

HUMBOLDT COUNTY

GROWERS ALLIANCE

Date: November 12, 2018

From: Terra Carver, HCGA Executive Director

To: Humboldt County Board of Supervisors and AG Commissioner Jeff Dolf

Subject: County Implementation of California State Hemp Laws

Dear Supervisors and AG Commissioner,

Please accept the following memo and our recommendations regarding industrial hemp production in Humboldt County.

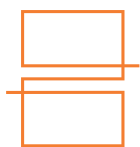
As California county governments are reviewing new state laws authorizing the cultivation of hemp – defined as cannabis plants with less than 0.3% THC, this memo is intended to provide you background on federal, state, and local hemp policy and explores the potential interactions between hemp and cannabis at the local level.

State Law Background

SB566, signed into California law in 2014, created the first structure for the legal cultivation of hemp in California. As originally written, the implementation of SB566 was indefinitely suspended pending federal legalization of hemp cultivation. Proposition 64, however, repealed this provision. Since Prop 64's passage, the state has been working to implement the ability for hemp cultivators to become state-legal by registering operations with their county agricultural commissioner. These state provisions will go into effect regardless of whether hemp is legalized by the federal government.

In 2018, the California legislature passed SB 1409, which clarified implementation of state hemp laws and made several changes to the details of hemp regulation. These changes included allowing hemp to be planted as a row crop, removing the prohibition on pruning or culling hemp plants, and implementing a testing program to ensure that hemp does not exceed 0.3% THC.

A major impact of these changes is to allow forms of hemp cultivation that result in high-CBD, low-THC crops. Prior to the passage of SB 1409, hemp was required to be cultivated as a “densely-planted fiber or oilseed crop,” which would effectively limit hemp cultivation to industrial, non-CBD uses only. The changes in SB 1409 mirror policies in other hemp-legal states that allow hemp cultivators to produce what is essentially high-CBD flower.



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Federal Law Background

Cultivation of hemp is currently largely illegal under federal law, with very limited carve-outs for agricultural institutions and small pilot programs.

However, Congress is currently considering a provision in the 2018 Farm Bill that would legalize hemp more broadly.

(https://www.agriculture.senate.gov/imo/media/doc/McConnell_01.pdf).

If passed, this provision would defer hemp regulation to state governments so long as the state can demonstrate that it is reasonably regulating hemp (e.g. they know where hemp is being grown and have a plan for ensuring that cultivated hemp does not exceed 0.3% THC). It's unclear whether the Farm Bill will pass before the new Congress is seated in January 2019. If the Farm Bill is delayed until after the new Congress is seated, it may need to be rewritten to satisfy the Democratic-controlled House.

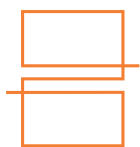
The Role of California Counties

Unless California county governments take action to prohibit hemp cultivation, individuals can register with the county agricultural commissioner to legally grow hemp. Hemp cultivation rules are mostly hands-off and not nearly as strict as cannabis cultivation rules: registration is contemplated as truly a "registration," rather than a permit.

County governments also have the ability to prohibit hemp cultivation by ordinance. Originally, explicit language in SB 1409 would have granted counties authority to prohibit hemp cultivation within their boundaries in order to prevent cross-pollination with cannabis crops. This language was removed, however, due to opposition from county governments themselves, who argued that counties already have the inherent land use ability to prohibit commercial activities and that explicit language was not necessary (for instance, see the Rural County Representatives of California letter to Governor Brown here: http://www.rcrcnet.org/sites/default/files/useruploads/County_Operations/Marijuana/2017_18_Letters/SB_1409_RFS_09042018.pdf).

Risks of Cross-Pollination Between Cannabis and Industrial Hemp

The risk of cross-pollination between cannabis and industrial hemp crops has become a major issue as jurisdictions in other states begin to permit both forms of cultivation. Cannabis farms rely on feminized plants that are protected from fertilization with male plants, as fertilization poses substantial commercial risks to



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cannabis farmers from seeding, decreased potency, and contaminated genetics. In Pueblo County, Colorado, for instance, cannabis farmers estimate that they have lost 12-18% of their crop to hemp pollen. (<https://www.dopemagazine.com/pollen-drift-cannabis-industrys-ticking-time-bomb/>).

Drawing on experiences in Oregon, Washington, and Colorado, the Senate Floor Analysis for SB 1409 states that one purpose for the bill is to ensure the “ability for a city or county to ‘opt out’ of the hemp registration program to avoid cross-pollination with medical and adult-use marijuana.” Although this language was removed from SB 1409 upon finding that counties already have the authority to prohibit hemp cultivation, it points to the possibility for distinct agricultural regions for cannabis and hemp cultivation.

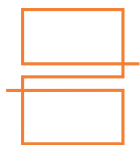
Given that pollen can travel long distances to seed distant cannabis crops, hemp and cannabis crops would need to maintain a significant distance to avoid cross-contamination. Distinct hemp and cannabis cultivation regions are also sensible from an agriculture perspective: cannabis tends to grow well on a small scale in mountainous regions with Mediterranean climates, while industrial hemp is more suited for industrial-scale cultivation in flatter areas. (<https://commons.cu-portland.edu/cgi/viewcontent.cgi>)

Industrial Hemp and CBD-Rich Hemp

The issue is further complicated by the practical distinction between industrial hemp (where stalks are harvested for industrial uses such as fiber or hempcrete) and CBD-rich “hemp” which is intended to produce low-THC, high-CBD flower that is extracted into CBD oil for human consumption. Following the passage of SB 1409, both industrial hemp and CBD-hemp are legally treated identically as “hemp” so long as the plant contains less than 0.3% THC.

In many ways, CBD-hemp is more similar to cannabis than industrial hemp: it’s feminized (and so doesn’t risk cross-pollination), grown for its flower, and is more viable on a small scale than industrial hemp. Legally, however, since CBD-hemp is treated identically to industrial hemp, CBD-hemp production is exempt from strict cannabis cultivation regulations and instead falls under the essentially hands-off hemp laws.

Theoretically, CBD-hemp could be grown alongside cannabis in the same geographical area without risk of cross-pollination. Practically, though, there may be issues with this arrangement. It’s unclear how a county would legalize only



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feminized CBD-hemp while prohibiting industrial hemp, and how that arrangement could be enforced.

Recommendations

1. Humboldt County has substantial cannabis cultivation and should prohibit cultivation of industrial hemp within the county before the 2019 cannabis cultivation season begins.

Industrial hemp involving male plants risks cross-pollination that would cause major damage to cannabis crops. Pollen can travel long distances – up to thirty miles – and there’s currently not enough data to legislate a safe buffer zone. Cannabis and industrial hemp cultivation are also best suited to different regions, with cannabis better suited for small-scale cultivation in the hills and industrial hemp more appropriate for industrial-scale cultivation in flatlands.

2. Humboldt County could consider allowing CBD-rich “hemp” cultivation, but this would need to be driven by a longer process involving stakeholders and should place a moratorium on cultivation of industrial hemp within the county before the 2019 cannabis cultivation season begins.

CBD-hemp doesn’t necessarily pose the same cross-pollination risks as industrial hemp, but a policy allowing CBD-hemp raises questions regarding regulation and enforcement, since state law does not formally recognize this category as distinct from industrial hemp. A moratorium may be appropriate in order to further study how CBD-hemp can be effectively regulated.

HCGA thanks you for your time and appreciates your consideration on this issue.

Please feel free to contact us with any questions.

Warmest regards,

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