

# Industrial Hemp Advisory Board

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TUESDAY, FEBRUARY 9, 2021

# Brief Update on USDA Adoption of Final Rule for Hemp Production

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# Overview of Federal Legislation and Regulations

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## **Agriculture Improvement Act of 2018 (2018 Farm Bill)**

- Signed into law on December 20, 2018
- Authorizes USDA to develop national regulations pertaining to industrial hemp cultivation
- Requires states that allow industrial hemp cultivation to submit a state regulatory plan to USDA for approval

## **Interim final Rule**

- Established on October 31, 2019
- Outlines requirements for USDA to approve state and tribal hemp production plans
- Establish a federal plan for hemp producers in states or territories without USDA-approved hemp production plans

## **Final Rule**

- Established on January 15, 2021 and will take effect on March 22, 2021
- Modifies state plan requirements established in interim final rule

# Final Rule

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Final rule is available at <https://www.federalregister.gov/documents/2021/01/19/2021-00967/establishment-of-a-domestic-hemp-production-program>

Notable changes to state plan requirements include:

- Harvest must be completed within 30 days of sample collection
- Alternative sampling methods (performance-based approach)
- DEA-registration requirement for laboratories delayed until January 1, 2022
- Negligence threshold for THC concentration increased to 1%
- Alternative disposal methods including remediation

More information on final rule and additional guidelines are available at <https://www.ams.usda.gov/rules-regulations/hemp>

# Brief Update on Proposed State Legislation for Industrial Hemp

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# Proposed State Legislation for Hemp

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## Assembly Bill (AB) 45

- Introduced by Assembly Member Aguiar-Curry on December 7, 2020
- AB 45 proposes changes to the Health and Safety Code to clarify the requirements and enforcement for manufacturers of dietary supplements, food, beverages, cosmetics, and pet food that contain industrial hemp
- Text of AB 45 is available at [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB45](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB45)

## Senate Bill (SB) 235

- Introduced by Senator Allen (Assembly Member Aguiar-Curry as Principal coauthor) on January 19, 2021
- SB 235 currently mirrors proposed changes in AB 45
- Text of SB 235 is available at [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB235](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB235)

# Brief Update on State Plan, Rulemaking, and other Program Activities

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# Rulemaking Update

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California Code of Regulations Section(s)	Type of Rulemaking	Description	Status	Effective Date
4901-4902	Emergency	Registration and Criminal History Report	Readopted	01/07/21
4940, 4935, 4940-4946, 4950-4950.1	Regular	Planting, Sampling and Testing for THC Content, Harvest, Destruction	Adopted	01/11/21

*A copy of the California industrial hemp law and regulations is available on the CDFA Hemp webpage.*

# Status of California State Regulatory Plan for Hemp Cultivation

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- California's state plan is a compilation of current and proposed laws and regulations
- CDFA submitted a proposed state plan based on the interim final to USDA for review and approval on September 17, 2020
- CDFA currently reviewing the final rule to determine the impacts to the proposed state plan
- CDFA plans to amend current regulations and develop new regulations as needed to ensure compliance with final rule
- Once CA's state plan is approved, FAC Sections 81004.5 and 81012, and amendments to Section 81000 will become effective

# Other Program Activities

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- Routing letter of interests for board vacancies to Secretary for selection
- Hired one additional environmental scientist
- Reviewing and approving applications from laboratories to test hemp for THC concentration
- Continue to collaborate with county agricultural commissioners on administering and enforcing the program
- Update online information including FAQs, forms and templates
- Responding to public inquiries

# Other CDFA Activities

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## CDFA's Market Enforcement Branch

- Responsible for licensing, inspection, and enforcement of California state law and regulations for the handling, manufacturing, processing, and selling of farm products for the purpose of resale or processing
- Began accepting applications for licenses for hemp on January 1, 2021
- For more information regarding MEB, please visit: <https://www.cdfa.ca.gov/mkt/meb/>

# INDUSTRIAL HEMP PROGRAM REVENUE AND BUDGET UPDATE

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*Industrial Hemp Advisory Board Meeting*

*February 9, 2021*

# Revenue Update

<b>Fiscal Year</b>	<b>Registration Fees Collected</b>
2018/2019	\$259,200
2019/2020	\$576,000
2020/2021	\$251,100
<b>Total</b>	<b>\$1,086,300</b>

# Registration Activities Summary

	<b>FY 18/19</b>	<b>FY 19/20</b>	<b>FY 20/21 Projection</b>
Registrations Issued	275	644	600
Registered Acres	17,523	20,492	15,000
Registration Amendments for Site/Cultivar	254	2,125	825

# Budget Summary

	PPPPY FY 2016/17	PPPY FY 2017/18	PPY FY 2018/19	PY FY 2019/20
TOTAL PERSONAL SERVICES	\$18,519	\$88,548	\$207,662	\$600,434
TOTAL OPERATING EXPENSES & EQUIPMENT	\$2,283	\$16,353	\$51,993	\$89,189
COUNTY AGREEMENTS	\$0	\$0	\$198,726	\$1,281,427
TOTAL COST RECOVERY	\$0	\$0	(\$497)	(\$24,766)
<b>TOTAL BUDGET</b>	<b>\$20,802</b>	<b>\$104,901</b>	<b>\$457,884</b>	<b>\$1,946,284</b>

*As of 01/25/2021*

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	CY FY 2020/2021
TOTAL PERSONAL SERVICES	\$651,474
TOTAL OPERATING EXPENSES & EQUIPMENT	\$135,082
COUNTY AGREEMENTS	\$1,016,425
<b>TOTAL BUDGET</b>	<b>\$1,802,981</b>

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## FY 2020/2021 Budget Projections

# COUNTY AGREEMENTS

## Reimbursable activities in FY 18/19 and 19/20

- Registration issuance
- Enforcement activities of non-compliant plantings grown by non-registered cultivators
- Public outreach activities
  - Respond to public inquiries regarding the registration process
  - Develop outreach material on local hemp cultivation requirements
  - Present local regulations regarding hemp cultivation at public meetings
- Training
- Reporting/invoicing

## Reimbursable activities in FY 20/21 and FY 21/22

- Registration and renewal issuance
- Enforcement activities of non-compliant plantings grown by non-registered cultivators
- Public outreach activities (Reimburse up to 8 hours per activity with prior approval)
  - Develop outreach material on local hemp cultivation requirements
  - Present local regulations regarding hemp cultivation at public meetings

# Current Fund Condition

	PPPPY 2016/17 Actual	PPPY 2017/18 Actual	PPY 2018/19 Actual	PY 2019/20 Actual	CY FY 2020/21 Projection	Projection for FY 2021/22	Projection for FY 2022/23
BEGINNING RESERVE BALANCE	\$0	(\$20,802)	(\$125,703)	(\$324,387)	(\$1,694,903)	(\$2,957,884)	(\$4,211,552)
REVENUE CATEGORIES							
Registration Fees	\$0	\$0	\$259,200	\$576,000	\$540,000	\$660,000	\$660,000
Interest & Miscellaneous Income	\$0	\$0	\$0	(\$232)	\$0	\$0	\$0
<b>TOTAL REVENUE</b>	<b>\$0</b>	<b>\$0</b>	<b>\$259,200</b>	<b>\$575,768</b>	<b>\$540,000</b>	<b>\$660,000</b>	<b>\$660,000</b>
EXPENDITURES							
Personnel Services	\$18,519	\$88,548	\$207,662	\$600,434	\$651,474	\$762,161	\$843,603
Operating Exp & Equipment	\$2,283	\$16,353	\$51,993	\$89,189	\$135,082	\$135,082	\$135,082
County Agreements	\$0	\$0	\$198,726	\$1,281,427	\$1,016,425	\$1,016,425	\$1,016,425
COST RECOVERY							
Reimbursement 224c - Admin	\$0	\$0	(\$497)	(\$24,766)	\$0	\$0	\$0
<b>TOTAL EXPENDITURES</b>	<b>\$20,802</b>	<b>\$104,901</b>	<b>\$457,884</b>	<b>\$1,946,284</b>	<b>\$1,802,981</b>	<b>\$1,913,668</b>	<b>\$1,995,110</b>
ENDING RESERVE BALANCE	(\$20,802)	(\$125,703)	(\$324,387)	(\$1,694,903)	(\$2,957,884)	(\$4,211,552)	(\$5,546,662)

The Department recommends that programs maintain a reserve of between 1/3 and 1/2 of its annual expenditures

# INDUSTRIAL HEMP TASK FORCE REGISTRATION FEE PROPOSAL

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*Industrial Hemp Advisory Board Meeting*

*February 9, 2021*

# Task Force Meeting Recap – 10/26/2020

- Presented on five options for fee structure and schedule.

Option 1	Option 2	Option 3	Option 4	Option 5
<ul style="list-style-type: none"><li>• Base fee</li></ul>	<ul style="list-style-type: none"><li>• Base fee</li><li>• Acreage fee</li><li>• Amendment Fee</li></ul>	<ul style="list-style-type: none"><li>• Site Fee</li><li>• Acreage Fee</li><li>• Amendment Fee</li></ul>	<ul style="list-style-type: none"><li>• Base fee</li><li>• Indoor square footage fee</li><li>• Outdoor acreage fee</li><li>• Amendment Fee</li></ul>	<ul style="list-style-type: none"><li>• Base fee</li><li>• Revenue fee</li></ul>

# Additional Activities Following Task Force Meeting

- Reviewed fee structure/schedules and budgets from other states.
- Interviewed county agricultural commissioners regarding registration workload.
- Explored additional fee structure options.

# Potential Impacts Due Lack of Funding

- All borrowed monies must be repaid with 1% interest
  - Currently limited amount of reserves to borrow from
- Delays in fee increases will result in higher fees later
- Reduction of program activities → federal and state compliance issues
  - CDFA: rulemaking, board meetings, training and support for counties, public outreach
  - Counties: registration, regulatory enforcement
- CDFA may raise fees despite/lack of board recommendation
  - Obligation to establish a registration fee to cover actual costs

# Task Force's Registration Fee Proposal

Fee	Rate	Estimated Unit	Estimated Revenue
Base	\$1,100 per registration	550 registrations	\$605,000
Outdoor Acreage	\$100 per acre	16,000	\$1,600,000
Indoor Sq Footage	\$0.01 per square foot	1 million square feet	\$10,000
Registration Amendment	\$100 per amendment (except changes to contact information)	825 amendments (1.5 amendment per registrant)	\$82,500
<b>Total Projected Annual Revenue</b>			<b>\$2,297,500</b>

- Increase reserve balance by a projected \$350,000 each year

	CY FY 2020/21 Projection	Projection for FY 2021/22	Projection for FY 2022/23	Projection for FY 2023/24	Projection for FY 2024/25	Projection for FY 2025/26	Projection for FY 2026/27	Projection for FY 2027/28	Projection for FY 2028/29	Projection for FY 2029/30	Projection for FY 2030/31
BEGINNING RESERVE BALANCE	<b>(\$1,694,903)</b>	<b>(\$2,957,884)</b>	<b>(\$2,574,052)</b>	<b>(\$2,271,662)</b>	<b>(\$1,926,981)</b>	<b>(\$1,582,300)</b>	<b>(\$1,237,619)</b>	<b>(\$892,938)</b>	<b>(\$548,257)</b>	<b>(\$203,576)</b>	<b>\$141,105</b>
REVENUE CATEGORIES											
Registration Fees	\$540,000	\$605,000	\$605,000	\$605,000	\$605,000	\$605,000	\$605,000	\$605,000	\$605,000	\$605,000	\$605,000
Outdoor Acreage Fees	\$0	\$1,600,000	\$1,600,000	\$1,600,000	\$1,600,000	\$1,600,000	\$1,600,000	\$1,600,000	\$1,600,000	\$1,600,000	\$1,600,000
Indoor Square Footage Fees	\$0	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000
Amendment Fees	\$0	\$82,500	\$82,500	\$82,500	\$82,500	\$82,500	\$82,500	\$82,500	\$82,500	\$82,500	\$82,500
Interest & Misc. Income	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>TOTAL REVENUE</b>	<b>\$540,000</b>	<b>\$2,297,500</b>									
EXPENDITURES											
Personnel Services	\$651,474	\$762,161	\$843,603	\$801,312	\$801,312	\$801,312	\$801,312	\$801,312	\$801,312	\$801,312	\$801,312
Operating Exp & Equipment	\$135,082	\$135,082	\$135,082	\$135,082	\$135,082	\$135,082	\$135,082	\$135,082	\$135,082	\$135,082	\$135,082
County Agreements	\$1,016,425	\$1,016,425	\$1,016,425	\$1,016,425	\$1,016,425	\$1,016,425	\$1,016,425	\$1,016,425	\$1,016,425	\$1,016,425	\$1,016,425
COST RECOVERY											
Reimb. 224c - Admin	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>TOTAL EXPENDITURES</b>	<b>\$1,802,981</b>	<b>\$1,913,668</b>	<b>\$1,995,110</b>	<b>\$1,952,819</b>							
ENDING RESERVE BALANCE	<b>(\$2,957,884)</b>	<b>(\$2,574,052)</b>	<b>(\$2,271,662)</b>	<b>(\$1,926,981)</b>	<b>(\$1,582,300)</b>	<b>(\$1,237,619)</b>	<b>(\$892,938)</b>	<b>(\$548,257)</b>	<b>(\$203,576)</b>	<b>\$141,105</b>	<b>\$485,786</b>

# FUND CONDITION FOR PROPOSAL

# Proposed Future Task Force Activities

- Review the impacts of the revised registration fee in late 2021
- Review the program's budget and reserve balance in late 2021
- Propose amendments to the registration fee for Board consideration in early 2022, if necessary