applicant hemp breeder, detailing their planned approach to growing and developing a new cultivar for industrial hemp.
- (b) This section shall become operative as of the date on which a state plan for California is approved pursuant to Section 297B of the federal Agricultural Marketing Act of 1946 (added by Section 10113 of the federal Agricultural Improvement Act of 2018 (Public Law 115-334)).<sup>3</sup>

**81001.** (a) There is in the department an Industrial Hemp Advisory Board. The board shall consist of 13 members, appointed by the secretary as follows:

- (1) Five of the board members shall be growers of industrial hemp that are registered pursuant to the provisions of this division.
- (2) Two of the board members shall be members of an established agricultural research institution.
- (3) One member of the board shall be a representative as provided by the California State Sheriffs' Association and approved by the secretary.
- (4) One member of the board shall be a county agricultural commissioner.
- (5) One member of the board shall be a representative of the Hemp Industries Association or its successor industry association.
- (6) Two members of the board shall be representatives of businesses that sell industrial hemp products.
- (7) One member of the board shall be a member of the public.

(b) It is hereby declared, as a matter of legislative determination, that growers and representatives of industrial hemp product manufacturers and businesses appointed to the board pursuant to this

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<sup>3</sup> Current, effective January 1, 2020.

division are intended to represent and further the interest of a particular agricultural industry, and that the representation and furtherance is intended to serve the public interest. Accordingly, the Legislature finds that persons who are appointed to the board shall be subject to the conflict-of-interest provisions described in Sections 87100 and 87103 of the Government Code.

(c) The term of office for a member of the board is three years. If a vacancy exists, the secretary shall, consistent with the membership requirements described in subdivision (a), appoint a replacement member to the board for the duration of the term.

(d) A member of the board shall not receive a salary but may be reimbursed by the department for attendance at meetings and other board activities authorized by the board and approved by the secretary.

(e) The board shall advise the secretary and may make recommendations on all matters pertaining to this division, including, but not limited to, industrial hemp seed law and regulations, enforcement, annual budgets required to accomplish the purposes of this division, and the setting of an appropriate assessment rate necessary for the administration of this division.

(f) The board shall annually elect a chair from its membership and, from time to time, other officers as it deems necessary.

(g) The board shall meet at the call of its chair or the secretary, or at the request of any four members of the board. The board shall meet at least once a year to review budget proposals and fiscal matters related to the proposals.<sup>4</sup>

**81002.** (a) Except when grown by a registered established agricultural research institution or by a registered hemp breeder developing a new cultivar, industrial hemp shall be grown only if it is on the list of approved cultivars, or produced by clonal propagation of industrial hemp that is on the list of approved cultivars and therefore genetically identical to, and capable of exhibiting the same range of characteristics as, the parent cultivar.

(b) The list of approved cultivars shall include all of the following:

- (1) Industrial hemp cultivars that have been certified by member organizations of the Association of Official Seed Certifying Agencies, including, but not limited to, the Canadian Seed Growers' Association.
- (2) Industrial hemp cultivars that have been certified by the Organization of Economic Cooperation and Development.
- (3) California varieties of industrial hemp cultivars that have been certified by a seed-certifying agency pursuant to Article 6.5 (commencing with Section 52401) of Chapter 2 of Division 18.

(c) (1) Upon recommendation by the board or the department, the secretary may update the list of approved cultivars by adding, amending, or removing cultivars.

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<sup>4</sup> Current, effective January 1, 2020.

- (2) The adoption, amendment, or repeal of the list of approved cultivars, and the adoption of a methodology and procedure to add, amend, or remove a cultivar from the list of approved cultivars, pursuant to this section shall not be subject to the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).
- (3) The department, in consultation with the board, shall hold at least one public hearing with public comment to determine the methodology and procedure by which a cultivar is added, amended, or removed from the list of approved cultivars.
- (4) The department shall finalize the methodology and procedure to add, amend, or remove a cultivar from the list of approved cultivars and send the methodology and procedure to the Office of Administrative Law. The Office of Administrative Law shall file the methodology and procedure promptly with the Secretary of State without further review pursuant to Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. The methodology and procedure shall do all of the following:
  - (A) Indicate that the methodology and procedure are adopted pursuant to this division.
  - (B) State that the methodology and procedure are being transmitted for filing.
  - (C) Request that the Office of Administrative Law publish a notice of the filing of the methodology and procedure and print an appropriate reference in Title 3 of the California Code of Regulations.
- (d) The department, in consultation with the board, may determine the manner in which the public is given notice of the list of approved cultivars, and any addition, amendment, or removal from that list.<sup>5</sup>

**81003.** (a) (1) Except for an established agricultural research institution subject to Section 81004.5 or a hemp breeder subject to Section 81004, and before cultivation, a grower of industrial hemp shall register with the commissioner of the county in which the grower intends to engage in industrial hemp cultivation.

- (2) The application shall include all of the following:
  - (A) The name, physical address, and mailing address of the applicant.
  - (B) The legal description, Global Positioning System coordinates, and map of the land area on which the applicant plans to engage in industrial hemp cultivation, storage, or both.
  - (C) The approved cultivar to be grown, including the state or county of origin.
- (3) The application shall be accompanied by a registration fee, as determined pursuant to Section 81005.

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<sup>5</sup> Current, effective January 1, 2020.

(4) A registration issued pursuant to this section shall be valid for one year, after which the registrant shall renew the registration and pay an accompanying renewal fee, as determined pursuant to Section 81005.

(b) If the commissioner determines that the requirements for registration pursuant to this division are met and that the applicant is eligible to participate in the industrial hemp program, in accordance with Sections 81012 to 81014, inclusive, the commissioner shall issue a registration to the applicant.

(c) A registrant that wishes to change or alter the land area on which the registrant conducts industrial hemp cultivation or storage, or both, shall, before any alteration or change, submit to the commissioner an updated registration with the legal description, Global Positioning System coordinates, and map specifying the proposed land change or alteration. Once the commissioner has received the change to the registration and the commissioner determines that the requirements pursuant to this division are met, the commissioner shall notify the registrant that it may cultivate industrial hemp on the changed or altered land area.

(d) A registrant that wishes to change the cultivar grown shall submit to the commissioner the name of the new, approved cultivar to be grown. Once the commissioner has received the change to the registration and the commissioner determines that the requirements pursuant to this division are met, the commissioner shall notify the registrant that it may cultivate the new cultivar.

(e) (1) The commissioner shall transmit information collected under this section to the department.

(2) The following information shall be transmitted by the commissioner to the department no more than 10 business days, and submitted by the department to the United States Department of Agriculture no more than 30 business days, after the date on which it is collected, or, in the case of subparagraph (C), the date of a change in registration status:

(A) Contact information for each grower of industrial hemp.

(B) A legal description of the land on which the grower engages in industrial hemp cultivation.

(C) Registration status of the grower of industrial hemp.

(f) The department and the commissioner shall retain information collected under this section for at least three years after collecting or receiving it. <sup>6</sup>

**81004.** (a) (1) Except when grown by an established agricultural research institution subject to Section 81004.5, and before cultivation, a hemp breeder shall register with the commissioner of the county in which the hemp breeder intends to engage in industrial hemp cultivation.

(2) The application shall include all of the following:

(A) The name, physical address, and mailing address of the applicant.

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<sup>6</sup> Current, effective January 1, 2020.

(B) The legal description, Global Positioning System coordinates, and map of the land area on which the applicant plans to engage in industrial hemp cultivation, storage, or both.

(C) A variety development plan, which shall include all of the following:

(i) If a new cultivar is to be certified by a seed-certifying agency, the name of the seed-certifying agency that will be conducting the certification.

(ii) The industrial hemp varieties that will be used and, if applicable, how those varieties will be used in the development of a new cultivar.

(iii) A plan for testing all of the plants grown.

(iv) The measures that will be taken to destroy any plants with THC concentrations that test above 0.3 percent.

(v) The measures that will be taken to prevent the unlawful use of industrial hemp under this division.

(vi) A procedure for the maintenance of records documenting the development of the new cultivar.

(3) The application shall be accompanied by a registration fee, as determined pursuant to Section 81005.

(4) A registration issued pursuant to this section shall be valid for one year, after which the registrant shall renew its registration and pay an accompanying renewal fee, as determined pursuant to Section 81005.

(b) If the commissioner determines that the requirements for registration pursuant to this division are met and that the applicant is eligible to participate in the industrial hemp program, in accordance with Sections 81012 to 81014, inclusive, the commissioner shall issue a hemp breeder registration to the applicant.

(c) A registrant that wishes to change or alter the land area on which the registrant conducts industrial hemp cultivation or storage, or both, shall, before any alteration or change, submit to the commissioner an updated registration with the legal description, Global Positioning System coordinates, and map specifying the proposed land change or alteration. Once the commissioner has received the change to the registration and the commissioner determines that the requirements pursuant to this division are met, the commissioner shall notify the registrant that it may cultivate industrial hemp on the changed or altered land area.

(d) A registrant that wishes to change the cultivar grown shall submit to the commissioner the name of the new, approved cultivar to be grown. Once the commissioner has received the change to the registration and the commissioner determines that the requirements pursuant to this division are met, the commissioner shall notify the registrant that it may cultivate the new cultivar.

(e) A registrant developing a new cultivar who wishes to change any provision of the variety development plan shall submit to the commissioner the revised variety development plan. Once the commissioner has received the change to the registration and the commissioner determines

that the requirements pursuant to this division are met, the commissioner shall notify the registrant that the registrant may cultivate under the revised variety development plan.

(f) All records pertaining to the variety development plan shall be kept and maintained by the hemp breeder and be available upon request by the commissioner, a law enforcement agency, or a seed certifying agency.

(g) (1) The commissioner shall transmit information collected under this section to the department.

(2) The following information shall be transmitted by the commissioner to the department no more than 10 business days, and submitted by the department to the United States Department of Agriculture no more than 30 business days, after the date on which it is collected, or, in the case of subparagraph (C), the date of a change in registration status:

(A) Contact information for each hemp breeder.

(B) A legal description of the land on which the hemp breeder engages in industrial hemp cultivation.

(C) Registration status of the hemp breeder.

(h) The department and the commissioner shall retain information collected under this section for at least three years after collecting or receiving it.<sup>7</sup>

**81004.5.** (a) (1) Before cultivating hemp for agricultural or academic research, an established agricultural research institution shall register with the commissioner of the county in which it intends to cultivate.

(2) The registration application shall include all of the following:

(A) The name, physical address, and mailing address of the applicant.

(B) The legal description, Global Positioning System coordinates, and map of the geographic area where the applicant plans to engage in hemp cultivation or storage, or both.

(C) A research plan that shall include all of the following:

(i) The hemp varieties that will be used and, if applicable, how those varieties will be used for purposes of agricultural or academic research.

(ii) A plan for testing all of the plants cultivated.

(iii) The measures that will be taken to destroy any plants with THC concentrations that test above 0.3 percent.

(iv) The measures that will be taken to prevent the unlawful use of hemp under this division.

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<sup>7</sup> Current, effective January 1, 2020.

- (v) A procedure for the maintenance of records documenting the agricultural or academic research.
- (3) A registration issued pursuant to this section shall be valid for one year, after which the registrant shall renew its registration if it will continue cultivating hemp beyond that term.
- (b) If the commissioner determines that the requirements for registration pursuant to this division are met and that the applicant is eligible to participate in the hemp program, in accordance with Sections 81012 to 81014, inclusive, the commissioner shall issue an established agricultural research institution registration to the applicant.
- (c) A registrant that wishes to change or alter the land area on which the registrant conducts hemp cultivation or storage, or both, shall, before any alteration or change, submit to the commissioner an updated registration with the legal description, Global Positioning System coordinates, and map specifying the proposed land change or alteration. Once the commissioner has received the change to the registration and the commissioner determines that the requirements pursuant to this division are met, the commissioner shall notify the registrant that it may cultivate hemp on the changed or altered land area.
- (d) A registrant conducting agricultural or academic research who wishes to change any provision of the research plan shall submit to the commissioner a revised research plan. Once the commissioner has received the revised research plan, and the commissioner determines that the requirements of this division are met, the commissioner shall notify the registrant that it may cultivate under the revised research plan.
- (e) All records pertaining to the research plan shall be kept and maintained by the established agricultural research institution and be available upon request by the commissioner or a law enforcement agency.
- (f) (1) The commissioner shall transmit information collected under this section to the department.
- (2) The following information shall be transmitted by the commissioner to the department no more than 10 business days, and submitted by the department to the United States Department of Agriculture no more than 30 business days, after the date on which it is collected, or, in the case of subparagraph (C), the date of a change in registration status:
- (A) Contact information for each registered established agricultural research institution.
- (B) A legal description of the land on which the established agricultural research institution engages in hemp cultivation.
- (C) Registration status of the established agricultural research institution.
- (g) The department and the commissioner shall retain information collected under this section for at least three years after collecting or receiving it.

(h) This section shall become operative as of the date on which a state plan for California is approved pursuant to Section 297B of the federal Agricultural Marketing Act of 1946 (added by Section 10113 of the federal Agricultural Improvement Act of 2018 (Public Law 115-334)).<sup>8</sup>

**81005.** (a) The department shall establish a registration fee and appropriate renewal fee to be paid by growers of industrial hemp and hemp breeders, not including an established agricultural research institution, to cover the actual costs of implementing, administering, and enforcing the provisions of this division.

(b) Fees established pursuant to subdivision (a) that are collected by the commissioners upon registration or renewal pursuant to Section 81003 or 81004, except for amounts retained pursuant to this subdivision, shall be forwarded, according to procedures set by the department, to the department for deposit into the Department of Food and Agriculture Fund to be used for the administration and enforcement of this division. A commissioner or the county, as appropriate, may retain the amount of a fee necessary to reimburse direct costs incurred by the commissioner in the collection of the fee.

(c) The board of supervisors of a county may establish a reasonable fee, in an amount necessary to cover the actual costs of the commissioner and the county of implementing, administering, and enforcing the provisions of this division, except for costs that are otherwise reimbursed pursuant to subdivision (b), to be charged and collected by the commissioner upon registrations or renewals required pursuant to Section 81003 or 81004 and retained by the commissioner or the county, as appropriate.<sup>9</sup>

**81006. Industrial Hemp Growth Limitations; Prohibitions; Imports; Laboratory Testing.**

(a) Except when grown by a registered established agricultural research institution or a registered hemp breeder, industrial hemp shall be grown in acreages of not less than one-tenth of an acre at the same time.

(b) Clandestine cultivation of industrial hemp is prohibited. All plots shall have adequate signage indicating they are industrial hemp.

(c) Industrial hemp shall not be cultivated on a premises licensed by the department to cultivate or process cannabis. Industrial hemp, regardless of its THC content, that is cultivated on a premises licensed by the department for cannabis cultivation shall be considered cannabis as defined in subdivision (f) of Section 26001 of the Business and Professions Code and subject to licensing and regulatory requirements for cannabis pursuant to Division 10 (commencing with Section 26000) of the Business and Professions Code.

(d) Industrial hemp shall include products imported under the Harmonized Tariff Schedule of the United States (2013) of the United States International Trade Commission, including, but not limited to, hemp seed, per subheading 1207.99.03, hemp oil, per subheading 1515.90.80, oilcake, per subheading 2306.90.01, true hemp, per heading 5302, true hemp yarn, per subheading 5308.20.00, and woven fabrics of true hemp fibers, per subheading 5311.00.40.

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<sup>8</sup> Current, effective January 1, 2020.

<sup>9</sup> Current, effective January 1, 2020.

(e) (1) Except when industrial hemp is grown by a registered established agricultural research institution and tested in accordance with an approved research plan or by a registered hemp breeder and tested in accordance with an approved variety development plan, a registrant that grows industrial hemp under this section shall, before the harvest of each crop and as provided below, obtain a laboratory test report indicating the THC levels of a random sampling of the dried flowering tops of the industrial hemp grown.

(2) Sampling shall occur no more than 30 days before harvest.<sup>10</sup>

(3) The sample collected for THC testing shall be taken with the grower or hemp breeder present. The department shall establish, by regulation, the sampling procedures, including all of the following:

(A) The number of plants to be sampled per field, and any composting of samples.

(B) The portions of the plant to be sampled.

(C) The plant parts to be included in a sample.

(D) Additional procedures as necessary to ensure accuracy and the sanitation of samples and fields.

(4) The sample collected for THC testing shall be accompanied by the registrant's proof of registration.

(5) The laboratory test report shall be issued by a laboratory approved by the department, using a department-approved testing method. The testing method shall use postdecarboxylation or similarly reliable methods for determining THC concentration levels. The laboratory test report shall indicate the percentage concentration of THC on a dry-weight basis, indicate the date and location of samples taken, and state the Global Positioning System coordinates and total acreage of the crop. If the laboratory test report indicates a percentage concentration of THC that is equal to or less than 0.3 percent, the words "PASSED AS CALIFORNIA INDUSTRIAL HEMP" shall appear at or near the top of the laboratory test report. If the laboratory test report indicates a percentage concentration of THC that is greater than 0.3 percent, the words "FAILED AS CALIFORNIA INDUSTRIAL HEMP" shall appear at or near the top of the laboratory test report.

(6) If the laboratory test report indicates a percentage concentration of THC that is equal to or less than 0.3 percent, the laboratory shall provide the person who requested the testing not less than 10 original copies signed by an employee authorized by the laboratory and shall retain one or more original copies of the laboratory test report for a minimum of two years from its date of sampling.

(7) If the laboratory test report indicates a percentage concentration of THC that is greater than 0.3 percent and does not exceed 1 percent, the registrant that grows industrial hemp shall submit additional samples for testing of the industrial hemp grown.

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<sup>10</sup> Proposed Section 4946(a)(3) of the California Code of Regulations further specifies that harvest shall be completed within 15 calendar days from the sampling date.

- (8) A registrant that grows industrial hemp shall destroy the industrial hemp grown upon receipt of a first laboratory test report indicating a percentage concentration of THC that exceeds 1 percent or a second laboratory test report pursuant to paragraph (7) indicating a percentage concentration of THC that exceeds 0.3 percent but is less than 1 percent. If the percentage concentration of THC exceeds 1 percent, the destruction shall begin within 48 hours, and be completed within seven days, after receipt of the laboratory test report. If the percentage concentration of THC in the second laboratory test report exceeds 0.3 percent but is less than 1 percent, the destruction shall take place as soon as practicable, but no later than 45 days after receipt of the second test report.
- (9) A registrant that intends to grow industrial hemp and who complies with this section shall not be prosecuted for the cultivation or possession of marijuana as a result of a laboratory test report that indicates a percentage concentration of THC that is greater than 0.3 percent but does not exceed 1 percent.
- ...
- (11) A registrant that grows industrial hemp shall retain an original signed copy of the laboratory test report for two years from its date of sampling, make an original signed copy of the laboratory test report available to the department, the commissioner, or law enforcement officials or their designees upon request, and shall provide an original copy of the laboratory test report to each person purchasing, transporting, or otherwise obtaining from the registrant that grows industrial hemp the fiber, oil, cake, or seed, or any component of the seed, of the plant.<sup>11</sup>

**81012.** (a) Enforcement of the approved state plan shall comply with subdivision (e) of Section 297B of the federal Agricultural Marketing Act of 1946 (added by Section 10113 of the federal Agriculture Improvement Act of 2018 (Public Law 115-334)).

(b) A grower of industrial hemp, established agricultural research institution, or hemp breeder that the secretary determines has violated a provision of this division listed in the approved state plan or an additional requirement listed pursuant to subdivision (b) of Section 81015, including, but not limited to, by failing to provide a legal description of the land on which industrial hemp is grown, failing to register as required, or exceeding the 0.3 percent THC limit established in this division, shall be subject to the following consequences:

- (1) For a negligent violation, as determined by the secretary, the consequences under state laws for a violation of this division shall be as follows:
- (A) If the violation is not a repeat violation subject to subparagraph (B), the grower of industrial hemp, established agricultural research institution, or hemp breeder shall comply with a corrective action plan, to be established by the secretary, that includes both of the following:
- (i) A reasonable date by which the grower of industrial hemp, established agricultural research institution, or hemp breeder shall correct the negligent violation.
- (ii) A requirement that the grower of industrial hemp, established agricultural research institution, or hemp breeder shall periodically report to the secretary, for a period

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<sup>11</sup> Current, effective January 1, 2020.

of at least the next two calendar years, on its compliance with this division or the approved state plan.

(B) A grower of industrial hemp, established agricultural research institution, or hemp breeder that commits a negligent violation three times in a five-year period shall be ineligible to participate in the industrial hemp program for a period of five years beginning on the date of the finding of the third violation.

(2) For a violation committed intentionally, or with recklessness or gross negligence, the secretary shall immediately report the grower of industrial hemp, established agricultural research institution, or hemp breeder to the Attorney General of the United States and the Attorney General of this state, as applicable.

(c) This section shall become operative as of the date on which a state plan for California is approved pursuant to Section 297B of the federal Agricultural Marketing Act of 1946 (added by Section 10113 of the federal Agricultural Improvement Act of 2018 (Public Law 115-334)).<sup>12</sup>

**81013.** Any person convicted of a felony relating to a controlled substance under state or federal law before, on, or after January 1, 2020, shall be ineligible, during the 10-year period following the date of the conviction, to participate in the industrial hemp program.<sup>13</sup>

**81014.** A person that materially falsifies any information contained in an application or registration under Section 81003 or 81004, or other application to participate in the industrial hemp program, shall be ineligible to participate in the industrial hemp program.<sup>14</sup>

**81015.** (a) On or before May 1, 2020, the secretary, in consultation with the Governor and the Attorney General, shall develop and submit to the United States Secretary of Agriculture a state plan, consistent with this division, pursuant to Section 297B of the federal Agricultural Marketing Act of 1946 (added by Section 10113 of the federal Agriculture Improvement Act of 2018 (Public Law 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.

(b) In an annex to the state plan, the secretary shall list the provisions of this division that are included in the state plan, and any additional requirements in the state plan, that shall be subject to enforcement pursuant to Section 81012.<sup>15</sup>

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<sup>12</sup> Current, effective January 1, 2020.

<sup>13</sup> Current, effective January 1, 2020.

<sup>14</sup> Current, effective January 1, 2020.

<sup>15</sup> Current, effective January 1, 2020.

**California Code of Regulations**  
**Title 3. Food and Agriculture**  
**Division 4. Plant Industry**  
**Chapter 8. Industrial Hemp Cultivation**

**Article 1. Registration of Industrial Hemp Growers**

**4900. Registration Fees**

- (a) The Secretary establishes the following fees for registration of growers of industrial hemp for commercial purposes and seed breeders to be submitted along with the registration application as authorized in sections 81003 and 81004 of the Food and Agricultural Code:
  - (1) Prior to cultivation, a fee of nine-hundred dollars (\$900) per applicant shall be submitted with the application to the commissioner.
  - (2) A separate registration is required for each county in which the applicant intends to grow industrial hemp.
  - (3) This registration is valid for one year from date of issuance by the commissioner.
- (b) The Secretary establishes the following fees for registration renewal of growers of industrial hemp for commercial purposes and seed breeders:
  - (1) Upon expiration of registration, a fee of nine-hundred dollars (\$900) per registrant shall be due to the commissioner in each county in which the applicant intends to continue to grow industrial hemp.
  - (2) Renewed registration is valid for one year from date of issuance of renewal by the commissioner.<sup>16</sup>

**Section 4901. Registration Application for Industrial Hemp.**

- (a) Definitions.
  - (1) "Cultivation site" means contiguous land area on which the applicant plans to engage in industrial hemp cultivation, storage, or both.
- (b) Registration.
  - (1) Before cultivation, a grower of hemp shall register with the commissioner of the county in which the grower intends to engage in hemp cultivation. The registration application for growers of hemp shall include:
    - (A) the name, physical address, and contact information of the applicant, including mailing address, telephone number, and email (if available),
    - (B) the business type, business name(s), including all DBAs ("doing business

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<sup>16</sup> Current, effective April 25, 2019.

as”), and the employer identification number (EIN) of the business entity as provided by the Internal Revenue Service,

- (C) the name(s), title(s), and email(s) (if available) of all key participants as defined in Section 4902(a)(2),
- (D) the legal description, Global Positioning System coordinates, and map of the cultivation site(s),
- (E) the approved cultivar to be grown, including the state or country of origin, and supporting documentation to demonstrate compliance with Section 4920, and
- (F) the applicant’s signature certifying the following:
  - (i) the information provided on the application is true and correct,
  - (ii) the cultivation site(s) to be registered for hemp cultivation is not on premises licensed by the department to cultivate or process cannabis,
  - (iii) the applicant shall comply with all the requirements outlined in Division 24 of the Food and Agricultural Code and this chapter, and
  - (iv) any changes to the registration shall be provided to the commissioner in accordance with Section 4901(c).

(2) Before cultivation, a hemp breeder shall register with the commissioner of the county in which the hemp breeder intends to engage in industrial hemp cultivation. The registration application for hemp breeders shall include:

- (A) the name, physical address, and contact information of the applicant, including mailing address, telephone number, and email (if available),
- (B) the business type, business name(s) including all DBAs (“doing business as”), and the employer identification number (EIN) of the business entity,
- (C) the name(s), title(s), and email(s) (if available) of all key participants as defined in Section 4902(a)(2),
- (D) the legal description, Global Positioning System coordinates, and map of the cultivation site(s),
- (E) a variety development plan, which shall include:
  - (i) 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,
  - (ii) the hemp varieties that will be used and, if applicable, how those varieties will be used in the development of a new cultivar,

- (iii) a plan for testing the THC concentration of all the plants grown,
  - (iv) the measures that will be taken to destroy any plants with THC concentrations that test above 0.3 percent,
  - (v) the measures that will be taken to prevent the unlawful use of hemp under Division 24 of the Food and Agricultural Code and this chapter, and
  - (vi) a procedure for the maintenance of records documenting the development of the new cultivar, and
- (F) the applicant's signature certifying the following:
- (i) the information provided on the application is true and correct,
  - (ii) the cultivation site(s) to be registered for hemp cultivation is not on premises licensed by the department to cultivate or process cannabis,
  - (iii) the applicant shall comply with all the requirements outlined in Division 24 of the Food and Agricultural Code and this chapter, and
  - (iv) any changes to the registration shall be provided to the county agricultural commissioner in accordance with Section 4901(c).
- (3) An established agricultural research institution shall register with the commissioner of the county in which the established agricultural research institution intends to engage in industrial hemp cultivation. This subsection shall become operative as of the date on which a state plan for California is approved pursuant to Section 297B of the federal Agricultural Marketing Act of 1946 (added by Section 10113 of the federal Agricultural Improvement Act of 2018 (Public Law 115-334)). The registration application for established agricultural research institutions shall include:
- (A) the name, physical address, and contact information of the applicant, including mailing address, telephone number, and email (if available),
  - (B) the business type, business name(s) including all DBAs ("doing business as"),
  - (C) the name(s), title(s), and email(s) (if available) of all key participants as defined in Section 4902(a)(2),
  - (D) the legal description, Global Positioning System coordinates, and map of the cultivation site(s),
  - (E) a research plan, which shall include:
    - (i) the hemp varieties that will be used and, if applicable, how those varieties will be used for the purposes of agricultural or academic

research,

- (ii) a plan for testing the THC concentration of all the plants cultivated,
- (iii) the measures that will be taken to destroy any plants with THC concentrations that test above 0.3 percent,
- (iv) the measures that will be taken to prevent the unlawful use of hemp under Division 24 of the Food and Agricultural Code and this chapter, and
- (v) a procedure for the maintenance of records documenting the agricultural or academic research, and

(F) the applicant's signature certifying the following:

- (i) the information the information provided on the application is true and correct,
- (ii) the cultivation site(s) to be registered for hemp cultivation is not on premises licensed by the department to cultivate or process cannabis,
- (iii) the applicant shall comply with all the requirements outlined in Division 24 of the Food and Agricultural Code and this chapter, and
- (iv) any changes to the registration shall be provided to the county agricultural commissioner in accordance with Section 4901(c).

(4) Each registration application, except for established agricultural research institutions, shall be accompanied the registration or renewal fee in accordance with Section 4900.

(5) Each registration application shall be accompanied with criminal history reports for all key participants in accordance with Section 4902.

(c) Alterations or changes to registration.

(1) Registration is non-transferrable to another person as defined in Section 38 of the Food and Agricultural Code. A new registration application shall be submitted in accordance with Section 4901(b) for any change in the registrant.

(2) Registrants shall submit an updated registration application to the commissioner for any of the following alterations or changes:

- (A) Any alterations or changes to business name, contact information, or key participants as defined by Section 4902(b)(2) must be submitted within 15 calendar days of the change.
- (B) Any alterations or changes to cultivation sites, approved cultivars, variety development plans, or key participants as defined by Section 4902(b)(2)

must be approved by the commissioner prior to planting.

- (3) Any alterations or changes not submitted to the commissioner within the specified timeframe shall result in the existing crop being considered non-compliant and subject to destruction in accordance with Section 4950.

(d) Registration renewal.

- (1) A registrant shall submit a registration application in accordance with the registration procedures outlined in Section 4901(b) to the commissioner in each county in which the applicant intends to renew the registration at least 30 calendar days prior to the expiration of registration. Renewal applications received less than 30 calendar days from registration expiration may result in noncompliance with Section 4901(b).

(e) Commissioner approval, refusal, or revocation.

- (1) Once the commissioner receives the application for registration, registration amendment, or renewal and determines that the registration requirements pursuant to Division 24 of the Food and Agricultural Code and this chapter are met, the commissioner shall issue a registration to the applicant and notify the registrant that the registrant may cultivate hemp using the registered cultivar(s), cultivation site(s), and variety development plan(s).

- (2) If the commissioner determines that the application for registration or renewal does not meet the registration requirements outlined in Division 24 of the Food and Agricultural Code and this chapter, the commissioner shall provide written notification to the applicant of the deficiencies in the application. The applicant shall have 30 calendar days from the receipt of the notification to provide the requested information to the commissioner. If the requested information is not provided within the timeframe, the commissioner will deny registration.

- (A) If registration is denied due to deficiencies in the application for registration or renewal, the applicant must submit a new application and registration or renewal fee to the commissioner in order to register to cultivate hemp.

- (3) If the commissioner determines that the registrant no longer meets the registration requirements outlined in Division 24 of the Food and Agricultural Code and this chapter, the commissioner shall revoke the registration and provide written notification to the applicant regarding the registration revocation. The revocation is effective as of the date on the notification.

- (f) The following information shall be transmitted by the commissioner to the department no more than 10 business days, and submitted by the department to the United States Department of Agriculture no more than 30 business days, after the date on which it is collected, or, in the case of subparagraph (C), the date of a change in registration status:

- (1) the name and contact information for each registrant,

- (2) a legal description of the land on which the registrant engages in hemp cultivation,

- (3) the registration status of the registrant,
- (4) the registration number for each registrant, except for established agricultural research institutions, associated with each location in the state where hemp will be produced, and
- (5) the name, business title, and email address (if available) of all key participants for each registration, except for established agricultural research insititutions.<sup>17</sup>

## **Section 4902. Criminal History Report for Industrial Hemp Registration**

### **(a) Definitions.**

- (1) “Criminal history report” means the Federal Bureau of Investigation’s Identity History Summary.
- (2) “Key Participants” means any person in the entity producing industrial hemp who is:
  - (A) a sole proprietor, a partner in partnership, or a person with executive managerial control in a corporation producing industrial hemp, or
  - (B) a person with executive managerial control over the entity producing industrial hemp, including persons such as a chief executive officer, chief operating officer and chief financial officer.
  - (C) This definition does not include a person in a management position with no executive managerial control over the entity producing industrial hemp, such as farm, field, or shift managers.
- (3) “Disqualifying conviction” means any plea of guilty or nolo contendere, or any finding of guilt for a State or Federal felony related to a controlled substance, except:
  - (A) when the finding of guilt is subsequently overturned on appeal, pardoned, or expunged, or
  - (B) 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.

### **(b) Registration requirements.**

- (1) A criminal history report for each key participant listed pursuant to Section 4901 shall be submitted along with the registration application to the commissioner. A registration application will not be considered complete without all required criminal history reports.

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<sup>17</sup> Will be proposed at a date to be determined.

- (2) Any changes to key participants must be reported along with criminal history reports for any additional key participants to the commissioner as an amendment to the registration within 15 calendar days of the change.
- (3) All criminal history reports must be dated within 60 calendar days of submission of the registration application.
- (4) Registrants shall notify the commissioner in writing within 48 hours of the registrant or a key participant receiving a disqualifying conviction.
- (5) If an applicant, registrant, or key participant is found to have a disqualifying conviction as defined in Section 4902(a)(3), the applicant or key participant shall be ineligible to participate in the hemp program for ten (10) years from the date of the conviction.
- (6) Any falsification of criminal history reports shall be considered as materially falsifying information in an application or registration and shall result in revocation or refusal of registration and ineligibility to participate in the industrial hemp program.<sup>18</sup>

## **Article 2. Regulations for Industrial Hemp Cultivation**

### **4920. List of Approved Seed Cultivars**

- (a) The Secretary, as provided in Section 81002 of the Food and Agricultural Code, adopts the following list of approved seed cultivars.
  - (1) Industrial hemp seed or propagative materials certified as breeder, foundation, registered, or certified seed or stock by one of the following agencies:
    - (A) Member organizations of the Association of Official Seed Certifying Agencies,
    - (B) Organization of Economic Cooperation and Development, or
    - (C) An officially approved and recognized seed-certifying agency listed in Title 3, California Code of Regulations, Section 3875, as provided in Section 52401 of the Food and Agricultural Code.
  - (2) Industrial hemp seed or propagative materials produced in a quality assurance program approved by one of the following agencies:
    - (A) Member organizations of the Association of Official Seed Certifying Agencies,
    - (B) Organization of Economic Cooperation and Development, or
    - (C) An officially approved and recognized seed-certifying agency listed in Title 3, California Code of Regulations, Section 3875, as provided in Section 52401 of

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<sup>18</sup> Will be proposed at a date to be determined.

the Food and Agricultural Code.

- (3) Industrial hemp seed or propagative materials produced by an authorized participant in a state industrial hemp agricultural pilot program, pursuant to Section 7606 of the federal Agricultural Act of 2014 (7 U.S.C. Sec. 5940).
  - (A) The crop from which the seed or propagative materials were harvested from shall have been tested in accordance with a testing method approved by the regulatory authority in the state of origin and found to have no more than three-tenths of one percent tetrahydrocannabinol (THC) on a dry weight basis.
  - (B) The commissioner shall be notified of the importation of all propagative materials into the county. The shipment is subject to inspection by the commissioner and shall not be used for cultivation until released by the commissioner (California Food and Agricultural Code Division 4, Part 2, Chapter 2 § 6401 and § 6501).
- (4) Industrial hemp seeds or tissue culture plants imported from outside the United States that meets federal importation requirements.
  - (A) The crop from which the seeds or tissue culture plants were harvested from shall have been tested in accordance with a testing method approved by the department of agriculture in the country of origin and found to have no more than three-tenths of one percent THC on a dry weight basis.
  - (B) The commissioner shall be notified of the importation of all propagative materials into the county. The shipment is subject to inspection by the commissioner and shall not be used for cultivation until released by the commissioner (California Food and Agricultural Code Division 4, Part 2, Chapter 2 § 6401 and § 6501).
  - (C) For the purposes of this section, the term “tissue culture” means in vitro material introduced into culture from nodal cuttings at a particular time and from a single plant and grown in aseptic conditions to be used as a source of propagative material.
- (5) Industrial hemp seed or propagative materials produced in California in accordance with the provisions of Division 24 of the Food and Agricultural Code and this chapter.
  - (A) The crop from which the seed or propagative materials were harvested from shall have been tested by a department-approved laboratory and found to have no more than three-tenths of one percent THC on a dry weight basis.<sup>19</sup>

#### **4921. Methodology and Procedure to Update the List of Approved Seed Cultivars**

- (a) The Secretary adopts the following methodology and procedure to add, amend or remove a seed cultivar from the list of approved seed cultivars.
  - (1) Upon request from the chair of the Board, or of any four members of the Board, the Department shall schedule a public hearing to consider a proposal to update the list

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<sup>19</sup> Current, effective February 28, 2019.

of approved seed cultivars by adding, amending, or removing seed cultivars. A notice and text of the proposal shall be made available to the public no less than 30 days prior to the hearing.

- (2) The public hearing to consider a proposal to update the list of approved seed cultivars shall be part of a regularly scheduled meeting of the Industrial Hemp Advisory board.
  - (3) The public hearing shall include:
    - (A) Presentation of the proposal to update the list of approved seed cultivars;
    - (B) Presentation of the purpose for the update; and
    - (C) Opportunity for public comment, pursuant to Section 11125.7 of the Government Code.
  - (4) After receiving comments from the public, the Board shall vote to accept, amend and accept, or deny a proposal for recommendation to the Secretary.
  - (5) Upon recommendation by the Board to adopt a proposal and approval by the Secretary, the Department shall amend the list of approved seed cultivars and shall submit the amended list to the Office of Administrative Law to be filed promptly with the Secretary of State. Pursuant to Section 81002 of the Food and Agricultural Code, the proposal shall not be subject to further review.
  - (6) The Department shall post the list of approved seed cultivars to its website and shall provide electronic and/or mail notification of amendments to list of approved seed cultivars to parties that have requested notification. An interested party may go to the Department's website and elect to receive automatic notifications of any changes to the list of approved seed cultivars via an electronic mail listserv.
- (b) The Secretary adopts the following methodology and procedure to add, amend or remove a seed cultivar from the list of approved seed cultivars.
- (1) By motion, the Board may recommend amending the methodology and procedure in subsection (a). In consultation with the chair of the Board, the Department shall schedule a public hearing to consider the recommendation, and a notice and text of the proposed amendment shall be made available to the public no less than 30 days prior to the hearing.
  - (2) The public hearing to consider a proposal to amend the methodology and procedure shall be part of a regularly scheduled meeting of the Industrial Hemp Advisory Board.
  - (3) The public hearing shall include:
    - (A) Presentation of the proposal to amend the methodology and procedure;
    - (B) Presentation of the purpose for the amendment; and
    - (C) Opportunity for public comment, pursuant to Section 11125.7 of the Government Code.

- (4) After receiving comments from the public, the Board shall vote to accept, amend and accept, or deny the proposal for recommendation to the Secretary.
- (5) Upon recommendation by the Board to adopt the amendment and approval by the Secretary, the Department shall amend the methodology and procedure, and shall submit the amended methodology and procedure to the Office of Administrative Law to be filed promptly with the Secretary of State. Pursuant to Section 81002 of the Food and Agricultural Code, the proposal shall not be subject to further review.
- (6) The Department shall provide electronic and/or mail notification of the amendment to the methodology and procedure to parties that have requested notification. An interested party may go to the Department's website and elect to receive automatic notifications of any changes to the methodology and procedure via an electronic mail listserv.<sup>20</sup>

#### **4930. Inspections of Industrial Hemp**

The commissioner shall conduct annual inspections of a random sample of registrants to verify registration information, confirm crop destruction, and ensure appropriate recordkeeping.<sup>21</sup>

#### **4935. Planting Report for Industrial Hemp**

- (a) In order to confirm that industrial hemp was planted at a registered cultivation site, registrants shall submit a signed planting report to the commissioner within 72 hours following the completion of the planting. A separate planting report shall be completed for each planting. The planting report shall include the:
  - (1) registrant's registration number,
  - (2) name and contact information of the registrant,
  - (3) planting date(s),
  - (4) name(s) of the cultivar(s) and the quantity planted,
  - (5) physical address, Global Positioning System coordinates, general description of the planting location, and total acreage or square footage of the planting, and
  - (6) planned growing period for the planting.
- (b) The Department shall make a template of a planting report form available on the Department's website.
- (c) The commissioner may confirm the planting of the crop by conducting field inspections. The commissioner shall be provided with complete and unrestricted access during

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<sup>20</sup> Current, effective December 18, 2018.

<sup>21</sup> Will be proposed at a date to be determined.

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.

- (d) Except for established agricultural research institutions, growers of industrial hemp and hemp breeders shall report on all hemp production in the state and any changes to where hemp will be produced to the Farm Service Agency of the United States Department of Agriculture and shall provide, at minimum, all of the following information:
- (1) registrant's registration number,
  - (2) physical address, Global Positioning System coordinates, general description of the planting location, and
  - (3) acreage dedicated to the production of hemp, or greenhouse or indoor square footage.<sup>22</sup>

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

(a) Sampling Timeframe.

- (1) Samples shall be collected no more than 6 calendar days prior to the anticipated harvest start date listed on the pre-harvest report.
- (2) Any changes to the harvest date that result in harvest activities to occur more than 15 days after the sample collection date shall require additional sampling for THC concentration prior to harvest.

(b) Sampling Request and Pre-Harvest Report.

- (1) In order to request sampling, registrants shall submit a signed pre-harvest report at least 20 calendar days before the anticipated harvest start date to initiate the sampling process.
- (2) A separate pre-harvest report shall be completed for each planting to be harvested. The pre-harvest report shall include the:
  - (A) registrant's registration number,
  - (B) name and contact information of the registrant,
  - (C) anticipated harvest start date,
  - (D) name(s) of the cultivar(s) to be harvested,

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<sup>22</sup> Will be proposed at a date to be determined.

- (E) physical address, Global Positioning System coordinates, general description of the planting location, and total acreage or square footage of the planting to be harvested, and
  - (F) name and contact information of the laboratory to conduct the testing for THC concentration.
- (3) The pre-harvest report shall be accompanied by a sample analysis request form for each composite sample to be taken. The sample analysis request form shall be used to record the:
- (A) name, contact information, and signature of the sample analysis requester,
  - (B) registration number,
  - (C) name and contact information of the commissioner,
  - (D) physical address, general description of the planting location, and total acreage or square footage of the planting sampled,
  - (E) lot identification number as provided by U.S. Department of Agriculture Farm Service Agency,
  - (F) name of the cultivar sampled,
  - (G) description of the planting to be sampled including estimated average height, appearance, approximate density, homogeneity, condition of the plants, and degree of maturity of flowering material,
  - (H) unique sample identification number for the composite sample,
  - (I) number of the samples taken,
  - (J) date and time of the sample collection,
  - (K) name and signature of the sampler,
  - (L) name and contact information of the approved laboratory conducting the THC testing,
  - (M) name and signature of the person testing the sample,
  - (N) date and time of the sample testing,
  - (O) testing instrumentation used to analyze the sample for THC concentration,
  - (P) laboratory determination of THC concentration in accordance with Section 4942(c) and limit of detection (LOD), and

- (Q) chain of custody information including the name and signature of the person who received and delivered the sample, and the date, time, and location of each possession or transfer of the sample.
- (4) The Department shall make a template of a pre-harvest report and sample analysis request form available on the Department's website.
- (5) The sampler, as described in Section 4941(a)(1), shall schedule a sampling date.
- (6) Registrants shall notify the commissioner of any changes to the above information no less than two calendar days prior to the scheduled sampling date.<sup>23</sup>

#### **4941. Sampling Procedures for Testing Industrial Hemp for THC Concentration**

##### **(a) Collection of Samples.**

- (1) Samples for THC testing shall be collected by the commissioner, an USDA-approved sampling agent, or a federal, state, or tribal law enforcement agent authorized by USDA to collect samples.
- (2) Prior to the collection of the samples, the sampler as described in Section 4941(a)(1) shall verify that the planting to be sampled corresponds to the registered cultivation site using the physical address, Global Positioning System coordinates, general description, and total acreage or square footage provided on the pre-harvest report and registration application.
- (3) The registrant shall be present to observe the collection of samples and allow the sampler, as described in Section 4941(a)(1), 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.

##### **(b) Sample Volume and Composition.**

- (1) Each sample shall be collected from different plants. Each sample shall consist of the terminal eight inches from the top of the plant. If the plant is less than eight inches tall, the whole plant above ground shall be taken.
- (2) A composite sample shall consist of the following:
  - (A) six samples for plantings that are less than or equal to six acres.
  - (B) one sample from each acre for plantings that are greater than six acres but less than 10 acres.

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<sup>23</sup> Will be proposed at a date to be determined.

(C) for plantings equal to or greater than 10 acres, the number of samples shall be calculated using the following formula where n is the number of plants to be selected and N is the planting acreage:

$$n = 299 / (1 + (298 / N))$$

(3) A separate composite sample shall be taken for:

(A) Each cultivar within each contiguous planting, and

(B) Indoor and outdoor growing areas shall be treated as separate plantings.

(c) Handling of Samples.

(1) All plant material collected for a composite sample shall be placed together in a permeable bag and kept in a manner not conducive to mold growth. Each composite sample shall be stored in separate bags.

(2) The bag containing the composite sample shall be sealed and labeled in a manner to detect tampering and ensure chain of custody. Sample labels shall be signed by both the registrant and the sampler as described in Section 4941(a)(1).

(3) Samples shall be labeled with a unique sample identification number as assigned on the sample analysis request form and accompanied by the following documentation:

(A) registrant's proof of registration,

(B) pre-harvest report,

(C) sample analysis request form containing information outlined in Sections 4940(b)(3)(B) through 4940(b)(3)(L) provided by the commissioner and Section 4940(b)(3)(A) provided by the registrant.

(4) Samples shall be delivered to the testing laboratory within 24 hours of collection.<sup>24</sup>

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

(a) Sampling Preparation.

(1) The laboratory shall maintain chain of custody upon receiving the samples by documenting the chain of custody information on the sample analysis request form. The laboratory shall provide the information outlined in Sections 4940(b)(3)(M) through 4940(b)(3)(Q) on the sample analysis request form.

(2) The laboratory shall check the sample for any signs of tampering. The laboratory shall immediately notify the commissioner and not test the sample if there is evidence of tampering. New samples shall be collected and submitted to the laboratory for testing in accordance with the procedures outlined in Section 4941.

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<sup>24</sup> Will be proposed at a date to be determined.

- (3) Each composite sample shall be maintained and tested separately for THC concentration.
  - (4) All plant material included in the composite sample shall be processed and tested as a single sample.
  - (5) All plant material included in the composite sample shall be dried until the weight of the composite sample remains constant after drying intervals. Drying temperature must not exceed 90 degrees Celsius.
  - (6) All of the dried plant material included in the composite samples shall be manicured through a wire screen no larger than 1.5 mm x 1.5 mm to remove all mature seeds and larger twigs and stems and milled to a homogenous powder-like consistency and combined before analysis.
- (b) Suitable analytical instrumentation used to determine THC concentration in industrial hemp includes the following:
- (1) Gas chromatography with flame ionization detector,
  - (2) Gas chromatography coupled with mass spectrometry,
  - (3) Liquid chromatography coupled with mass spectrometry, or
  - (4) Liquid chromatography coupled with diode-array or variable wavelength detector.
- (c) "THC concentration" or "percentage concentration of THC" means the post-decarboxylated value of the percentage of delta-9 THC on a dry weight basis to the nearest thousandth, or three decimal places. The percentage concentration of THC may be measured by using either:
- (1) a suitable analytical instrumentation described in Section 4942(b) that results in the decarboxylation of THC-acid to delta-9 THC, or
  - (2) a calculated value using a conversion formula of the percentage concentration of delta-9 THC plus eighty-seven and seven tenths (87.7) percent of the percentage concentration of THC-acid when a suitable analytical instrumentation described in Section 4942(b) does not result in the decarboxylation of THC-acid to delta-9 THC.
- (d) "Acceptable hemp THC level" means a THC concentration that falls within the distribution or range that includes three-tenths of one percent or less that is produced when the measurement of uncertainty is applied to the reported THC concentration. For example, if the reported THC concentration of a sample is 0.35% and the measurement of uncertainty is  $\pm 0.06\%$ , the measured THC concentration would range from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the acceptable hemp THC level.
- (e) Sample Retention and Disposal.

- (1) 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.
- (2) If the laboratory test report indicates a percentage concentration of THC that is exceeds the acceptable hemp THC level, the laboratory shall retain the sample for a minimum of 60 calendar days from the testing date. The laboratory shall destroy the samples in a manner compliant with Section 297B of the federal Agricultural Marketing Act of 1946 (added by Section 10113 of the federal Agriculture Improvement Act of 2018 (Public Law 115-334), implementing regulations, and guidance.<sup>25</sup>

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

- (a) Testing of industrial hemp for THC concentration shall be conducted by a laboratory with International Organization for Standardization (ISO) / International Electrotechnical Commission (IEC) 17025 accreditation using a validated method in accordance with Sections 4942, 4944, 4945 for THC analysis on plant material.
  - (1) Laboratories testing industrial hemp for THC concentration shall meet all laboratory registration requirements outlined in Part 990.3 in Title 7 of the Code of Federal Regulations and corresponding guidance.
- (b) A laboratory shall obtain written approval from the Department in order to test industrial hemp for THC concentration. A laboratory shall submit a signed laboratory approval application with the following information to the Department for review and approval:
  - (1) name and contact information of the applicant,
  - (2) name and physical address of the testing laboratory,
  - (3) a copy of the testing laboratory's DEA registration certificate, if applicable,
  - (4) a copy of the testing laboratory's ISO/IEC 17025 certificate of accreditation, and
  - (5) a copy of the testing laboratory's standard operating procedures for THC testing.
- (c) If the Department determines that the requirements outlined in this section are met and the laboratory's standard operating procedures for THC testing comply with the requirements outlined in Sections 4942, 4944, and 4945, the Department shall approve the laboratory to conduct THC testing on industrial hemp by issuing a proof of approval, and adding the testing laboratory to the list of approved testing laboratories. When the laboratory is not approved, the Department will notify the laboratory in writing of any deficiencies in the application.
- (d) Laboratory approval shall be valid for one year from date of approval by the Department, after which the laboratory shall renew the approval.

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<sup>25</sup> Will be proposed at a date to be determined.

- (e) Laboratories shall request renewal of Department approval in accordance with the procedures outlined in Section 4943(b). Renewed approval shall be valid for one year from date of renewal by the Department.
- (f) Any changes to the approved laboratory's standard operating procedures shall be submitted to the Department for review and approval prior to implementation. Once the Department has determined that the requirements outlined in this section are met and the laboratory's standard operating procedures comply with testing requirements outlined in Sections 4942, 4944, and 4945, the Department shall notify the laboratory that testing may be completed under the revised standard operating procedures.
- (g) The Department shall make a template of a laboratory application and the list of approved testing laboratories available on the Department's website.<sup>26</sup>

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

- (a) Laboratories shall issue a separate laboratory test report for each composite sample.
- (b) The laboratory test report shall include the:
  - (1) registration number,
  - (2) unique sample identification number as assigned on the sample analysis request form,
  - (3) name and contact information of the registrant,
  - (4) name of the sampler,
  - (5) dates and times of the sample collection, testing, and test report,
  - (6) name of the cultivar tested,
  - (7) physical address, Global Positioning System coordinates, general description of the planting location, and total acreage or square footage of the planting sampled,
  - (8) name and contact information of the laboratory,
  - (9) name of approved analytical instrumentation used and the limit of detection (LOD),
  - (10) name of the person who received the sample,
  - (11) name of the person who tested the sample,
  - (12) DEA registration number of the laboratory, if applicable,
  - (13) identification of a retest, if applicable,

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<sup>26</sup> Will be proposed at a date to be determined.

- (14) percentage concentration of THC in accordance with Section 4942,
- (15) measurement of uncertainty as a  $\pm$  percentage value to the nearest thousandth, or three decimal places, at 95% confidence level,
- (16) the words "OFFICIAL CALIFORNIA REGULATORY SAMPLE",
- (17) and words "PASSED AS CALIFORNIA INDUSTRIAL HEMP" or "FAILED AS CALIFORNIA INDUSTRIAL HEMP" at or near the top of page.
  - (A) If the laboratory test report indicates a percentage content of THC that is within the acceptable hemp THC level, the words "PASSED AS CALIFORNIA INDUSTRIAL HEMP" shall appear.
  - (B) If the laboratory test report indicates a percentage content of THC that is greater than the acceptable hemp THC level, the words "FAILED AS CALIFORNIA INDUSTRIAL HEMP" shall appear.
- (c) Laboratories shall provide an electronic copy of the laboratory test report to the registrant and commissioner concurrently within five calendar days of the collection of samples.
- (d) Following the electronic notification of the laboratory test report, the laboratory shall:
  - (1) report the test results for all samples tested to USDA.
  - (2) provide the registrant no fewer than ten original paper copies with wet signatures of a passing laboratory test report, signed by an employee authorized to sign by the laboratory.
  - (3) provide the registrant one or more paper copies of a failed laboratory test report, signed by an employee authorized to sign by the laboratory.
- (e) Upon request from the commissioner, the laboratory shall provide a copy of the completed sample analysis request form.
- (f) The laboratory shall retain one or more original copies of each laboratory test report and the completed sample analysis request form for a minimum of three years from the date of sampling.<sup>27</sup>

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

- (a) Additional samples for retesting shall be collected in accordance with the sampling procedures outlined in Section 4941 and tested in accordance with the testing procedures outlined in Sections 4942 through 4944.<sup>28</sup>

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<sup>27</sup> Will be proposed at a date to be determined.

<sup>28</sup> Will be proposed at a date to be determined.

#### 4946. Final Disposition for Registered Industrial Hemp Crops

- (a) Registrants may harvest the sampled crop upon receipt of an electronic copy of a passing laboratory test report.
  - (1) Registrants shall submit a harvest report to the commissioner within 72 hours following the completion of the harvest. The harvest report shall include the:
    - (A) registration number,
    - (B) name and contact information of the registrant,
    - (C) harvest timeframe including start and end dates,
    - (D) name of the cultivar(s),
    - (E) unique sample identification number(s) as assigned on the sample analysis request form and the percentage concentration of THC for each cultivar as reported on the laboratory test report,
    - (F) physical address, Global Positioning System coordinates, general description of the planting location, and total acreage or square footage of the harvested planting, and
    - (G) description and quantity of the material harvested.
  - (2) The Department shall make a template of a harvest report form available on the Department's website.
  - (3) Harvest shall be completed within 15 calendar days from the sampling date.
    - (A) Registrants may request additional sampling and testing in accordance with the procedures outlined in Section 4940 to extend the harvest timeframe.
      - (i) The most recent laboratory test report electronically received by the commissioner in compliance with Sections 4940 through 4945 shall be considered the effective THC concentration for determining whether the planting may be harvested and determining compliance with Division 24 of the Food and Agricultural Code.
      - (ii) All previous laboratory test reports received for the same planting shall be invalid upon the commissioner's receipt of an electronic copy of the most recent of laboratory test report.
      - (iii) If the most recent laboratory test report indicates a percentage content of THC that is greater than the acceptable hemp THC level but does not exceed one percent, the registrant may request one additional retest in accordance with Section 4945.
  - (4) The commissioner may confirm the completion of the harvest 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.

- (b) Registrants shall not harvest the sampled crop that received a failed laboratory test report.
  - (1) If the initial laboratory test report indicates a percentage content of THC that is greater than the acceptable hemp THC level but does not exceed one percent, the registrant may request one additional retest in accordance with Section 4945.
- (c) Registrants shall destroy a crop that receives a failed laboratory test report within the following timeframes:
  - (1) If a laboratory test report indicates the percentage concentration of THC exceeds one percent, the destruction shall begin within 48 hours, and be completed within seven calendar days, after the registrant's receipt of an electronic copy of the laboratory test report.
  - (2) If a second laboratory test report from retesting indicates the percentage concentration of THC exceeds the acceptable hemp THC level but is less than one percent, the destruction shall take place as soon as practicable, but no later than 45 calendar days after the registrant's receipt of an electronic copy of the second laboratory test report.<sup>29</sup>

### **Article 3. Abatement and Enforcement**

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

- (a) Except for industrial hemp crop grown by established agricultural research institutions, any industrial hemp crop that does not meet the requirements of Division 24 of the Food and Agricultural Code and this chapter shall be destroyed in a manner compliant with Section 297B of the federal Agricultural Marketing Act of 1946 (added by Section 10113 of the federal Agriculture Improvement Act of 2018 (Public Law 115-334), implementing regulations, and guidance.
  - (1) Unless otherwise specified in 4946(b), any non-compliant industrial hemp crop shall be destroyed as soon as practical, but destruction must be completed no later than 45 calendar days after the cultivator's receipt of notification of abatement from the commissioner.
  - (2) If the grower does not complete destruction of the crop within the timeframe specified by the commissioner, the county or city within which the crop is located may undertake destruction of the crop in accordance with a duly-adopted local abatement procedure.

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<sup>29</sup> Will be proposed at a date to be determined.

- (3) Nothing in this Chapter shall be interpreted to limit nor prevent a city, county, or city and county from exercising its police power authority under Section 7 of Article XI of the California Constitution, or to otherwise restrict a local government from enforcing state or local law or abating a hemp crop that does not comply with state or local law.
- (b) The cultivator of the industrial hemp crop shall submit a signed destruction plan to the commissioner at least 24 hours prior to the start of the destruction, unless a shorter timeframe is allowed by the commissioner. The destruction plan shall include the:
    - (1) registration number, if applicable,
    - (2) name and contact information of the cultivator,
    - (3) anticipated destruction date(s) of the crop to be destroyed,
    - (4) name(s) of the cultivar(s) to be destroyed,
    - (5) unique sample identification number(s) as assigned on the sample analysis request form and percentage concentration of THC for each cultivar as reported on the laboratory test report, if applicable,
    - (6) physical address, Global Positioning System coordinates, general description of the planting location, and total acreage or square footage of the crop to be destroyed, and
    - (7) destruction method compliant with Section 297B of the federal Agricultural Marketing Act of 1946 (added by Section 10113 of the federal Agriculture Improvement Act of 2018 (Public Law 115-334), implementing regulations, and guidance.
  - (c) The destruction plan shall be approved by the commissioner prior to the start of the destruction.
  - (d) The cultivator shall submit a signed destruction report to the commissioner within 72 hours following the completion of the destruction. The destruction report shall include the:
    - (1) registration number, if applicable,
    - (2) name and contact information of the cultivator,
    - (3) date(s) and time(s) of destruction,
    - (4) name of the cultivar(s) destroyed,
    - (5) unique sample identification number(s) and percentage concentration of THC for each cultivar as reported on the laboratory test report, if applicable,

- (6) physical address, Global Positioning System coordinates, general description of the planting location, and total square footage or acreage of the destroyed planting, and
- (7) description and quantity of the material destroyed.
- (e) The commissioner shall confirm the destruction of the crop 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.
- (f) The Department shall make a template of a destruction plan and destruction report available on the Department's website.
- (g) The Department shall promptly notify USDA by certified mail or electronically of any occurrence of non-compliant plants or plant material and provide a disposal record for those plants and materials in accordance with the procedure outlined in Part 990.70(b) in Title 7 of the Code of Federal Regulations.<sup>30</sup>

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

- (a) Except for established agricultural research institutions, any industrial hemp cultivator that wishes to voluntarily destroy a crop shall destroy the crop in a manner compliant with Section 297B of the federal Agricultural Marketing Act of 1946 (added by Section 10113 of the federal Agriculture Improvement Act of 2018 (Public Law 115-334), implementing regulations, and guidance.
- (b) The cultivator shall report destruction of the crop to the commissioner in accordance with procedures outlined in Section 4950(b) through (e).<sup>31</sup>

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<sup>30</sup> Will be proposed at a date to be determined.

<sup>31</sup> Will be proposed at a date to be determined.