

Industrial Hemp Advisory Board (IHAB) Meeting
California Department of Food and Agriculture (CDFA)

1220 N Street, Auditorium
Sacramento, CA 95814

Wednesday, May 30, 2018
10:00 AM – 12:00 PM

Board Members

Van Butsic
Rick Gurrola
Allison Justice (Absent)
Matt McClain
Valerie Mellano
Tom Pires
David Robinson
John Roulac
Lawrence Serbin
Richard Soria

CDFA & Guests

G.V. Ayers
Chris Boucher
Alex Brant-Zawadzki
Josh Chase
Don Chesney
Chad Crivelli
Justin Eve
Leslie Fernandez
John Heaton
Caitlin Hengeveld
Chris Hewes
Jean Johnson
Janice Jurado
Joshua Kress
Danny Lee
Fiona Mattson

Jered Micheli
Nitin Patel
Shail Patel
Carl Pfeiffer
Michelle Phillips
Michael Ramirez
Wayne Richman
Jennifer Romero
Robin Sanchez
Linda Sawtelle
Jennifer Schwab
Austin Sherman
Jennie Tedlos
Cathy Vue
Brian Webster
Marie Ziegel

1. Roll Call and Opening Remarks

Meeting called to order at 10:02 AM by Lawrence Serbin, Board Chair. Board members and Program staff provided self-introductions.

Serbin briefly reviewed the meeting's agenda. Michelle Phillips, Senior Environmental Scientist of the CDFA Nursery, Seed, and Cotton Program, reviewed general housekeeping information. Phillips also reminded board members to submit travel receipts for processing their travel expense claims.

2. Legislation Task Force Report

Board members Matt McClain and Valerie Mellano presented a series of recommended amendments to Senate Bill (SB) 1409. The task force's recommendations included:

- Adding the use of clonal propagation of approved seed cultivars to the list of approved seed cultivars to address clonal propagation.
- Specifying whether seed producers must register as seed breeders or as growers for commercial cultivation.
- Requiring the origin of planting materials on the registration application for regulatory and data collection purposes.
- Changing the registration timeframes to one year to mirror the growing cycle of the crop.

- Removing the term “densely planted” from existing law to provide for all cultivation practices of industrial hemp.
- Amending FAC Section 81006 to include sampling and testing requirements recommended by the Board during the April 24, 2018 meeting, including the collection and maintenance of samples, testing methods, and sample retention.
- Specifying that THC content shall be no more than three-tenths of one percent “on a dry weight basis” to mirror federal language.
- Requiring registrants be notified of test results within seven days after sample collection.
- Including approved crop destruction methods that would ensure carbon is returned to the environment, such as under-tilling or biochar gasification.
- Extending crop destruction deadlines to seven days of receipt of a fail test results to allow registrants more time to comply to destruction requirements.
- Providing prosecution protection to all registrants who comply with crop destruction requirements for plantings with THC content testing above 0.3%.
- Requiring CDFR to establish an agricultural pilot program, and clearly stating that all registrants are participants in the agricultural pilot program.
- Providing for the cultivation of industrial hemp by Indian tribes, and adding an additional IHAB member representing the Indian tribes.

McClain expressed concerns regarding the broadness of the language in SB 1409 that allowed counties and cities to ban cultivation of industrial hemp based on potential pollen drift issues.

Serbin raised concerns regarding the potential for excessive state and county fees. Joshua Kress, Program Supervisor of the CDFR Nursery, Seed, and Cotton Program, noted that SB 1409 would allow counties to establish fees to recover actual costs for the implementation, administration and enforcement of the registration program. Kress also noted that the language used in SB 1409 was similar to the provision in existing law authorizing the state to establish fees. David Robinson explained that counties must demonstrate and justify fees by using hourly rates.

Tom Pires asked about the start date and limitation on acreage for the proposed pilot program. Mellano explained that the proposed language in SB 1409 did not include a specific start date nor a limit on acreage to be grown. Kress noted that language in current statute included a minimum acreage requirement for cultivation of industrial hemp, but not a maximum. Kress explained that if the proposed bill passed, changes to current law would likely take effect on January 1, 2019.

Serbin asked about the purpose of the pilot program. Mellano explained that the language proposed by the task force will automatically enroll all registered growers and seed breeders in the pilot program. McClain explained that the proposed pilot program would not impact the requirements already established for the registration program.

Serbin asked for clarification on the intent of the proposed pilot program. McClain explained that the pilot program would provide commercial growers compliance with federal law, and would provide for data collection on cultivation activities.

Richard Soria asked about pollen drift. McClain explained that he understood pollen drift could range from two to 10 miles. McClain expressed concerns regarding the impact of the proposed language in SB 1409 to growers’ right to farm. McClain believed that the proposed provision in SB 1409 would require cities and counties to provide evidence of pollen drift or the threat of pollen drift.

Serbin asked for clarification on the provision in SB 1409 regarding restricting industrial hemp cultivation due to pollen drift. McClain explained that the proposed provision in SB 1409 would allow a city or county to restrict industrial hemp cultivation due to pollen drift. McClain believed that the proposed provision in SB 1409 was constructed to provide protection for cannabis cultivation.

Serbin asked about the impacts of cannabis cultivation to industrial hemp cultivation, and asked if the provision in SB 1409 favored cannabis cultivation over industrial hemp cultivation. McClain explained that cannabis cultivation did not produce a lot of pollen. Mellano stated that industrial hemp seed producers would be the most impacted by pollen drift. Serbin stated that a potential risk of pollen drift would always be present when growing industrial hemp outdoors. Mellano expressed concerns in situations where cannabis growers may want to cultivate within the same vicinity of existing industrial hemp cultivation.

John Roulac asked about the proposed language in SB 1409 to amend the requirement of DEA-registered testing laboratories. McClain explained that the proposed language in SB 1409 amended the requirement to a department-approved laboratory.

Roulac asked about the impacts to SB 1409 and the language proposed by the task force with relation to proposed changes to federal law. McClain noted the task force's proposed provision to address cultivation by Indian tribes mirrored proposed federal legislation. McClain stated that there would be a one-year moratorium for pilot programs if the pending federal legislation passed. McClain explained that SB 1409 and the amendments suggested by the task force would remain in agreement with any changes to federal law.

Rick Gurrola commented that the right to farm term may need legal review. Gurrola stated that he believed the right to farm term only applied to agricultural crops. Gurrola noted that neither cannabis nor industrial hemp was recognized as an agricultural crop in California. Kress confirmed that industrial hemp has not been defined in California law as an agricultural crop.

Roulac asked about designating industrial hemp as an agricultural crop. McClain noted that such designation could impact grants, water rights, and other issues. Kress noted that the Board had previously discussed the impacts of designating industrial hemp as an agricultural seed with relation to the California Seed Law at the January 18, 2018 meeting. McClain recommended to engage Alex Mkandawire from the California Crop Improvement Association (CCIA) to provide more insight on the impact of such designation.

Robinson asked about the proposed language from the task force addressing cultivation by Indian tribes. McClain explained that the language mirrored pending federal legislation. Robinson explained that California followed different guidelines than other states under Public Law 280.

Robinson expressed concerns regarding the proposed changes to destruction timeline. Robinson suggested that the destruction timelines should be based on acreage size. Robinson stated that small plots should be afforded less time to destroy the crop than larger grows.

Mellano commented that the proposed language for addressing cultivation by Indian tribes will need further review. Mellano noted that she found that there was no consistency on how the issue was addressed across various states.

Wayne Richman, California Hemp Association (CHA), expressed concerns regarding SB 1409. Richman stated that the inclusion of language to ban cultivation due to cross pollination made SB

1409 a cannabis bill instead of an industrial hemp bill, and that SB 1409 did not support industrial hemp farmers. Richman stated that CHA's recommendations to the authors of SB 1409 were rebuffed. Richman asked if any Board members had opportunity for direct input. Roulac explained that he had a discussion with Senator Wilk's office regarding the proposed amendment to the DEA-registered laboratory requirement, but he had not reviewed the amendments included in the May 25, 2018 version of SB 1409. Richman expressed concerns that CHA has not had an opportunity to provide input in SB 1409. Roulac explained that all organizations could contact the authors of SB 1409 and provide their input.

Chris Boucher, Farmtiva and Imperial Valley Conservation Center, expressed concerns regarding the proposed language in SB 1409 regarding county fees. Boucher explained that the proposed language in SB 1409 provided counties with broad authority to set fees with no limits and no requirement to establish fees in a timely manner. Boucher recommended that the Board set fees for the counties. Boucher also expressed concerns regarding restrictions due to pollen drift.

Roulac suggested an amendment to SB 1409 to establish a registration fee to cover both the state and county costs, but also provide the counties an option to set a fee by a specific date. Boucher believed that Roulac's suggestion could be a compromise. Boucher expressed concerns regarding counties possibly setting fees based on the purpose of the crop.

Boucher commented that pollen drift in Colorado had been measured at 40 to 80 miles in open plains. McClain stated that SB 1409 did not clearly define pollen drift.

Gurrola commented that the California Agricultural Commissioners and Sealers Association specifically requested a provision to allow counties to establish a fee for actual cost recovery for administering the registration program. Gurrola explained the difficulties of using a set fee without knowing the roles of the counties, and of establishing a flat fee to cover all counties considering the wide range of local costs.

Brian Webster, CHA, recommended to include a provision in SB 1409 to establish industrial hemp as an agricultural crop to provide a basis for the right to farm. Webster also recommended to remove the provision that allows counties and cities to ban industrial hemp cultivation. Webster stated that counties should provide studies to prove pollen drift concerns.

Webster asked about the provisions regarding a pilot program. McClain explained that the 2014 Farm Bill allowed institutions of higher education and state departments to establish a pilot program. McClain explained that commercial growers currently do not have federal protection without participating in a pilot program.

Alex Brant-Zawadzki commented that SB 1409 still required approval through the State Assembly, and encouraged everyone to provide concerns to the authors during this time.

Justin Eve, 7 Generations, suggested the Board specify the moisture content to further clarify the dry weight term. Eve stressed that storage of samples must be in a dry condition. Eve recommend the Board review neighboring states' policies regarding THC content. McClain explained the task force's recommendations on SB 1409 regarding drying and THC content stemmed from recommendations made by the Sampling and Testing Task Force at the April 24, 2018 board meeting.

Eve asked about the potential impacts to SB 1409 from pending federal legislation. McClain explained that he did not foresee any significant impacts or conflicts to SB 1409. McClain noted that Assembly Bill 710 covered CBD.

Chris Hewes asked about manufacturing industrial hemp products. Kress explained that there were currently no rules or regulations regarding manufacturing such products.

G.V. Ayers, Gentle Rivers Consulting, noted a discrepancy in the reporting requirement deadline of January 1, 2019 outlined in the task force's proposed language for Section 81007. Ayers commented that SB 1409 theoretically would not become effective until January 1, 2019 and therefore not feasible for the Board to issue an economic report on the same day.

Ayers commented that the requirement of a pilot program may increase the cost of administering the Industrial Hemp Program.

Van Butsic recommended that the Board further investigate the impact of designating industrial hemp as an agricultural crop.

3. Registration Fee Task Force

Board members Gurrola and Robinson reported their findings regarding determining the counties' cost to administer the registration program.

Robinson explained that SB 1409 would affect the fees required to recover the counties' costs. Robinson noted that the task force did not have a recommendation on a registration fee at this time and explained that the Assembly Appropriations Committee may provide information that can be used to determine a registration fee.

Gurrola explained the difficulty of establishing one fee to cover the varying local costs for all 58 counties. Gurrola noted that 30 counties participated in an informal survey on hourly rates in 2017, and the hourly rates ranged from \$42.37 to \$161.28. Gurrola stated that the counties would need to be able to recover actual costs, and explained it was difficult to determine the county cost without fully identifying the counties' roles and responsibilities.

Roulac expressed concerns that allowing counties to set the fees would result in delays the establishment of the fee and registration. Roulac suggested that the Board establish a registration fee to cover both the state and county costs, but provide the counties the option to set a fee by a specific date. Gurrola explained that his county currently conducted activities in which fees were set in advance and where individuals are invoiced for actual costs after the services have been rendered.

Kress stated that the Board initially recommended that CDFR promulgate regulations to establish a registration and renewal fee of not less than \$1,000 per applicant to be collected by the county agricultural commissioner, that the county board of supervisors may set a fee greater than \$1,000 during a regular meeting and adopt it pursuant to county rules, and that \$1,000 per applicant would be forwarded by the commissioner to CDFR. Kress explained that it was determined that current statute did not provide authority to the commissioners to establish their own fees. Kress noted the amendment in SB 1409 would provide authority to the commissioners to establish their own fees.

Roulac clarified that he would like to see an amendment to SB 1409 to establish a registration fee but also provide authority to counties to establish a different amount by a specific date to allow

full cost recovery by the counties. Gurrola explained that determining the counties' costs required the counties to fully understand the workload required of them. Roulac stated that what he was suggesting would still allow counties to set registration fees for full cost recovery. Roulac explained that he would like to specify when the counties must have the fees set in order to expedite registration.

Gurrola explained that counties must submit a financial report to CDFA by October 31 of each fiscal year that outlines the costs for all programs administered by the counties. Gurrola reiterated that counties needed to know the scope of work to estimate the program costs.

McClain asked about the need for a registration fee to start registration. Kress explained that a new motion was needed in order for CDFA to move forward with promulgating regulations to establish a registration fee. Kress confirmed that counties did not have the authority to establish their own fees.

Robinson asked if it was feasible to establish a fee and allow counties to recover costs through CDFA. Kress explained that CDFA had general authority to reimburse the counties. Kress stated that it would require a Memorandum of Understanding (MOU) between CDFA and the counties to do so. Kress explained the difficulties of establishing a fee to allow counties to recover full costs. Gurrola noted that counties would not sign MOUs that did not fully reimburse them.

Roulac asked if the fee should be established through legislation or regulation. Kress explained that the fee would need to be established through regulation regardless of the pending legislation.

Butsic recommended that CDFA subsidize the counties to ensure full cost recovery for the counties, and stated that the registration fee could be adjusted in the future to repay the borrowed money.

Serbin asked about fee collection. Kress explained that counties collected the fees but were required to forward the fees to CDFA. CDFA would then reimburse the counties through an administrative process.

Butsic asked if counties expected to spend over \$1,000. Gurrola stated that county costs would depend on the workload required. Gurrola estimated based on county field walk activities that each registration may require three to five hours. Gurrola explained that counties would need direction from CDFA regarding the counties' workloads. Gurrola noted that, based on the previously referenced survey, \$84.36 was statewide average county hourly rate, which meant five hours would be equivalent to approximately \$400. Gurrola explained that county hourly rates vary and a fee of \$400 would not cover costs for many counties. Gurrola emphasized that counties could not charge more than actual costs to administer the registration program.

Roulac asked about if the higher hourly rates were from larger non-agricultural counties. Gurrola emphasized that the survey was for conducting work for the Weights and Measures Program and Santa Clara had the highest hourly rate at \$161.28. Gurrola confirmed the hourly rates were higher for counties with urban areas. Roulac suggested not raising the fee to ensure consideration of all county rates since counties with urban areas would likely not have cultivation in their counties. Roulac recommended to instead set a fee that will provide coverage for most county hourly rates.

Butsic noted that CDFA would need to also collect money to recover for state costs. Kress explained that the initial motion from the Board at the June 29, 2017 meeting included \$1,000 for CDFA's costs.

Robinson asked about adjusting the registration fee in the future. Kress explained adjustments to the registration fee in the future would require a recommendation from the Board and CDFA to promulgate regulations.

Gurrola expressed concerns with charging a flat fee instead of actual costs. Gurrola explained that a flat fee would restrict the counties' abilities to recover actual costs.

Pires explained that it would be helpful for farmers to know what to expect for registration costs. Gurrola responded that the counties could provide accurate estimates of county costs once workloads were specified.

McClain asked about funds not used by the State and counties. Kress confirmed that any excess funds would stay in the Program's reserves.

Kress asked Gurrola about other programs that were reimbursed by the State through a different method. Gurrola cited a pest detection program that used a flat rate for several years, forcing counties to use general funds to subsidize program costs.

McClain calculated that registration would be \$1,800 for two years based on the \$1,000 previously recommended for the state costs at the June 29, 2017 board meeting and on the information provided by Gurrola for the counties' costs.

Serbin suggested establishing an annual fee. Kress explained that current statute required registration be valid for two years.

Pires asked if the fee would not be dependent on acreage size. Serbin stated that small acreages were only economically feasible for CBD production. He explained that CBD production would likely be able to collect more revenue and therefore would not be burdened by the proposed registration fee.

Soria noted that only one of the five states contacted for the sampling and testing task force charged fees by acreage. Serbin recommended that the registration fee be kept as simple as possible. Soria noted that annual fees from the five states ranged from \$500 to \$1,300. Kress noted that each state had different fee structures and explained that it would be difficult to model the registration fee after one state. Kress noted that the Board could reevaluate the fee structure in the future to ensure full cost recovery for both the State and counties.

McClain asked if a new recommendation was required from the Board for CDFA to promulgate regulations to establish a registration fee. Kress confirmed that a new recommendation from the Board was needed for CDFA to proceed.

Van Butsic moved that CDFA promulgate regulations to establish a registration and renewal fee of \$1,800 per applicant to be collected by the county agricultural commissioner. John Roulac seconded the motion.

Eve recommended that the Board should ensure that counties can fully recover costs and allow the Department to have full staffing by setting an adequate amount for the registration fee.

Chad Crivelli suggested that the Board considered a system like the Pink Bollworm Program, where fees were assessed annually based on acreage.

Richman expressed concerns regarding taxing industrial hemp based on crop purpose and crop potential revenue.

Ayers asked if the motion was based on current legislation. Kress confirmed that the motion was based on current law. Ayers asked about the timeline for CDFA to promulgate regulations. Kress briefly reviewed the timeframe for the regular rulemaking process. Ayers asked about the process for emergency rulemaking. Kress explained that through the emergency rulemaking process a regulation would take effect upon proposal, but that CDFA would then be required to proceed with the regular rulemaking process.

Linda Sawtelle expressed concerns regarding establishing a flat fee structure for all growers regardless of acreage. Sawtelle suggested that the Board considered a graduated fee structure based on acreage, including a cap on the fees.

Austin Sherman asked about establishing different types of fees for growers, seed breeders, and manufacturers. Kress explained that current legislation provides for two different types of registration for growers and seed breeders. Kress explained the Board could recommend a more complex fee structure if they wished to do so. Kress noted that current law did not provide for licensing for manufacturing or processing of industrial hemp.

The Board voted on the motion as follows:

Yes:	Van Butsic, Rick Gurrola, Matt McClain, Tom Pires, David Robinson, John Roulac, Lawrence Serbin, Richard Soria
No:	None
Abstained:	None
Absent:	Allison Justice, Valerie Mellano

Motion carried.

4. Public Comments

Webster asked about designating industrial hemp as an agricultural crop. Kress explained that there was no designation in current statute. Robinson noted that it was mentioned earlier in the meeting that further investigation was needed to explore the impacts from such designation prior to recommending proposed language in SB 1409.

5. Next Meeting/Agenda Items

Pires asked about the status of the approved seed cultivar list with additional information of each cultivar. Kress noted that Mkandawire could provide a status update in a future meeting.

Serbin recalled Pires' previous concern that CDFA's industrial hemp webpage was not clear regarding the legality of cultivation of industrial hemp. Kress explained that a document clarifying the status of cultivation by established agricultural research institutions was available on the webpage. Kress noted that Phillips was currently working on update to the Frequently Asked Questions (FAQ) page for the program. Kress recommended to contact Phillips for any suggestions of additional topics to be covered in the FAQ.

Pires suggested to include information on cultivation practices for industrial hemp on CDFA's industrial hemp webpage. Serbin stated that the Hemp Industries Association would be publishing a comprehensive farming guide soon. Kress suggested also seeking documentation from cooperative extensions or other state agricultural departments.

Soria requested that the agricultural crop designation for industrial hemp discussion be included at the next board meeting.

Kress noted that CDFA would present draft sampling and testing guidelines at the next board meeting, per the Board's request.

McClain requested to include a status update on the registration fee regulations at the next board meeting.

The Board tentatively set the next board meeting for the end of July 2018, pending confirmation.

6. Adjournment

Meeting adjourned by Serbin at 12:42 PM.

Respectfully submitted by:

Michelle Phillips
Senior Environmental Scientist (Specialist)
CDFA Nursery, Seed and Cotton Program

AMENDED IN SENATE MAY 25, 2018
AMENDED IN SENATE MAY 01, 2018
AMENDED IN SENATE APRIL 02, 2018

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

SENATE BILL

No. 1409

Introduced by Senator Wilk
(Coauthors: Senators Galgiani, Glazer, and Wiener)
(Coauthor: Assembly Member Lackey)

February 16, 2018

An act to amend Sections 81002, 81003, 81004, [81005](#), and 81006 of, and to add Sections 81007, ~~and~~ 81011 [and 81012](#) to, the Food and Agricultural Code, and to amend Section 11018.5 of the Health and Safety Code, relating to industrial hemp, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1409, as amended, Wilk. Industrial hemp.

(1) Existing law governs the growth of industrial hemp and imposes specified procedures and requirements on a person who grows industrial hemp, not including an established agricultural research institution. Existing law defines “industrial hemp” to be the same as that term is defined in the California Uniform Controlled Substances Act, which defines that term as a fiber or oilseed crop, or both, that is limited to the nonpsychoactive types of the plant *Cannabis sativa* L. and the seed produced from that plant, and that meets other specified criteria. Existing law requires that industrial hemp only be grown if it is on the list of approved hemp seed cultivars, which includes industrial hemp seed cultivars certified on or before January 1, 2013, by specific organizations, except as specified. Existing law requires industrial hemp to be grown only as a densely planted fiber or oilseed crop, or both, in minimum acreages, as provided, except as specified. Existing law prohibits the ornamental and clandestine cultivation of industrial hemp plants, and, except under specified circumstances, pruning and tending of individual industrial hemp plants and culling of industrial hemp.

Existing law requires a grower of industrial hemp, as specified, and a seed breeder, as defined, to register with the county agricultural commissioner and to pay a registration or renewal fee, as specified. Existing law requires that the fees be deposited into the Department of Food and Agriculture Fund and continuously appropriated for use in the administration and enforcement of these provisions. Existing law requires that an application for registration include information about the approved seed cultivar to be grown and whether the seed cultivar will be grown for its grain or fiber, or as a dual purpose crop, or, in the case of a seed breeder, for seed production.

This bill would delete the requirement that industrial hemp seed cultivars be certified on or before January 1, 2013, in order to be included on the list of approved hemp seed cultivars. The bill would also delete the

prohibitions on ornamental cultivation of industrial hemp plants, pruning and tending of individual industrial hemp plants, and culling of industrial hemp. By ~~establishing~~ *removing limitations on the types of industrial hemp seed cultivars that may be cultivated, and the purposes for which they may be cultivated, with payment of a registration or renewal fee, this bill would establish* new sources of revenue for a continuously appropriated fund, ~~the bill would make~~ *thereby making* an appropriation. *The bill would authorize a county agricultural commissioner or a county, as appropriate, to retain the amount of a registration or renewal fee necessary to reimburse direct costs incurred by the commissioner in the collection of the fee. The bill would also authorize the board of supervisors of a county to establish a registration or renewal fee to cover other costs of the county agricultural commissioner and the county of implementing, administering, and enforcing these provisions, as provided.*

Under the bill, “industrial hemp” would no longer be defined in the California Uniform Controlled Substances Act as a fiber or oilseed crop. The bill would delete the requirement that industrial hemp be grown as a fiber or oilseed crop, or both. The bill would also delete the requirement that an application for registration include information about whether a seed cultivar is being grown for its grain or fiber, or as a dual purpose crop.

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

(2) Existing federal law, the Agricultural Act of 2014, authorizes an institution of higher education, as defined, or a state department of agriculture, as defined, to grow or cultivate industrial hemp under an agricultural pilot program, as defined, under certain conditions, including the condition that a state department of agriculture is authorized to promulgate regulations to carry out the pilot program in accordance with specified purposes.

The bill would also authorize the department, as part of the industrial hemp registration program, to establish and carry out, by regulation, an agricultural pilot program pursuant to the federal Agricultural Act of 2014 in accordance with those specified purposes.

The bill would also provide inclusion of Indian tribes, and their members, desiring to cultivate and process industrial hemp in the state.

Digest Key

Vote: MAJORITY Appropriation: YES Fiscal Committee: YES Local Program: NO

Bill Text

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

Section 81002 of the Food and Agricultural Code is amended to read:

81002.

(a) Except when grown by an established agricultural research institution or by a seed breeder developing a new California seed cultivar, industrial hemp shall only be grown if it is on the list of approved seed cultivars. Clonal propagation of approved seed cultivars may also be grown without further review as they are genetically identical to the parent cultivars and will exhibit identical characteristics when grown.

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

(1) Industrial hemp seed 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 seed cultivars that have been certified by the Organization of Economic Cooperation and Development.

(3) California varieties of industrial hemp seed 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) Upon recommendation by the board or the department, the secretary may update the list of approved seed cultivars by adding, amending, or removing seed cultivars.

(1) The adoption, amendment, or repeal of the list of approved seed cultivars, and the adoption of a methodology and procedure to add, amend, or remove a seed cultivar from the list of approved seed 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).

(2) 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 seed cultivar is added, amended, or removed from the list of approved seed cultivars.

(3) The department shall finalize the methodology and procedure to add, amend, or remove a seed cultivar from the list of approved seed 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 seed cultivars, and any addition, amendment, or removal from that list.

SEC. 2.

Section 81003 of the Food and Agricultural Code is amended to read:

81003.

(a) Except for an established agricultural research institution, and before cultivation, a grower of industrial hemp for commercial purposes shall register with the commissioner of the county in which the grower intends to engage in industrial hemp cultivation.

(1) 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 seed cultivar to be grown, and state or country of origin.

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

(B) A registration issued pursuant to this section shall be valid for one two years, after which the registrant shall renew his or her registration and pay an accompanying renewal fee, as determined pursuant to Section 81005.

(b) ~~Subject to subdivision (f), if~~ the commissioner determines that the requirements for registration pursuant to this division are met, the commissioner shall issue a registration to the applicant.

(c) A registrant 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.

(d) A registrant that wishes to change the seed cultivar grown shall submit to the commissioner the name of the new, approved seed cultivar to be grown. Once the commissioner has received the change to the registration, the commissioner shall notify the registrant that it may cultivate the new seed cultivar.

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

~~(f) A city or county may prohibit growers from conducting, or otherwise limit growers' conduct of, industrial hemp cultivation in the city or county by local ordinance, regardless of whether growers meet, or are exempt from, requirements for registration pursuant to this division or any other law. A limitation pursuant to this subdivision shall be effective as of the date on which the city or county notifies the department, secretary, and applicable commissioner of the limitation.~~

SEC. 3.

Section 81004 of the Food and Agricultural Code is amended to read:

81004.

(a) Except when grown by an established agricultural research institution, and before cultivation, a seed breeder shall register with the commissioner of the county in which the seed breeder ~~intends to engage in industrial hemp cultivation.~~ **Are we talking only about seed breeders or seed producers also?**

(1) 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 seed cultivar to be grown for seed production, and state or country of origin.

(D) If an applicant intends to develop a new California seed cultivar to be certified by a seed-certifying agency, the applicant shall include all of the following:

(i) The name of the seed-certifying agency that will be conducting the certification.

(ii) The industrial hemp varieties that will be used in the development of the new California seed cultivar.

(iii) A seed development plan specifying how the listed industrial hemp varieties will be used in the development of the new seed cultivar, measures that will be taken to prevent the unlawful use of industrial hemp or seed cultivars under this division, and a procedure for the maintenance of records documenting the development of the new seed cultivar.

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

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

~~(b) Subject to subdivision (h), if~~ **if** the commissioner determines that the requirements for registration pursuant to this division are met, the commissioner shall issue a seed breeder registration to the applicant.

(c) A registrant 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.

(d) A registrant that wishes to change the seed cultivar grown shall submit to the commissioner the name of the new, approved seed cultivar to be grown. Once the commissioner has received the change to the registration, the commissioner shall notify the registrant that it may cultivate the new seed cultivar.

(e) A registrant developing a new California seed cultivar who wishes to change any provision of the seed development plan shall submit to the commissioner the revised seed development plan. Once the

commissioner has received the change to the registration, the commissioner shall notify the registrant that he or she may cultivate under the revised seed development plan.

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

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

~~(h) A city or county may prohibit seed breeders from conducting, or otherwise limit seed breeders' conduct of, industrial hemp cultivation in the city or county by local ordinance, regardless of whether the seed breeders meet, or are exempt from, requirements for registration pursuant to this division or any other law. A limitation pursuant to this subdivision shall be effective as of the date on which the city or county notifies the department, secretary, and applicable commissioner of the limitation.~~

SEC. 4.

Section 81005 of the Food and Agricultural Code is amended to read:

81005.

(a) The department shall establish a registration fee and appropriate renewal fee to be paid by growers of industrial hemp for commercial purposes and seed 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~~ 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.*

~~SEC. 4.~~ SEC. 5.

Section 81006 of the Food and Agricultural Code is amended to read:

81006.

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

(a) (1) Except when grown by an established agricultural research institution or a seed breeder, industrial hemp shall be grown only as a ~~densely planted~~ crop in acreages of not less than one-tenth of an acre at the same time.

(2) Seed breeders, for purposes of seed production, shall only grow industrial hemp as a ~~densely planted~~ crop in acreages of not less than one-tenth of an acre at the same time.

(3) Seed breeders, for purposes of developing a new California seed cultivar, shall grow industrial hemp as densely as possible in dedicated acreage of not less than one-tenth of an acre and in accordance with the seed development plan. The entire area of the dedicated acreage is not required to be used for the cultivation of the particular seed cultivar.

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

(c) 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.

(d) Except when industrial hemp is grown by an established agricultural research institution, 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.

(1) Sampling shall occur ~~as soon as practicable when the THC content of the leaves surrounding the seeds is at its peak and shall commence as the seeds begin to mature, when the first seeds of approximately 50 percent of the plants are resistant to compression~~ no more than 30 days prior to harvest.

(2) ~~The entire fruit-bearing part of the plant including the seeds shall be used as a sample. The sample cut shall be made directly underneath the inflorescence found in the top one third of the plant.~~ The sample shall be taken randomly with the grower or seed breeder present. At least five random samples from different plants shall be taken per variety to be milled and combined into one sample. These samples shall include stalks, stems, leaves, seeds, and fruit-bearing part of plant or any parts intended to be included in an extraction process. Indoor and outdoor growing areas should be treated as separate crops even if the same variety.

(3) The sample collected for THC testing shall be placed in a brown paper bag, kept in a cool area, marked with properly labeled chain-of-custody, to include grower or seed breeder's signature, and accompanied by the following documentation:

(A) The registrant's proof of registration.

(B) Seed certification documentation for the seed cultivar used.

(C) The THC testing report for each certified seed cultivar used.

(4) The laboratory test report shall be issued by a laboratory approved by the department and state the percentage content of THC, indicate the date and location of samples taken, and state the Global Positioning System coordinates and total acreage of the crop. Laboratory testing should be performed by gas chromatography with a flame ionization detector. If the laboratory test report indicates a percentage content of THC that is equal to or less than three-tenths of 1 percent on a dry weight basis, 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 content of THC that is greater than three-tenths of 1 percent on a dry weight basis, the words "FAILED AS CALIFORNIA INDUSTRIAL HEMP" shall appear at or near the top of the laboratory test report. Registrant will be notified within 7 days of sampling if "PASS" or "FAIL".

(5) 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 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. The laboratory will retain the sample for 30 days.

(6) If the laboratory test report indicates a percentage content of THC that is greater than three-tenths of 1 percent and does not exceed 1 percent, the registrant that grows industrial hemp shall submit additional samples for testing of the industrial hemp grown. The laboratory will retain the sample for 60 days.

(7) A registrant that grows industrial hemp shall destroy by under-tilling or biochar gasification the industrial hemp grown within 7 days of ~~upon~~ receipt of a first laboratory test report indicating a percentage content of THC that exceeds 1 percent or a second laboratory test report pursuant to paragraph (6) indicating a percentage content of THC that exceeds three-tenths of 1 percent but is less than 1 percent. If the percentage content of THC exceeds 1 percent, the destruction shall take place within ~~48 hours~~ 7 days after receipt of the laboratory test report. If the percentage content of THC in the second laboratory test report exceeds three-tenths of 1 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.

(8) 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 content of THC that is greater than three-tenths of 1 percent ~~but does not exceed 1 percent.~~

(9) Established agricultural research institutions shall be permitted to cultivate or possess industrial hemp with a laboratory test report that indicates a percentage content of THC that is greater than three-tenths of 1 percent if that cultivation or possession contributes to the development of types of industrial hemp that will comply with the three-tenths of 1 percent THC limit established in this division.

(10) Except for an established agricultural research institution, 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.

(e) If, in the Attorney General's opinion issued pursuant to Section 8 of the act that added this division, it is determined that the provisions of this section are not sufficient to comply with federal law, the department, in consultation with the board, shall establish procedures for this section that meet the requirements of federal law.

~~SEC. 5.~~SEC. 6.

Section 81007 is added to the Food and Agricultural Code, to read:

81007.

As part of the registration program established pursuant to this division, the department ~~may~~shall establish and carry out, by regulation, an agricultural pilot program pursuant to Section 7606 of the federal Agricultural Act of 2014 (7 U.S.C. Sec. 5940) in accordance with the purposes of that section. Each registrant is thereby a participant in the CDFA industrial hemp agricultural pilot program, to be overseen by the Industrial Hemp Advisory Board, whose purpose is to report the economic impacts of industrial hemp cultivation, processing and product manufacturing to the Assembly and Senate Committees on Agriculture and the Assembly and Senate Committees on Public Safety not later than January 1, 2019.

~~SEC. 6.~~SEC. 7.

Section 81011 is added to the Food and Agricultural Code, to read:

81011.

A city or county may, upon a finding that pollen drift from industrial hemp crops ~~may~~poses a threat to licensed cannabis cultivators permitted by the city or county, prohibit growers from conducting, or otherwise limit growers' conduct of, industrial hemp cultivation in the city or county by local ordinance, regardless of whether growers meet ~~, or are exempt from,~~ requirements for registration pursuant to this division or any other law. A limitation pursuant to this section is effective as of the date on which the city or county notifies the department, secretary, and applicable commissioner of the limitation.

~~SEC. 7.~~SEC. 8.

Section 11018.5 of the Health and Safety Code is amended to read:

11018.5.

(a) "Industrial hemp" means a crop that is limited to types of the plant *Cannabis sativa* L. having no more than three-tenths of 1 percent tetrahydrocannabinol (THC) contained in the dried flowering tops, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced therefrom.

(b) Industrial hemp shall not be subject to the provisions of this division or of Division 10 (commencing with Section 26000) of the Business and Professions Code, but instead shall be regulated by the Department of Food and Agriculture in accordance with the provisions of Division 24 (commencing with Section 81000) of the Food and Agricultural Code, inclusive.

SEC. 9.

Section 81012 is added to the Food and Agricultural Code, to read:

81012.

- (a) An Indian tribe desiring to cultivate and process industrial hemp shall have two options:
 - a. Operate as a whole under regulations and exemptions similar to the standing of an established agricultural institution in the State.
 - b. Have individual tribal members apply as registrant growers or seed breeders with County and department officials.
- (b) The department and board shall coordinate with Tribal Government to enact procedures for compliance with Section 7606 of the Agricultural Act of 2014 (7 U.S.C. 5940) and any changes to federal law.
- ~~(a)~~(c) The department shall increase the size of the board to consist of 12 members. The additional member shall be a representative of Indian tribes in the State.