

# Hemp Law 101

---

By Lauren Mendelsohn, Esq.



Presentation for:  SONOMA COUNTY  
BAR ASSOCIATION



# DISCLAIMER

The information contained herein is provided for educational and informational purposes only, and should not be construed as legal advice or as an offer to perform legal services on any subject matter. The content of this presentation contains general information and may not reflect current legal developments or information. The information is not guaranteed to be correct, complete or current. The Law Offices of Omar Figueroa (LOOF) makes no warranty, expressed or implied, about the accuracy or reliability of the information in this presentation.

Recipients of content from this site should not act or refrain from acting on the basis of any information included in the presentation without seeking appropriate legal advice on the particular facts and circumstances at issue from an attorney licensed in the recipient's state. LOOF expressly disclaims all liability with respect to actions taken or not taken by the recipient based on any or all of the information or other contents of this presentation.

The transmission of this presentation, in whole or in part, does not constitute or create an attorney-client relationship between any recipients. Nothing herein is intended to create an attorney-client relationship and shall not be construed as legal advice. This is not an offer to represent you, nor is it intended to create an attorney-client relationship. The only way to become a LOOF client is through a mutual agreement in a formal letter. This presentation is not soliciting clients and does not propose any type of transaction.



# OVERVIEW

- I. Federal Law
  - A. Agricultural Improvement Act (“Farm Bill”) - 2014 + 2018
  - B. USDA Regulations for Domestic Hemp Production
  - C. FDA Oversight
- II. State Law
  - A. California Industrial Hemp Act
  - B. Industrial Hemp Regulations
  - C. Regulation of products containing hemp-derived ingredients
- III. Local Law
  - A. Sonoma County
  - B. Santa Rosa
- IV. Other Topics
  - A. Intellectual Property
  - B. Banking, Taxes and Insurance
- V. Q & A



# Federal Law

---



## Previous Law

- Cannabis & hemp were previously defined by the part of the plant the material was from.
  - *"The term 'marihuana' means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination." (21 U.S.C. § 802(16).)*
- Restrictions on hemp cultivation were loosened by the Agricultural Improvement Act of 2014 (the “2014 Farm Bill”) and further in the Agricultural Improvement Act of (the “2018 Farm Bill”).
  - 2014 Farm Bill allowed for hemp cultivation for research purposes by “institutions of higher education” or State departments of agriculture as part of an approved pilot program or other agricultural or academic research.



# Agricultural Improvement Act of 2018 (a.k.a. “2018 Farm Bill”)

- Also known as the “2018 Farm Bill.”
- Redefined “hemp” - now determined based on THC content
  - *“The term ‘hemp’ means the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.” (7 U.S.C. §1639o(1).)*
- Removed hemp from the Controlled Substances Act.
- Requires registration in and compliance with an approved state or tribal hemp production program, or with the USDA’s hemp production program.



# USDA Hemp Production Program

- [Interim Final Rule](#) (84 FR 58522)
- Outlines requirements for State and Tribal plans.
- Establishes a Federal plan for producers located in States or Indian Tribal Territories that don't have a USDA-approved plan.
- Covers licensing requirements, THC limits, sampling and testing procedures, disposal of non-compliant plants, penalties for violations, information reporting & more.
- [Domestic Hemp Production Program Website](#)





# FDA Oversight

- Federal Food, Drug & Cosmetic Act (21 U.S.C. Chapter 9) (FDCA)
- CBD + THC products
- Hemp seeds, hemp seed oil → Generally recognized as safe (GRAS)
- Particular areas of focus:
  - Supplements
  - Food products
  - Health claims
- Enforcement
  - Warning letters
  - Other penalties and consequences







## FDA Oversight (Continued)

- The FDA recently held a public hearing and requested public comments
  - [Scientific Data and Information about Products Containing Cannabis or Cannabis-Derived Compounds; Public Hearing; Request for Comments](#)
- For more information, visit this page: [FDA Regulation of Cannabis and Cannabis-Derived Products, Including CBD](#)



# State Law

---



# California Industrial Hemp Farming Act

- Codified in Sections 81000 - 81015 of the California Food & Agricultural Code.
- Program overseen by the [Department of Food & Agriculture](#) (CDFA).
- Allows for the cultivation of hemp by registered growers, seed breeders, and established agricultural research institutions.
- Growers and seed breeders must register with the Agricultural Commissioner in all counties they want to cultivate in.
- \$900 annual state registration fee, plus \$900 county fee (certain counties require a separate \$900 for each site within the county).



# California Industrial Hemp Regulations

- Adopted industrial hemp laws and regulations
  - Statutes: Food & Agricultural Code §§ 81000 - 81015
  - Regulations: 3 Cal. Code of Regs. §§ 4900 - 4950.1
- Recent legislation and regulations have brought the state's program into alignment with the federal requirements in the 2018 Farm Bill.
- As of 5/20/2020, California is preparing a plan to submit to the federal USDA for approval.





# Basic Rules & Application Requirements

- Must grow a minimum 1/10 of an acre at once (Food & Ag. Code § 81006).
- Need to provide GPS coordinates (Food & Ag. Code § 81004).
- Industrial hemp can't be grown on a premises licensed for cannabis cultivation, but could be grown elsewhere on the same property (Food & Ag. Code § 81006).
- Anyone who has suffered a drug-related felony conviction in the past 10 years is ineligible to participate in the industrial hemp program (Food & Ag. Code § 81013).
- Other key areas covered include:
  - Approved seed cultivars
  - Application requirements
  - Sampling & testing requirements
  - Destruction of noncompliant crops



# Regulation of Products Containing Hemp

- California Department of Public Health
  - CBD cannot be used as a food, food ingredient, food additive, or dietary supplement until the federal FDA says it can be. CDPH issued a [FAQ document](#) about this in 2018.
- Bureau of Cannabis Control
  - Licensed cannabis retailers can only sell, and licensed distributors can only store and transport, cannabis goods, cannabis accessories and licensees' branded merchandise. Cannot sell anything defined as "hemp" -- possible exception for branded items. (See 16 Cal. Code of Regs. §§ 5300, 5301, 5311, 5407.)
- Proposed legislation
  - [AB 2827](#) - Food or beverages containing industrial hemp products, including CBD derived from industrial hemp, would not be considered "adulterated."
    - Cannabis bills in Sacramento likely dead for the year as a result of coronavirus



# Local Law

---



# Industrial Hemp in Sonoma County

- [Sonoma County Industrial Hemp Webpage](#)
- The Industrial Hemp Ordinance (Chapter 37 of the Sonoma County Code) was adopted in January 2020. The previous moratorium expired on April 30, 2020 and the new ordinance went into effect on May 1, 2020.
- The Department of Agriculture, Weights & Measures (AWM) oversees the program. AWM began accepting applications in mid-April but couldn't approve any until the program went into effect on 5/1.







# Industrial Hemp in Sonoma County (continued)

- Overview of county-specific industrial hemp rules
  - Propagative material for outdoor cultivation (females = outside only)
  - Pollen management (males = inside only)
  - Setbacks
  - Best Management Practices
  - Enforcement
  - Cannabis-related violations
  - Fees
  - Compliance with state industrial hemp laws and regulations



# Applying for a Hemp License in Sonoma County

- [Department of Agriculture/Weights and Measures \(AWM\) - Industrial Hemp Webpage](#)
- Steps:
  - Fill out and submit CDFA application form for [growers](#) and/or [seed breeders](#) and pay \$900 state registration fee to CDFA
  - Fill out and submit [county application form](#), and pay \$900 county registration fee per site to AWM
- Compliance with [Best Management Practices](#)
- If selling nursery stock, need a [CDFA nursery license](#) and to register as a grower, seed breeder, or both.



# Santa Rosa

- Recent Zoning Code Interpretation ([Zoning Code Interpretation No. 26 - March 2, 2020](#)) to allow hemp-related activities in existing city zones based on compatible surrounding uses.
- Includes processing, distribution/packing, manufacturing and sale of hemp-related goods.





# Other Topics

---



# Intellectual Property Issues

- Hemp-related Patents: OK
- Hemp-related Copyrights: OK
- Hemp-related Trademarks: OK if compliant with Farm Bill and other federal laws (such as the FDCA)
  - A mark must be lawfully (under federal law) used in commerce to be eligible for federal trademark registration.
  - [USPTO Exam Guide 1-19 \(May 2019\)](#)

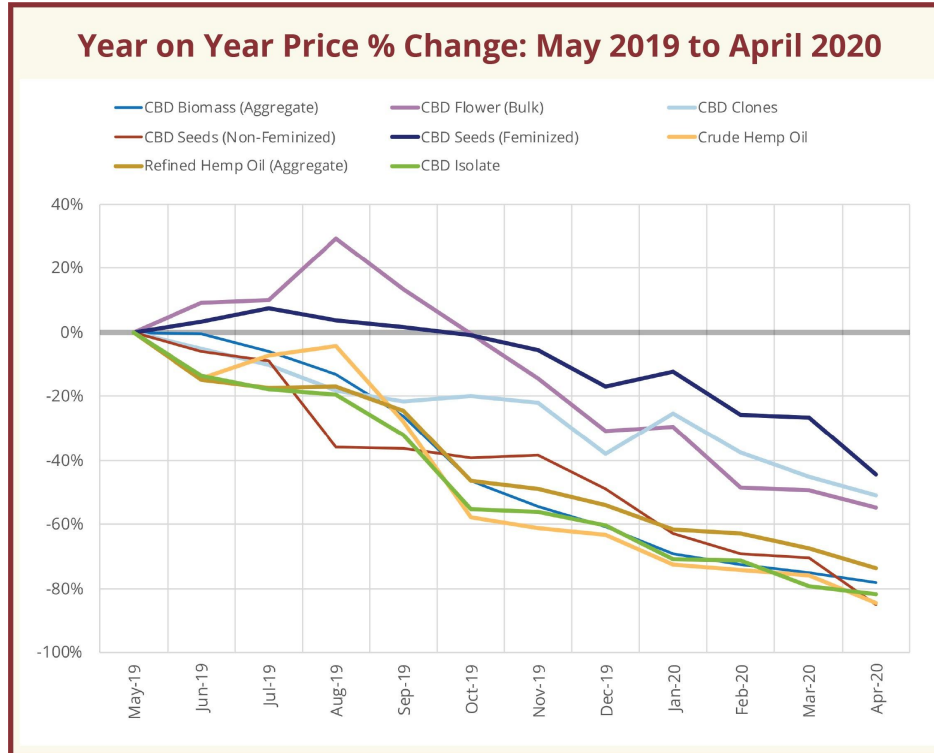


# Banking, Taxes & Insurance

- Unlike cannabis businesses, for hemp businesses:
  - Banking access is not restricted
  - No §280E problem with taxes
  - Eligible for federal aid
  - Easier to obtain insurance



# Recent Industry Trends



Source:  
Hemp Benchmarks® (April 2020)

Q & A







# Thank you!



— LAW OFFICES OF —  
**OMAR FIGUEROA**

Lauren Mendelsohn, Esq.

7770 Healdsburg Ave., Sebastopol, CA, 95472

[lauren@omarfigueroa.com](mailto:lauren@omarfigueroa.com)

(707) 829-0215