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By statute,¹ the CALIFORNIA STATE LEGISLATURE has directed this office to issue an opinion on the following questions:

1. To what extent has federal law authorized the California Industrial Hemp Farming Act?
2. On what date did federal law authorize, and render operative, the relevant portions of the California Industrial Hemp Farming Act?
3. What limitations does federal law impose that are inconsistent with the provisions of the California Industrial Hemp Farming Act?

¹ Stats. 2013, ch. 398 (Sen. Bill No. 566), § 8(b).

CONCLUSIONS

1. Federal law has authorized the California Industrial Hemp Act to the extent that it permits institutions of higher education and the California Department of Food and Agriculture to grow and cultivate industrial hemp, for the purposes of agricultural or academic research, in compliance with the federal definition of industrial hemp. These same entities may also conduct agricultural pilot programs to study the growth, cultivation, or marketing of industrial hemp, provided that such programs are conducted in a manner that (1) ensures that only institutions of higher education and the California Department of Food and Agriculture are used to grow or cultivate industrial hemp; (2) requires that sites used for growing or cultivating industrial hemp in California be certified by, and registered with, the California Department of Food and Agriculture; and (3) authorizes the California Department of Food and Agriculture to promulgate regulations to carry out the pilot program in accordance with the purposes of section 7606 of the federal Agricultural Act of 2014.

2. Federal law authorized, and rendered operative, the relevant portions of the California Industrial Hemp Farming Act on February 7, 2014.

3. Federal law imposes limitations that are inconsistent with the provisions of the California Industrial Hemp Farming Act in that: (1) it continues to prohibit the cultivation of industrial hemp for purposes other than agricultural or academic research; (2) it restricts those persons or entities who may cultivate industrial hemp for agricultural or academic research to the California Department of Food and Agriculture or an institution of higher education; (3) it prevents even these authorized entities from instituting an agricultural pilot program to study the growth, cultivation, or marketing of industrial hemp, unless the program is conducted in compliance with additional federal requirements set forth in section 7606(b)(1)(B) of the federal Agricultural Act of 2014; and (4) it prohibits, even for research purposes, the cultivation or possession of the parts of the plant *Cannabis sativa* L. that exceed a 0.3% concentration of tetrahydrocannabinol (THC). In general, provisions of the California Industrial Hemp Farming Act are inoperative to the extent that they apply or pertain to any form of industrial hemp cultivation not authorized by federal law.

ANALYSIS

Federal and California laws generally prohibit the possession and cultivation of marijuana. The plant material known as industrial hemp is derived from the same *Cannabis* plant as marijuana but, unlike marijuana, industrial hemp is used for manufacturing purposes rather than for its psychoactive or therapeutic effects. Although it is lawful in the United States to import and possess products manufactured from

industrial hemp, it has until recently been unlawful to grow or cultivate industrial hemp for any purpose.

On September 27, 2013, the Governor signed the California Industrial Hemp Farming Act (Hemp Act).² The Hemp Act conditionally permits the growth and cultivation of industrial hemp in California. Recognizing that federal law continued to ban these activities throughout the United States at the time the Hemp Act was passed, the Legislature provided that the Hemp Act’s provisions “shall not become operative unless authorized by federal law”³—that is, by way of subsequent federal legislation. Anticipating the eventual passage of such legislation, however, the Hemp Act further provides that, if and when federal law does authorize industrial hemp cultivation—thereby causing the Hemp Act to become operative, whether in full or in part—the “Attorney General shall issue an opinion on the extent of that authorization under federal law and California law, the operative date of those provisions, and whether federal law imposes any limitations that are inconsistent with the provisions of this act.”⁴

On February 7, 2014, several months after the Hemp Act was passed, the President signed the Agricultural Act of 2014 (Agricultural Act). Section 7606 of the Agricultural Act (section 7606) is entitled “Legitimacy of Industrial Hemp Research.”⁵ This provision changed federal law to a limited extent, to authorize certain entities to grow or cultivate industrial hemp for agricultural or academic research purposes in states that permit such activity. Because some portions of the Hemp Act have now become operative by virtue of section 7606, this opinion analyzes the extent, operative date, and limitations of that federal authorization, as the Legislature has directed.

Federal law defines marijuana as “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.”⁶

² Stats. 2013, ch. 398, §§ 1-8.

³ Stats. 2013, ch. 398, § 8(a); see also *id.* §§ 4-6.

⁴ Stats. 2013, ch. 398, § 8(b).

⁵ Agricultural Act of 2014, Pub.L. No. 113-79 (Feb. 7, 2014) 128 Stat. 912, § 7606.

⁶ 21 U.S.C. § 802(16); accord, Health & Saf. Code, § 11018.

The federal Controlled Substances Act classifies marijuana as a controlled substance under Schedule I.⁷ It is a federal crime “to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance”⁸ Under federal law, manufacturing includes cultivation.⁹ One limited exception to this prohibition exists for marijuana research approved by the federal Drug Enforcement Administration (DEA).¹⁰ California state law makes the cultivation and possession of marijuana a crime or infraction, except for use as medical treatment under the Compassionate Use Act.¹¹ Under the federal Constitution’s Supremacy Clause, however, any state law that conflicts with a federal law has no effect.¹² Thus, the cultivation and possession of marijuana remains illegal under federal law, even where California permits it for medical use.¹³

Marijuana and industrial hemp are derived from the same plant, but are grown for different purposes. Whereas marijuana is typically used for its psychoactive effects, caused by the chemical tetrahydrocannabinol (THC), industrial hemp is ordinarily used for its fiber and seeds in order to make consumer products such as paper, fuel, and food.¹⁴ According to the United States Department of Agriculture, “[m]arijuana and industrial

⁷ 21 U.S.C. § 812(b)(1); see 21 U.S.C. § 812, Sch. I, subd. (c)(10). Schedule I substances are those classified by law as having no medical benefits and a high potential for abuse.

⁸ 21 U.S.C. § 841(a)(1); see 21 U.S.C. § 841(b)(1)(A)(vii), (b)(1)(B)(vii), (b)(1)(D).

⁹ 21 U.S.C. § 802(15), (22); *United States v. Bernitt* (7th Cir. 2004) 392 F.3d 873, 879.

¹⁰ See 21 U.S.C. § 823(f); *United States v. Oakland Cannabis Buyers’ Co-op.* (2001) 532 U.S. 483, 490; Schutjer, *Marijuana on Campus – Yes, It is Still Illegal (But Hemp May Be Okay)* (2014) vol. 12, No. 3, NACUA Notes 1, 1-2 & fn. 5, at <http://www.nacua.org/nacualert/notes/MarijuanaUpdate.pdf> (as of Mar. 9, 2014).

¹¹ Health & Saf. Code, §§ 11357, 11358, 11362.5; Pen. Code, § 1170, subd. (h).

¹² U.S. Const., art. VI, cl. 2; *Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, 814.

¹³ *Gonzales v. Raich* (2005) 545 U.S. 1, 19, 29; *United States v. \$186,416.00 in U.S. Currency* (9th Cir. 2010) 590 F.3d 942, 945.

¹⁴ WebMD at <http://www.webmd.com/vitamins-supplements/ingredientmono-947-MARIJUANA.aspx?activeIngredientId=947&activeIngredientName=MARIJUANA> (as of Mar. 9, 2014); Comment & Note, *Lethal Concentration of Power: How the DEA Acts Improperly to Prohibit the Growth of Industrial Hemp* (1999) 68 Mo.K.C. L.Rev. 239, 240, 243-245, 254; Bergoffen & Clark, *Hemp as an Alternative to Wood Fiber in Oregon* (1996) 11 J. Env’tl. L. & Litig. 119, 119.

hemp are different varieties of the same plant species, *Cannabis sativa* L. Marijuana typically contains 3 to 15 percent THC on a dry-weight basis, while industrial hemp contains less than 1 percent [citations]. Most developed countries that permit hemp cultivation require use of varieties with less than 0.3 percent THC. . . . Industrial hemp can be grown as a fiber and/or seed crop.”¹⁵

Possessing or importing non-psychoactive hemp in industrially-produced consumer products is not illegal under federal law because non-psychoactive hemp “fits within the plainly stated exception to the [Controlled Substances Act] definition of marijuana,” as it is “derived from the ‘mature stalks’ or is ‘oil and cake made from the seeds’ of the *Cannabis* plant”¹⁶ Absent a certificate of registration from the DEA, however, cultivating industrial hemp has been a federal offense “[b]ecause the CSA does not distinguish between marijuana and hemp in its regulation, and because farming hemp requires growing the entire marijuana plant which at some point contains psychoactive levels of THC”¹⁷ The upshot is that while Californians may import and possess products manufactured from industrial hemp, they have not been allowed to lawfully cultivate it without a license from the DEA.¹⁸ Similarly, because California’s definition of *Cannabis sativa* L. (*Cannabis*) “includes all plants popularly known as marijuana that contain the toxic agent THC,”¹⁹ the cultivation of industrial hemp has been prohibited under state law as well.

¹⁵ U.S. Dept. Agr., *Industrial Hemp in the United States: Status and Market Potential* (Jan. 2000) p. 2, available at <http://www.ers.usda.gov/publications/ages/ages001e.aspx> (as of Mar. 9, 2014); see also Comment, *The Argument for the Legalization of Industrial Hemp* (2003) 13 San Joaq. Agric. L.Rev. 85, 94-98 (describing various commercial uses for industrial hemp).

¹⁶ *Hemp Industries Ass’n. v. Drug Enforcement Admin.* (9th Cir. 2004) 357 F.3d 1012, 1017; accord, *New Hampshire Hemp Council, Inc. v. Marshall* (1st Cir. 2000) 203 F.3d 1, 7, fn. 6.

¹⁷ *United States v. White Plume* (8th Cir. 2006) 447 F.3d 1067, 1073; accord, *New Hampshire Hemp Council, Inc. v. Marshall, supra*, 203 F.3d at pp. 6-8; see 21 U.S.C. §§ 821-824; 21 C.F.R. § 1301.18 (2010); *Lethal Concentration of Power, supra*, 68 Mo.K.C. L.Rev. at pp. 256-257.

¹⁸ See Kolosov, *Evaluating the Public Interest: Regulation of Industrial Hemp Under the Controlled Substances Act* (2009) 57 UCLA L.Rev. 237, 246-247 (noting that while a person may apply to the DEA for a license to grow hemp, “in practice, the DEA unilaterally rejects almost all such applications,” and the DEA’s requirements would “make planting the crop extremely expensive”).

¹⁹ *People v. Van Alstyne* (1975) 46 Cal.App.3d 900, 917.

In adopting the Hemp Act, the Legislature made numerous findings and declarations, including that at least 30 nations grow industrial hemp; that sales of hemp products in the United States exceed \$500 million annually; and that law enforcement should not be burdened with THC testing of industrial hemp crops.²⁰ Based on these findings, the Hemp Act provides that—*contingent upon federal authorization*—farmers and other individuals or entities in California may grow or cultivate industrial hemp for both commercial and research purposes.²¹ The Hemp Act creates a structure for regulating such cultivation, and alters the state definition of marijuana to exclude industrial hemp.²² While the Hemp Act imposes various requirements upon those who would grow or cultivate industrial hemp, including safeguards designed to ensure that plants do not contain excessive amounts of THC, it does not restrict who may lawfully grow hemp, nor does it limit the purposes for which industrial hemp may lawfully be grown.

The Agricultural Act of 2014, popularly known as the 2014 U.S. Farm Bill, is omnibus legislation that authorized agricultural programs for the period of 2014 through 2018. Section 7606 of the Agricultural Act permits cultivation of industrial hemp for research purposes, despite the general federal prohibition on cultivating the Cannabis plant. Entitled “Legitimacy of Industrial Hemp Research,” section 7606 provides, in its entirety:

- a. IN GENERAL.—Notwithstanding the Controlled Substances Act (21 U.S.C. 801 et seq.), the Safe and Drug-Free Schools and Communities Act (20 U.S.C. 7101 et seq.), chapter 81 of title 41, United States Code, or any other Federal law, an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) or a State department of agriculture may grow or cultivate industrial hemp if—
 1. the industrial hemp is grown or cultivated for purposes of research conducted under an agricultural pilot program or other agricultural or academic research; and
 2. the growing or cultivating of industrial hemp is allowed under the laws of the State in which such institution of higher education or State department of agriculture is located and such research occurs.
- b. DEFINITIONS.—In this section:

²⁰ See Stats. 2013, ch. 398, § 2.

²¹ See Stats. 2013, ch. 398, § 4 (conditionally adding Food & Agr. Code, §§ 81000-81010).

²² See Stats. 2013, ch. 398, §§ 4, 5 (conditionally amending Health & Saf. Code, 11018), § 6 (conditionally adding Health & Saf. Code, § 11018.5).

1. AGRICULTURAL PILOT PROGRAM.—The term “agricultural pilot program” means a pilot program to study the growth, cultivation, or marketing of industrial hemp—
 - A. in States that permit the growth or cultivation of industrial hemp under the laws of the State; and
 - B. in a manner that—
 - i. ensures that only institutions of higher education and State departments of agriculture are used to grow or cultivate industrial hemp;
 - ii. requires that sites used for growing or cultivating industrial hemp in a State be certified by, and registered with, the State department of agriculture; and
 - iii. authorizes State departments of agriculture to promulgate regulations to carry out the pilot program in the States in accordance with the purposes of this section.
2. INDUSTRIAL HEMP.—The term “industrial hemp” means the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.
3. STATE DEPARTMENT OF AGRICULTURE.—The term “State department of agriculture” means the agency, commission, or department of a State government responsible for agriculture within the State.²³

The enactment of section 7606 has authorized certain activities conditionally permitted under the Hemp Act, thereby triggering our duty under the Hemp Act to “issue an opinion on the extent of that authorization under federal law and California law, the operative date of those provisions, and whether federal law imposes any limitations that are inconsistent with the provisions of this act.”²⁴

1. Extent of Federal Authorization

In order to answer the Legislature’s question concerning the extent to which federal law, via section 7606, has authorized the Hemp Act, we must construe the meaning and coverage of both laws, with our primary focus on ascertaining the

²³ Agricultural Act of 2014, Pub. L. No. 113-79 (Feb. 7, 2014) 128 Stat. 912, § 7606.

²⁴ Stats. 2013, ch. 398, § 8(b).

legislative intent behind each.²⁵ In doing so, we “look first to the words of the statute[s] themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose.”²⁶ Where the definitions of words in the statute are not specialized, we “give them their usual, ordinary meaning, which in turn may be obtained by referring to a dictionary.”²⁷ “The statutory language is not read in isolation, however. Rather, we consider its terms in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment.”²⁸ “If the statutory language is clear and unambiguous, our inquiry ends. If there is no ambiguity in the language, we presume the Legislature meant what it said and the plain meaning of the statute governs.”²⁹ If an ambiguity exists, however, we may examine “extrinsic aids, including the statute’s legislative history, to assist us in our interpretation.”³⁰ These principles of statutory interpretation apply to both federal and state laws.³¹

a. Who May Grow Industrial Hemp?

Nothing in the Hemp Act limits who may lawfully cultivate industrial hemp, but the state statutory scheme is only operative to the extent that its provisions are authorized by federal law. Federal section 7606 limits those who may grow or cultivate industrial hemp to two kinds of entities: institutions of higher education, and state departments of agriculture. An “institution of higher education” is defined for purposes of federal law in title 20 United States Code section 1001,³² so a California educational institution would

²⁵ See *Freedom Newspapers, Inc. v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 826.

²⁶ *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386-1387.

²⁷ *Smith v. Selma Community Hosp.* (2010) 188 Cal.App.4th 1, 30.

²⁸ *Los Angeles Unified School Dist. v. Garcia* (2013) 58 Cal.4th 175, 186, internal quotation marks and citations omitted.

²⁹ *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103, internal quotation marks and citations omitted.

³⁰ *MacIsaac v. Waste Management Collection and Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1083, internal citations omitted.

³¹ *McLaughlin v. Walnut Properties, Inc.* (2004) 119 Cal.App.4th 293, 297; *Black v. Dept. of Mental Health* (2000) 83 Cal.App.4th 739, 747-748.

³² 20 U.S.C. § 1001 provides as follows:

(a) Institution of higher education

For purposes of this chapter, other than subchapter IV, the term “institution of higher education” means an educational institution in any State that--

(1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate; or persons who meet the requirements of section 1091(d) of this title;

(2) is legally authorized within such State to provide a program of education beyond secondary education;

(3) provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary;

(4) is a public or other nonprofit institution; and

(5) is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

(b) Additional institutions included

For purposes of this chapter, other than subchapter IV, the term “institution of higher education” also includes--

(1) any school that provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provision of paragraphs (1), (2), (4), and (5) of subsection (a) of this section; and

(2) a public or nonprofit private educational institution in any State that, in lieu of the requirement in subsection (a)(1), admits as regular students individuals--

(A) who are beyond the age of compulsory school attendance in the State in which the institution is located; or

(B) who will be dually or concurrently enrolled in the institution and a secondary school.

(c) List of accrediting agencies

For purposes of this section and section 1002 of this title, the Secretary shall publish a list of nationally recognized accrediting agencies or associations that

need to satisfy the requirements of that federal provision in order to fall under section 7606's authorization. In addition, section 7606(b)(3) defines a state department of agriculture as "the agency, commission, or department of a State government responsible for agriculture within the State[.]" which in California is the Department of Food and Agriculture (CDFA). By its failure to limit or restrict who may lawfully grow and cultivate industrial hemp, the Hemp Act implicitly permits both California institutions of higher education and the CDFA³³ to do so.

b. For What Purposes May Industrial Hemp Be Grown?

Section 7606(a) provides that industrial hemp may be "grown or cultivated" by an institution of higher education or state department of agriculture "for purposes of research conducted under an agricultural pilot program or other agricultural or academic research" in states where such growth and cultivation is allowed.³⁴ Because the Hemp Act allows California entities to grow and cultivate industrial hemp for unlimited purposes,³⁵ we believe that cultivating industrial hemp for the purposes listed in section 7606(a)³⁶ is now generally authorized under both federal and California law. Federal law, however, does not authorize hemp cultivation for any other purpose.

That said, we must examine the language used in section 7606 in still greater detail in order to fully advise the Legislature on the extent of the federal authorization it provides. Subdivision (a)(1) of section 7606 states that an appropriate educational or governmental entity may grow or cultivate industrial hemp "for purposes of research

the Secretary determines, pursuant to subpart 2 of part G of subchapter IV of this chapter, to be reliable authority as to the quality of the education or training offered.

³³ See generally Food & Agr. Code, §§ 101-885.

³⁴ Agricultural Act of 2014, Pub.L. No. 113-79 (Feb. 7, 2014) 128 Stat. 912, § 7606, subd. (a).

³⁵ Stats. 2013, ch. 398, §§ 5, 6.

³⁶ See Agricultural Act of 2014, Pub.L. No. 113-79 (Feb. 7, 2014) 128 Stat. 912 (section 7606 is entitled "Legitimacy of Industrial Hemp Research"); *id.* at § 7606(a)(1) ("industrial hemp is grown or cultivated for purposes of research"), (2) (requiring that "such research occurs" in the state authorizing hemp cultivation), (b)(1) (contemplating, and setting requirements for, an "agricultural pilot program" as a type of research); Schutjer, *supra*, vol. 12, No. 3, NACUA Notes at p. 6 ("it certainly seems to be the intent behind the legislation that once the hemp is grown, it can be used in research without a DEA license").

conducted under an agricultural pilot program *or other agricultural or academic research*[.]”³⁷ This disjunctive phrasing indicates that a variety of forms of agricultural or academic industrial hemp research are authorized under section 7606—one specific form of permitted research being that conducted under an “agricultural pilot program.”

This disjunctive structure is echoed in some of section 7606’s other provisions. First, subdivision (b)(1) of section 7606 defines the term “agricultural pilot program” as (1) “a pilot program” (2) “to study the growth, cultivation, or marketing of industrial hemp.”³⁸ This definition is not employed in connection with the “other agricultural or academic research” authorized under section 7606. Second, subdivision (b)(1)(B) of section 7606 provides that agricultural pilot programs are to be conducted “in a manner that—(i) ensures that only institutions of higher education and State departments of agriculture are used to grow or cultivate industrial hemp; (ii) requires that sites used for growing or cultivating industrial hemp in a State be certified by, and registered with, the State department of agriculture; and (iii) authorizes State departments of agriculture to promulgate regulations to carry out the pilot program in the States in accordance with the purposes of this section.” These additional restrictions are not mentioned in connection with the “other agricultural or academic research” authorized under section 7606.

In light of these features of the statutory structure, we conclude that federal law authorizes, and the Hemp Act permits, institutions of higher education and the CDFA to grow and cultivate industrial hemp for purposes of agricultural or academic research. In addition to that authority, California institutions of higher learning and the CDFA may grow and cultivate industrial hemp for purposes of research conducted under a pilot program to study the growth, cultivation, or marketing of industrial hemp—provided that the pilot program is conducted in a manner that (1) ensures that only institutions of higher education and the CDFA are used to grow or cultivate industrial hemp; (2) requires that sites used for growing or cultivating industrial hemp in California be certified by, and

³⁷ Emphasis added.

³⁸ We construe a “pilot program” as a temporary, small-scale study for the purpose of evaluating how certain activities might work on a larger scale. (See Dictionary.com at <http://dictionary.reference.com/browse/pilot+program> (as of Mar. 9, 2014); Merriam-Webster online at <http://www.merriam-webster.com/dictionary/trial> (as of Mar. 9, 2014); CIO.com at <http://searchcio.techtarget.com/definition/pilot-program-pilot-study> (as of Mar. 9, 2014); Merriam-Webster online at <http://www.merriam-webster.com/dictionary/marketing> (as of Mar. 9, 2014); Pen. Code, § 5058.1, subd. (a); Cal. Law Revision Com. com., 51C pt. 2 West’s Ann. Pen. Code (2011 ed.) foll. § 5058.1, p. 156 (citing Bus. & Prof. Code, § 3537.15 & Fam. Code, § 3032); 7 U.S.C. § 627; 38 U.S.C. § 3677(d); 42 U.S.C. § 17541(g)(1)(A).)

registered with, the CDFA; and (3) authorizes the CDFA to promulgate regulations to carry out the pilot program in accordance with the purposes of section 7606.³⁹

c. What May Be Grown?

The Hemp Act’s definition of “industrial hemp” is no broader than the federal definition.⁴⁰ Under the federal definition, industrial hemp is any part of the Cannabis plant that does not exceed a 0.3 percent THC concentration. The state definition limits industrial hemp to “nonpsychoactive types of the plant *Cannabis sativa* L. and the seed produced therefrom,” and also sets a maximum THC concentration of 0.3 percent.⁴¹ Thus, because the Hemp Act’s definition of industrial hemp is materially consistent with that of section 7606, we conclude that the Hemp Act is operative to the extent it permits

³⁹ The Legislature should consider whether additional legislation or regulation is needed to satisfy the requirements of section 7606(b)(1)(B) for the conduct of agricultural pilot programs. For example, the Hemp Act does not “require[] that sites used for growing or cultivating industrial hemp in [California] be certified by, and registered with, the [CDFA]” (Cf. section 7606(b)(1)(B)(ii).) Rather, the Hemp Act classifies institutions of higher education and the CDFA as “established agricultural research institutions” and therefore exempts them from the registration and land-certification requirements it would impose on other industrial hemp growers. (See Stats. 2013, ch. 398, § 4 (conditionally adding Food & Agr. Code, §§ 81002, subd. (a), 81003, subd. (a), 81004, subd. (a), & 81006, subd. (a)).)

Moreover, although an “agricultural pilot program” appears to be only a subset of “other agricultural or academic research” as those terms are used in section 7606, we recognize that the distinction between the two forms of research may not always be clear. The Legislature may therefore wish to consider whether *all* forms of agricultural or academic industrial hemp research in California should be required to satisfy section 7606(b)(1)(B).

⁴⁰ Compare Agricultural Act of 2014, Pub.L. No. 113-79 (Feb. 7, 2014) 128 Stat. 912, § 7606(b)(2) with Stats. 2013, ch. 398, § 6.

⁴¹ While the state definition requires only that the “dried flowering tops” have no more than 0.3% THC, whereas the federal definition requires that “any part of such plant” have no more than 0.3% THC, this distinction is not significant. Because the flowering tops of the Cannabis plant contain the highest levels of THC (see University of Washington Alcohol & Drug Abuse Institute, Learn About Marijuana, at <http://adai.uw.edu/marijuana/factsheets/potency.htm> (as of Mar. 9, 2014)), if the flowering tops of a Cannabis plant contain 0.3% or less of THC, every other part of the plant should as well.

the CDFR and institutions of higher education to cultivate industrial hemp for agricultural and academic research.⁴²

2. Date of Federal Authorization

The Hemp Act was signed into law on September 27, 2013, without any urgency provision, and therefore it became nominally “effective”⁴³ on January 1, 2014.⁴⁴ By its own terms, however, the Hemp Act “shall not become operative^[45] unless authorized under federal law.”⁴⁶ The federal Agricultural Act did not provide an effective date for the law generally or for the industrial hemp provisions contained in section 7606 specifically. In this circumstance, section 7606—i.e., the federal authorization that rendered at least some portions of the Hemp Act operative—became effective on February 7, 2014, when the President signed the Agricultural Act into law.⁴⁷

3. Federal Limitations on the Hemp Act

Our analysis of the manner in which federal law limits the operative effect of the Hemp Act largely flows from our earlier analysis of the industrial hemp activities that section 7606 permits. We therefore present in summary form what we believe are (a) the

⁴² However, the Hemp Act would allow researchers “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.” (Stats. 2013, ch. 398, § 4 (conditionally adding Food & Agr. Code, § 81006, subd. (f)(9)).) Section 7606 provides no such exception, so this particular provision of the Hemp Act provision is inoperative.

⁴³ *People v. McCaskey* (1985) 170 Cal.App.3d 411, 416 (“[t]he effective date” is the “date upon which the statute came into being as an existing law”).

⁴⁴ See Cal. Const., art. IV, § 8(c).

⁴⁵ *People v. McCaskey*, *supra*, 170 Cal.App.3d at p. 416 (“the operative date is the date upon which the directives of the statute may be actually implemented”); 83 Ops.Cal.Atty.Gen. 21, 21, fn. 1 (2000) (usually a law’s effective and operative dates are the same, but in some cases, the Legislature may specify different effective and operative dates).

⁴⁶ Stats. 2013, ch. 398, §§ 4 (conditionally adding Food & Agr. Code, §81010), § 8(a).

⁴⁷ See *Gozlon-Peretz v. United States* (1991) 498 U.S. 395, 404 (“It is well established that, absent a clear direction by Congress to the contrary, a law takes effect on the date of its enactment.”).

four chief limitations that federal law imposes on the Hemp Act, and (b) the necessary implications that these limitations have on related provisions of the Hemp Act.

First, the Hemp Act is inconsistent with section 7606(a)(1) and the Controlled Substances Act to the extent that it would permit industrial hemp cultivation for commercial purposes, or for any purpose other than agricultural or academic research. Federal law prohibits cultivation of the Cannabis plant, including industrial hemp, except as specifically authorized by section 7606.

Second, the Hemp Act is inconsistent with section 7606(a) and the Controlled Substances Act to the extent that it would allow research by any entity—including what the Hemp Act would define as an “established agricultural research institution,”⁴⁸—that is not either “an institution of higher education” as defined in 20 U.S.C. § 101, or “a State department of agriculture.”

Third, the Hemp Act is inconsistent with section 7606(a)(1) and the Controlled Substances Act to the extent that it would permit authorized research entities to conduct “an agricultural pilot program” that does not conform to the requirements of section 7606(b)(1)(B)(2) and (3).

Fourth, the Hemp Act is inconsistent with section 7606 and the Controlled Substances Act to the extent that it would permit researchers “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.”⁴⁹ Industrial hemp with a THC concentration exceeding 0.3% falls outside the definition established in section 7606, and is therefore not exempt from the Controlled Substances Act’s general prohibition on Cannabis cultivation.

All portions of the Hemp Act that are not authorized by section 7606 remain inoperative.⁵⁰ In our view, this includes any component of the Hemp Act that would be

⁴⁸ Stats. 2013, ch. 398, § 4 (conditionally adding Food & Agr. Code, § 81000, subd. (c) (“‘Established agricultural research institution’ means a public or private institution or organization that maintains land for agricultural research, including colleges, universities, agricultural research centers, and conservation research centers.”)).

⁴⁹ Stats. 2013, ch. 398, § 6 (conditionally adding Food & Agr. Code, § 81006, subd. (f)(9)).

⁵⁰ Stats. 2013, ch. 398, § 6 (adding Food & Agr. Code, § 81010 (Division 24 of the

dependent on the cultivation of hemp by unauthorized entities, or for unauthorized purposes. Without limitation, such inoperative provisions include: the creation and operation of an Industrial Hemp Advisory Board to the extent such a board would involve itself in the oversight or governance of any activities not authorized under section 7606,⁵¹ the requirement that such a board submit a report to the Legislature on the *economic* effects of industrial hemp cultivation;⁵² and the procedures and registration requirements imposed on any non-authorized growers.⁵³

We conclude that federal law imposes limitations that are inconsistent with the Hemp Act in that: (1) it continues to prohibit the cultivation of industrial hemp for purposes other than agricultural or academic research; (2) it restricts those persons or entities who may cultivate industrial hemp for agricultural or academic research to the CDFA or an institution of higher education; (3) it prevents even these authorized entities from instituting an agricultural pilot program to study the growth, cultivation, or marketing of industrial hemp, unless the program is conducted in compliance with additional federal requirements set forth in section 7606(b)(1)(B) of the Agricultural Act, and (4) it prohibits, even for research purposes, the cultivation or possession of the parts of the plant *Cannabis sativa* L. that exceed a 0.3% concentration of THC. Provisions of the Hemp Act are inoperative to the extent that they apply or pertain to any form of industrial hemp cultivation not authorized by federal law.

Food and Agricultural Code, to be added pursuant to the Hemp Act, “shall not become operative unless authorized under federal law.”), § 8 (“This act shall not become operative unless authorized under federal law.”).

⁵¹ Stats. 2013, ch. 398, § 4 (conditionally adding Food & Agr. Code, § 81001).

⁵² Stats. 2013, ch. 398, § 4 (conditionally adding Food & Agr. Code, § 81008, subd. (c)).

⁵³ Stats. 2013, ch. 398, § 4 (conditionally adding Food & Agr. Code, §§ 81002-81006).