

ORIGINS COUNCIL



September 10th, 2019

Dear Mendocino Board of Supervisors,

This memo outlines state and national laws governing hemp production and sales, and considerations our organization would like to put forward regarding prospective local hemp production.

Thank you for your consideration,

Genine Coleman
Executive Director, Origins Council & Mendocino Appellations Project

National and State Laws for Hemp Production

The Hemp Farming Act of 2018 was a proposed law to remove hemp (defined as cannabis with less than 0.3% THC) from Schedule I controlled substances and making it an ordinary agricultural commodity. Its provisions were incorporated in the 2018 United States farm bill that became law on December 20, 2018.

USDA is drafting hemp regulations for publication in the Federal Register and public comment. It is USDA's goal to have regulations in effect by the fall of 2019 to accommodate the 2020 planting season.

California is a Right to Farm state, the provisions of which are applicable to hemp production given its legal designation as an agricultural crop. Cannabis is excluded from Right to Farm provisions, given its legal designation as an agricultural product. California municipalities retain local control over the right to regulate or ban both cannabis and hemp production.

From the California Department of Food and Agriculture's Website:

The California Industrial Hemp Farming Act (Senate Bill 566, Chapter 398, Statutes of 2013) was signed into law to authorize the commercial production of industrial hemp in California. The Act 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) is developing a program to administer this new law. The first step of this process is to establish an Industrial Hemp Advisory Board. With assistance from the Board, CDFA will further develop the registration process, fee structure, regulations, and other administrative details as necessary to provide for the commercial production of industrial hemp in accordance with the Act.

[Division 24 of the California Food and Agricultural Code](#) provides for the cultivation of industrial hemp by registered growers and established agricultural research institutions.

Presently there are no state regulations for hemp production environmental land use requirements, pesticide use, water use or waste water discharge. In contrast commercial cannabis production has extensive state regulations under the authority of the California Department of Food and Agriculture, Department of Pesticide Regulation, CalFire, California Department of Fish and Wildlife, California State Waterboard.

Land development for hemp production has a simple noticing requirement:

81003 (c) A registrant (hemp cultivator or breeder) that wishes to alter the land area on which the registrant conducts industrial hemp cultivation, storage, or both, shall, before altering the area, submit to the commissioner an updated legal description, Global Positioning System coordinates, and map specifying the proposed alteration. Once the commissioner has received the change to the registration, the commissioner shall notify the registrant that it may cultivate industrial hemp on the altered land area.

[Senate Bill 1409](#) was approved by the Governor on September 30, 2018 and took effect on January 1, 2019.

1) Amends the definition of industrial hemp so that it is no longer defined as a fiber and oilseed crop.

2) Allows the production of industrial hemp by clonal propagation of cultivars that are on the list of approved seed cultivars and therefore genetically identical to, and capable of exhibiting the same range of characteristics as, the parent cultivar.

3) Deletes the requirement that industrial hemp be grown only for fiber or oilseed.

4) Deletes the requirement that industrial hemp seed cultivars be certified on or before January 1, 2013, in order to be on the approved list of cultivars.

5) Deletes the requirement that an application for registration to grow industrial hemp include information about whether the seed cultivar will be grown for its grain or fiber, or as a dual purpose crop.

6) Deletes prohibitions on ornamental cultivations of industrial hemp plants, pruning and tending of individual hemp plants and culling of industrial hemp.

7) Adds the requirement that an application for registration to grow industrial hemp include the state or county of origin of the seed cultivar to be grown.

8) Reduces the length of time for which registration to produce industrial hemp is valid from two years to one, at which time the registrant must apply for renewal.

9) Allows agricultural commissioners or the counties, as appropriate, to retain the amount of a registration fee necessary to reimburse direct costs incurred by the commissioner in the collection of the fee.

10) Authorizes the board of supervisors of a county to establish a reasonable fee, in an amount necessary to cover the actual costs of the commissioner and the county of implementing, administering, and enforcing specified provisions of law pertaining to cultivation of industrial hemp; the fee is to be charged and collected by the commissioner upon registrations or renewals required to produce industrial hemp.

11) Requires a registered producer of industrial hemp to obtain a laboratory test report indicating the tetrahydrocannabinol levels of a random sampling of the dried flowering tops of the industrial hemp grown no more than 30 days before harvest.

12) Requires that the sampling be conducted with the grower present and establishes a specific process by which the sample must be taken.

13) Requires that the laboratory providing the test report be approved by the CDFA, rather than registered with the federal Drug Enforcement Agency.

14) Specifies that laboratory testing shall be performed by gas chromatography with a flame ionization detector.

15) Specifies that the destruction of industrial hemp which exceeds permitted THC levels must begin within 48 hours and be completed within seven days.

16) Authorizes the CDFA, as part of the industrial hemp registration program, to establish and carry out an agricultural pilot program pursuant to the Federal Agricultural Act of 2014.

17) Requires an established agricultural research institution, before cultivating industrial hemp, to notify the agricultural commissioner of the county in which the institution intends to engage in cultivation and include the Global Positioning System coordinates of the proposed cultivation site.

18) Authorizes a city or county, by local ordinance and upon making a specified finding, to prohibit growers or seed breeders from conducting, or otherwise limit growers' conduct of, industrial hemp cultivation, regardless of whether growers meet, or are exempt from, the registration requirements in the above-described provisions or any other law.

[Senate Bill 153](#) is an active bill, in floor process.

This bill revises oversight of industrial hemp cultivation and testing to align state policy with the federal Agriculture Improvement Act of 2018 (2018 Federal Farm bill).

- 1) Requires the California Department of Food and Agriculture (CDFA), by May 1, 2020, to develop and submit to the United States Department of Agriculture (USDA) a state plan consistent with the 2018 Federal Farm bill related to industrial hemp production.
- 2) Requires a county agricultural commissioner (CAC) to submit specified information, including contact information and registration status of each hemp breeder, to CDFA and requires CDFA to submit that same information to USDA within a set timeframe
- 3) Prohibits industrial hemp from being cultivated on a premises licensed to cultivate or process cannabis. Any industrial hemp, regardless of THC content, cultivated on such a premise will be considered cannabis.
- 4) Establishes a range of consequences for violations of provisions governing industrial hemp production, including possible five-year suspension from the program.
- 5) Makes ineligible for participating in the industrial hemp program any person convicted of a felony related to a controlled substance for 10 years following conviction or any person that materially falsifies any information in an application or registration.
- 6) Establish registration requirements for established agricultural research institution (EARI). The requirements to register an EARI include: a research plan, review by a county agricultural commission (CAC), maintenances of records, rules for changing a research plan, and specified information to be submitted to CACs, CDFA, and USDA.
- 7) Increase the number of growers from four to five and decreases representatives of businesses that sell industrial hemp products from three to two on the Industrial Hemp Advisory Board.
- 8) Make numerous technical and conforming changes.

Market Considerations for Hemp Derived CBD

California law does not currently provide any requirements, permits or licenses for the manufacturing, processing, or selling of non-food industrial hemp or hemp products. In California it is currently illegal to include CBD derived hemp in commercial cannabis products, or for licensed cannabis retailers to sell hemp derived CBD products.

Assembly Bill 228 was introduced this year, and would have created a regulatory framework for industrial hemp products, as defined, in food, beverage, or cosmetic products. It would have also allowed for the integration of hemp into the regulated

cannabis supply chain. On August 30th, the bill was put on the suspense file largely due to concerns from cannabis industry and patient advocacy groups around the the bill's vague language for hemp testing standards and public health and safety concerns, particularly given the exclusive use of CBD as a medicine.

National market opportunities for hemp derivatives are determined in large part by the Food and Drug Administration.

[From the FDA website:](#)

Is it legal for me to sell CBD products?

It depends, among other things, on the intended use of the product and how it is labeled and marketed. Even if a CBD product meets the definition of "hemp" under the 2018 Farm Bill (see Question #2), it still must comply with all other applicable laws, including the FD&C Act. The below questions and answers explain some of the ways that specific parts of the FD&C Act can affect the legality of CBD products.

Is it legal, in interstate commerce, to sell a food (including any animal food or feed) to which THC or CBD has been added?

No. Under section 301(II) of the FD&C Act [21 U.S.C. § 331(II)], it is prohibited to introduce or deliver for introduction into interstate commerce any food (including any animal food or feed) to which has been added a substance which is an active ingredient in a drug product that has been approved under section 505 of the FD&C Act [21 U.S.C. § 355], or a drug for which substantial clinical investigations have been instituted and for which the existence of such investigations has been made public. FDA has therefore concluded that it is a prohibited act to introduce or deliver for introduction into interstate commerce any food (including any animal food or feed) to which THC or CBD has been added.

Can THC or CBD products be sold as dietary supplements?

No. Based on available evidence, FDA has concluded that THC and CBD products are excluded from the dietary supplement definition under section 201(ff)(3)(B) of the FD&C Act [21 U.S.C. § 321(ff)(3)(B)].

What is FDA's position on cannabis and cannabis-derived ingredients in cosmetics?

Yes. Under the FD&C Act, cosmetic products and ingredients are not subject to premarket approval by FDA, except for most color additives. Certain cosmetic ingredients are prohibited or restricted by regulation, but currently that is not the case for any cannabis or cannabis-derived ingredients. Ingredients not specifically addressed by regulation must nonetheless comply with all applicable requirements, and no

ingredient – including a cannabis or cannabis-derived ingredient – can be used in a cosmetic if it causes the product to be adulterated or misbranded in any way.

Local Considerations

In light of the early stages of development underway for state and national hemp regulations, limited state and national market opportunities for hemp derived CBD, and the differing legal designations and regulatory frameworks for hemp and cannabis, we ask that the Mendocino County Board of Supervisors carefully consider the following questions in evaluating if and when to establish a local program for hemp production:

- What are the opportunities and risks to both industry and our region as a whole in pursuing hemp cultivation prior to comprehensive national and state regulations being developed?
- If hemp production is allowed, what local policy frameworks should be crafted to address potential impacts related to land use, production practices, natural resource management and cross pollination issues?
- What are the potential social and economic impacts to the local cannabis program and industry if Mendocino allows for hemp production?
- How will CBD hemp production, which legally requires exclusive use of state registered CBD genetics, impact the biodiversity of Mendocino's exceptional pool of cannabis genetic resources?
- How would CBD hemp production impact the regional brand and reputation of Mendocino County as a world famous heritage producing region for craft cannabis?
- What are the immediate market opportunities, and the long term market viability for Mendocino hemp production?

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