



**Department of Agriculture  
Staff Report**

Meeting Date: December 7, 2021

To: Board of Supervisors

From: Charlene Carveth, Agricultural Commissioner

Subject: Urgency ordinance extending an interim moratorium on the cultivation of industrial hemp for all purposes within the unincorporated areas of the County of El Dorado and direct staff to develop a permanent ban on industrial hemp.

---

**Recommendation:** Staff recommends the Board of Supervisors take the following actions:

1. Approve the extension of the interim moratorium on the cultivation of industrial hemp.
2. Direct staff to develop a permanent ban on industrial hemp.

**Funding:** No funding is required for this item.

**Background:**

The California Industrial Hemp Farming Act 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.

On December 20, 2018, the Agriculture Improvement Act of 2018 (“the 2018 Farm Bill”) was signed into law legalizing the production of hemp as an agricultural commodity while removing it from the list of controlled substances. This allowed a broader hemp cultivation program than was previously allowed for pilot programs under the 2014 Farm Bill. The 2018 Farm Bill also redefined hemp to include all parts of the plant, including seeds, derivatives, extracts and cannabinoids and allows the transfer of hemp-derived products across state lines for commercial or other purposes. It also puts no restrictions

on the sale, transport or possession of hemp-derived products, so long as those items are produced in a manner consistent with state law. The 2018 Farm Bill requires states wishing to be the primary regulators of hemp cultivation to submit their proposed regulatory program (State Regulatory Plan) for federal compliance approval and directs the United States Department of Agriculture (USDA) to develop federal regulations for hemp farming which will override state regulatory programs containing less stringent requirements. The Federal Interim Final Rule for a U.S. Domestic Hemp Production Program was published October 31, 2019, which was six months after California opened up registrations. This created some conflicts between the State and Federal rules so CDFA worked on changes to the California laws and regulations. California's proposed State Regulatory Plan for hemp production was submitted to USDA for review and approval on September 17, 2020. The Federal Final Rule was published on January 19, 2021 and became effective March 22, 2021. When this was published, California's State Regulatory Plan no longer met the Federal Rule so it was sent back to the State for further work. This required CDFA to once again work on changes to the California laws and regulations governing industrial hemp. It is estimated that California will be resubmitting the State Regulatory Plan to USDA around the end of 2021.

The Board of Supervisors established an Ad Hoc Committee on June 23, 2020 and had multiple meetings to review how other counties had established industrial hemp programs. Research projects that were established were reviewed for information. The Ad Hoc Committee brought the discussion back to the full Board on May 18, 2021. The Board directed the Sheriff and Agricultural Commissioner to explore Hemp with the Agricultural Commission and directed the Planning and Building Department Director to explore economic opportunities relative to Hemp with the Community and Economic Development Advisory Committee (CEDAC). Both committees were directed to return to the Board with a recommendation. Both committees selected two members to work on hemp and formed a joint working sub-committee. The joint sub-committee created key points for an Industrial Hemp Pilot Program. They also developed draft Letters of Recommendation to bring back to their committees for consideration. The Agricultural Commission approved their letter of recommendation and their revised Key Points at their October 13, 2021 meeting and forwarded it to the Board. The CEDAC committee approved their letter of recommendation and revised Key Points at their October 14, 2021 meeting. Both recommendations were informed by the guiding principles and goals outlined in the Agricultural and Forestry Element of the El Dorado County General Plan which promote agricultural production. CEDAC also discussed the economic potential for the emerging industrial hemp industry.

## **Analysis:**

### Concerns

Industrial hemp and cannabis are derivatives of the same plant, *Cannabis sativa* L. They are differentiated by definition in state law, where industrial hemp may not contain more than 0.3% tetrahydrocannabinol (THC). The appearance of industrial hemp grown for CBD production and cannabis are virtually indistinguishable. A laboratory chemical analysis for THC content is required to distinguish between the two. This makes it impossible for law enforcement or Ag Department staff to independently distinguish between an industrial hemp plant and a cannabis plant without collecting samples for testing. State industrial hemp procedures for sampling plants limit how many samples can be taken. Samples are collected from different plants. Only six samples are taken for plantings that are less than or equal to six acres and one additional sample for each acre for plantings that are greater than six acres but less than ten acres. This small sample size can allow illicit high THC cannabis to be integrated within the industrial hemp planting.

### Program Costs

The current Registration fee is \$900, which the Agriculture Department collects and sends to CDFA. The Agriculture Department receives approximately \$230 back for each registration. Each registration application can take two to three hours to review the application, criminal history report, seed or clone licensing information and lab test paperwork. The money we would receive from the cooperative agreement with CDFA generally covers staff costs for registrations.

Site visits to industrial hemp sites throughout the season include:

- 1) Field inspection to verify the site information in the registration application
- 2) Field inspection to confirm planting
- 3) Pre-harvest sampling-this could include multiple visits if the registrant has multiply varieties that mature at slightly different rates or there were multiple plantings over a period of time
- 4) Field inspection to confirm completion of harvest
- 5) Field inspection to confirm destruction of the crop-this could be crop that failed the lab test or voluntary destruction by the grower for crop failure/pests
- 6) Annual inspections of a random sample of registrants to ensure appropriate recordkeeping

Conservative staff cost estimates for 10 registrants for two inspectors per site visit and three to four hours per site visit is \$10,700-\$13,275. These would be General Fund expenditures.

### AB 45-Industrial Hemp Products

The bill was an urgency bill that went into effect immediately upon signing by the Governor. The bill allows the State Department of Public Health to outline steps for allowing the incorporation of hemp cannabinoids into the cannabis supply chain and the sale of hemp products at cannabis retailers. The bill also allows that a dietary supplement, food, beverage or cosmetic is not adulterated by the inclusion of industrial hemp. While it will take some time for the regulatory process and testing program to be created, this will eventually, allow for increased economic opportunities with industrial hemp manufacturing and processing in the State. A problem that remains is that the U.S. Food and Drug Administration (FDA) position is that additional CBD research and safety data is needed before it can be considered for uses such as a food additive or dietary supplement. This could prevent any interstate commerce of industrial hemp products.

Another issue this bill has now created is that tolerances will need to be set for any pesticide residues in industrial hemp that is used in human or pet food. Tolerance setting requires numerous scientific studies. In setting the tolerance, a safety finding that the pesticide can be used with “reasonable certainty of no harm” must be found. To make these findings U.S. EPA must consider for each pesticide used on industrial hemp:

- The toxicity of the pesticide and its break-down products
- How much of the pesticide is applied and how often.
- How much of the pesticide remains in or on food by the time it is marketed
- All possible routes of exposure to that pesticide

This process will take quite some time and will prevent the majority of pesticides from being used on industrial hemp for the near future. Industrial hemp like most crops has problems with a variety of insect pests and powdery mildew.

### Summary:

The Industrial Hemp Industry has the potential to be a viable economic commodity but still has a number of regulatory hurdles to meet before growth can occur. The Agriculture Department is recommending the permanent ban for these reasons. The Department will continue to monitor information from the state program, other counties and research that occurs and report this information back to the Board for further review.