



To: Board of Supervisors
From: Birgitta E. Corsello, County Administrator
Date: April 25, 2019
Subject: Significant Issues Update

1) County Administrator's update on contracts

The County Administrator has not signed any new contracts since the April 23, 2019 memorandum.

2) Update on Industrial Hemp

In 2018, Industrial Hemp was legalized at the federal level with the passage of the Agricultural Improvement Act (2018 Farm Bill), removing Industrial Hemp from the Controlled Substances Act. Industrial hemp is a type of *Cannabis sativa L.* plant which contain no more than 0.3 percent of Tetrahydrocannabinol (THC). THC is psychoactive drug in cannabis plants that makes people intoxicated. Hemp is now classified as an agricultural commodity that is approved for interstate movement and is an insurable commodity under federal crop insurance.

On January 1, 2019, Senate Bill 1409 amended the California Industrial Hemp Act. This bill permits clonal hemp plant propagation, requires growers to be present during THC sampling and requires agricultural institutions to provide GPS coordinates to County Agricultural Commissioners (CACs) prior to cultivation and authorizes the California Department of Food and Agriculture (CDFA) to establish an Industrial Hemp program. This bill also made changes to existing law including sampling, testing, destruction procedures, use of approved seed cultivars, removed growing restrictions and allows CACs to charge fees to recover program costs.

With assistance from the Industrial Hemp Advisory Board (IHAB), the California Department of Food and Agriculture (CDFA) has been developing the registration process, fee structure, regulations, and other administrative details as necessary to provide for the commercial production of industrial hemp.

Currently in California, legal industrial hemp cultivation is not feasible until the registration fee regulations are adopted by CDFA. Proposed regulations for registration fees were sent to the Office of Administrative Law on 11/9/2018 and if adopted, may go into effect as soon as May 2019.

Once the registration fee is adopted, commercial industrial hemp cultivation laws become operable. The Department of Agriculture has received multiple calls from growers and consultants interested in registering and cultivating industrial hemp in Solano County. The Department will continue to work with CDFA and the local agricultural industry to ensure that all industrial hemp activities in the County meet the established protocols pertinent to the California Industrial Hemp Act, 2018 Farm Bill and the applicable regulations.

For additional information see white paper (*starting below contact line*).

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INDUSTRIAL HEMP 2019

March 8, 2019

By Jose Arriaga, Interim Agricultural Commissioner, Sealer of Weights and Measures and
By Priscilla Yeane, Deputy Agricultural Commissioner, Sealer of Weights and Measures

OVERVIEW

Industrial hemp (Hemp) is a type of *Cannabis sativa* L. plant which contain no more than 0.3 percent of Tetrahydrocannabinol (THC) under the California Health and Safety Code section 11018.5. THC is psychoactive drug in cannabis plants that makes people intoxicated. The low levels of THC in Hemp do not have the intoxicating effects as high level THC Cannabis sativa L. plant varieties. High level THC Cannabis includes many species know as *Cannabis sativa*, *Cannabis indica*, and *Cannabis ruderalis*. Cannabis typically contains 5 to 40 percent THC and is defined in the California Business and Professions Code (BPC) section 26001(f).

Hemp is an agricultural commodity used in the production of many commercial products including but not limited to foods, beverages, cosmetics and nutritional supplements, fabrics, fiber, oil and seed. Cannabinoid (CBD) is the primary extract form the cannabis plant. CBD is alleged to have analgesic, anti-inflammatory, and anti-anxiety properties and is used to treat medical conditions without the effects of psychoactive effects of THC. CBD can be produced from both Hemp and Cannabis.

Hemp may be a profitable crop for California farmers. Currently it is used in over 25,000 products globally, industrial hemp-based goods include automotive parts, furniture, textiles, food, beverages, beauty products and construction supplies. (Forbes, D. Carpenter, Dec 20, 2018). However, much of the current interest in Hemp is due to the booming business of extracting CBD from Hemp. In 2017 the Cannabis industry grew by 40 percent and industry analysis expect that by 2020, the CBD products market will be worth \$1.2 billion. (New Frontier Data, 2018)

Potential cultivators have been active in Industrial Hemp Advisory Board (IHAB) Meetings. Solano County Department of Agriculture has received multiple inquiries on when Hemp registrations will be available for cultivators.

The legal framework to grow Hemp in California was established when Governor Brown signed SB 556 in 2013; however, this bill contained a provision that kept it inoperable until Hemp was legalized at the federal level. In 2014, Congress gave states permission to set up pilot programs to research Hemp plants and the commercial potential of the commodity. Agricultural research institutions were then allowed to cultivate Hemp for research purposes in California under federal permits. Passage of Proposition 64, the Adult Use of Marijuana Act, made Hemp cultivation statutes operable in 2016.

In 2018, Hemp was legalized at the federal level with the passage of the Agricultural Improvement Act (2018 Farm Bill), removing Hemp from the Controlled Substances Act. Hemp is now classified as an agricultural commodity that is approved for interstate movement without THC testing restrictions and is an insurable commodity under federal crop insurance. For states, territories and Native American Tribes to have regulatory authority over the growing and planting of Hemp, they must have an approved Industrial Hemp Plan. Plans are approved by the Secretary of the United States Department of Agriculture (USDA). USDA is required to respond within 60 days from the date the plan was submitted. The State of Kentucky has already submitted their proposal to the USDA Secretary.

On January 1, 2019, Senate Bill 1409 amended the California Industrial Hemp Act. This bill permits clonal hemp plant propagation, requires growers to be present during THC sampling and requires agricultural institutions to provide GPS coordinates to County Agricultural Commissioners (CACs) prior to cultivation and authorizes the California Department of Food and Agriculture (CDFA) to establish a pilot program. This bill also made changes to existing law including sampling, testing, destruction procedures, use of approved seed cultivars, removed growing restrictions and allows CACs to charge fees to recover program costs.

With assistance from the Industrial Hemp Advisory Board (IHAB), the California Department of Food and Agriculture (CDFA) has been developing the registration process, fee structure, regulations, and other administrative details as necessary to provide for the commercial production of industrial hemp according to the mandates in Division 24 of the California Food and Agricultural Code (FAC section 81001).

Currently in California, legal industrial hemp cultivation is not feasible until the administrative and regulatory framework needed to carry out California Hemp statutes is in place. Proposed regulations for registration fees were sent to the Office of Administrative Law on November 9, 2018 and if adopted, may go into effect as soon as May 2019. The county will remain informed if registrations become available to industry after the adoption of the fee regulations as cultivators and seed breeders are required to register with the local CAC.

SB 527 is a new bill and if passed it will deem licensed cultivation of industrial hemp a compatible use on land under a Williamson Act contract unless the Board makes the necessary findings of non-compatibility.

COUNTY ROLES

Mandated roles for CACs include service on the IHAB, registration of hemp cultivators and retention of hemp registration information.

INDUSTRIAL HEMP ADVISORY BOARD

One position on the 11-member IHAB is mandated to be filled by a CAC for a term of 3 years. There is no salary for this position; however, travel expenses may be paid to attend Advisory Board Meetings and Activities. The current acting CAC Board member is Rick Gurrola, Tehama County Agricultural Commissioner.

HEMP REGISTRATIONS

All Hemp growers, cultivators and seed breeders, except agricultural research institutions, are mandated to register with the CAC prior to cultivation and on an annual basis (FAC sections 81003 & 81004). Hemp registrations are valid for one year of which an annual registration fee applies (FAC section 81005, subdivision (3)(A)(B)). Fees are paid to the CAC. Proposed regulations on registration fees were sent to the Office of Administrative Law on November 9, 2018 and if adopted, may go into effect as soon as April 2019.

CALIFORNIA INDUSTRIAL HEMP REGISTRATION AND INSPECTION PROGRAM

The CDFA and California Agricultural Commissioners and Sealers Association (CACASA) are in the process of drafting a Memorandum of Understanding (MOU) on CDFA and CACASA responsibilities for the Industrial Hemp Inspection and Registration Program. CAC responsibilities may include:

1. Maintaining records of registration, sampling, testing and other records necessary for regulatory enforcement actions.
2. Forward fees and copies of registration forms and data to CDFA.
3. Perform inspections, Hemp THC sampling and regulatory enforcement activities as needed to comply with all laws, regulations and contracts for the Hemp program.

4. Train properly licensed county inspection personnel to perform inspections, sampling and regulatory activities.
5. Investigate all complaints and coordinate with local law enforcement, as necessary, to take appropriate enforcement action regarding industrial Hemp cultivation within the county.
6. Enforce Industrial Hemp registration and notification requirements for all hemp cultivators.

THC TESTING AND SAMPLING PROCEDURES

The IHAB in conjunction with CDFA is developing regulatory language for CACs to sample Hemp for THC content 30 days before harvest for mandated testing.

Regulations regarding sampling and testing of THC in Hemp have not been released for comment. The IHAB recommended proposed regulations for sampling procedures for in December 2018. Sampling recommendations included THC sample collection by CACs with the Hemp registrant or authorized representative present, having the registrant provide a sampling report to the CAC and THC sampling occurring 30 days before harvest. It was also recommended that all samples follow chain of custody procedures to ensure integrity of samples.

Once regulations for sampling are drafted by CDFA and recommended by IHAB, they will be released for comment and then forwarded to the Office of Administrative Law for approval.

ENFORCEMENT PROCEDURES

Enforcement procedures for minor violations have not been recommended by the IHAB. Drafted provisions and/or regulations to carry out enforcement would follow IHAB has made initial recommendations for the process.

Under existing law, Hemp with THC content over 1 percent after initial testing will undergo a second testing. Destruction of hemp with THC content of 0.4 percent to 1 percent after a second confirming test are required to be destroyed beginning 48 hours after notification and completed within 7 days (FAC 81006(d)(8)). Any penalties for violating the THC content requirements would be in addition to plant destruction.

FISCAL IMPACT

REGISTRATION FEES

The proposed annual fee in the proposed California Code of Regulations title 3 section 4900 is \$900 per year. The fee will be collected by the CAC annually and forwarded on to CDFA for the most part. Growers must register and pay a registration fee in each county that they intend to grow Hemp in. The county is authorized to collect additional fees to recover its cost.

COUNTY AGRICULTURAL COMMISSIONER COST RECOVERY

A CAC may retain 15 percent of the fee (\$135 per registration) and County Boards of Supervisors may establish fees for unreimbursed CAC costs for issuing, implementing, administering, and enforcing Hemp laws and regulations as stated in FAC section 81005. Such activities may include THC sampling, inspections, reporting or issuing enforcement actions.

PERSONNEL

Additional CAC personnel may be needed to support the California Industrial Hemp Registration and Inspection Program depending on the number of Hemp cultivators and/or seed breeders that would register in the county.

HEMP MORATORIA AND REGULATION

Without completed regulations, some counties have placed moratoria on Hemp cultivation.

Some counties that allow hemp cultivation as an activity view Hemp as a commodity that must be further regulated to reduce to the extent of possible impacts upon permitted cannabis cultivation. Hemp may have serious impacts on outdoor cannabis cultivators due to cross contamination pollination. Cross-pollination of Hemp with Cannabis may reduce the THC potency of the Cannabis plant cultivars propagated from cross pollinated seed.

In counties without a Hemp moratorium, CACs will be required by state law to register industrial hemp growers and seed breeders once registration regulations are approved.

Inyo County adopted an ordinance limiting hemp cultivation to certain zones and requiring a conditional use permit (Inyo County Ordinance No. 18.78.370).

Relevant statutes, regulations and ordinances are attached for reference purposes.

1. The California Health and Safety Code section 11018.5.
2. The California Business and Professions Code section 26001.
3. The California Food and Agricultural Code sections 81000-81011.