

PROPOSED TEMPORARY RULES

Note from the Codifier: The OAH website includes notices and the text of proposed temporary rules as required by G.S. 150B-21.1(a1). Prior to the agency adopting the temporary rule, the agency must hold a public hearing no less than five days after the rule and notice have been published and must accept comments for at least 15 business days.

For questions, you may contact the Office of Administrative Hearings at 919.431.3000 or email oah.postmaster@oah.nc.gov.

TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Rulemaking Agency: North Carolina Industrial Hemp Commission

Codifier of Rules received for publication the following notice and proposed temporary rule(s) on: December 28, 2016

Rule Citations: 02 NCAC 62 .0101-.0109

Public Hearing:

Date: January 12, 2017

Time: 2:00 p.m.-4:00 p.m.

Location: Martin Building, NC State Fairgrounds, 1025 Blue Ridge Road, Raleigh, NC 27601

Reason: The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: S.L. 2016-93, Section 7. The legislation created the Industrial Hemp Commission and directed the Commission to adopt temporary rules to implement the provisions of the act, for an industrial hemp pilot program as operated under federal guidelines.

Comment Procedures: Comments from the public shall be directed to: Christina Waggett, 1001 Mail Service Center, Raleigh, NC 27699-1001, email Christina.waggett@ncagr.gov. The comment period begins January 5, 2017 and ends January 27, 2017.

CHAPTER 62 – INDUSTRIAL HEMP COMMISSION

02 NCAC 62 .0101 APPROVED SEED FOR PLANTING

(a) Approved seed or transplants for cultivating industrial hemp in North Carolina shall be from one of the following:

- (1) Seed or transplants produced from seed or living plant parts that meet the criteria for Breeder, Foundation, Registered, or Certified categories as defined by the North Carolina Crop Improvement Association (NCCIA), including certification by other seed agencies recognized by NCCIA. All such seed and transplants shall include a certifying tag of varietal purity issued by NCCIA or another official certifying agency as defined in G.S. 106-277.2(23); or
- (2) Seed or transplants produced lawfully under an industrial hemp pilot program within the United States provided that the seed or transplants have accompanying documentation of:
 - (A) being produced by a licensed grower within the state of production, and
 - (B) have accompanying documentation that the crop from which the seed or transplants were harvested had a THC analysis of 0.3% or less by dry weight.

(b) Growers or other organizations in North Carolina may produce seed or transplants for distribution or sale for cultivation, if the source is Subparagraph (a)(1) of this Rule, in subsequent years only if it is overseen by NCCIA and certified by NCCIA to be true to type under American Organization of Seed Certifying Associations (AOSCA) guidelines. No other seed or transplants may be produced in North Carolina for distribution or sale in North Carolina.

(c) All seed or transplants produced in North Carolina for distribution or sale in North Carolina to be utilized for cultivation of industrial hemp shall include a certifying tag of varietal purity issued by NCCIA or another official certifying agency as defined in G.S. 106-277.2(23).

(d) A business entity, including an agricultural co-operative enterprise ("co-op") or other farm aggregator ("aggregator") who contracts with one or more permitted growers, may, upon registering with the Commission, obtaining any required permitting from the United States Drug Enforcement Agency, and pursuant to Federal and State law, obtain bulk quantities of seed or transplants approved under this Rule for distribution to permitted growers. A permitted grower may own and plant seed or transplants obtained from such registered op-ops or aggregators, who must document quantities delivered to each named grower within 10 days of delivery.

Authority G.S. 106-568.50 through 58.

02 NCAC 62 .0102 CONTROL OF VOLUNTEERS

(a) Volunteers, or feral plants, from a previous years' planting must be monitored and destroyed immediately for three years after cultivation.

(b) It shall be the responsibility of the license holder to monitor and destroy volunteers.

(c) The responsibilities of the license holder in this provision may be transferred to another entity by mutual agreement in writing with both parties' signatures.

Authority G.S. 106-568.50-58.

02 NCAC 62 .0103 SAMPLING OF THC LEVEL

(a) All plantings of industrial hemp are subject to sampling for THC levels. Licensees to cultivate industrial hemp under these Rules are subject to sampling and analysis of THC levels at any time by the North Carolina Department of Agriculture and Consumer Services' Plant Industry Division or law enforcement agencies. The Division or law enforcement agency collecting the sample shall notify the license holder at the time the sample is collected.

(b) License holders are responsible for notifying the Division at the time of initiation of floral buds.

(c) The Division shall sample all fields, or greenhouses, prior to harvest, if practicable, or randomly and based on perceived risk at the discretion of the Division. The sampling unit shall be defined as a distinct field, greenhouse, or variety planted within a field or greenhouse, whichever is smaller.

(d) When industrial hemp is sampled for THC levels, the sampling method shall be per guidelines adopted by the Division for collecting regulatory samples of industrial hemp.

(e) Representatives of the Division collecting or transporting the samples shall have the legal right to possess industrial hemp in North Carolina for purposes of collecting the sample and transporting the sample to a laboratory for analysis. The laboratory performing the analysis shall have the legal right to possess industrial hemp, perform the analysis, and retain a portion of the sample.

(f) The laboratory performing the analysis for THC levels shall handle the sample in a manner consistent with established regulatory protocols for maintaining the sample and reporting the results.

(g) The license holder shall be responsible for the cost of all laboratory analytical services of the sample, billable to the license holder by the laboratory performing the analysis.

Authority G.S. 106-568.50 through 58.

02 NCAC 62 .0104 REPORTING OF SAMPLING

(a) As soon as it is available, the results of the THC analysis shall be reported to the North Carolina Department of Agriculture and Consumer Services' Plant Industry Division and the holder of the license.

(b) Samples with a THC level equal to or below 0.3% THC require no further action and the area or harvested plant material from which the sample was obtained shall be released for marketing or further processing.

(c) Samples with a THC level greater than 0.3% THC shall be reported by the Division to the Industrial Hemp Commission and the licensee. The license holder may request a re-test of the sample. If no re-test is requested, or the re-tested sample is greater than 0.3% THC, the area represented by the sample, or any harvested plant parts from the area represented by the sample shall be subject to the following disposition:

(1) Industrial hemp stalks may be harvested, processed and used for fiber and/or any other lawful purpose; or

(2) Industrial hemp seed may be harvested, processed, and rendered non-viable for food products, provided the source of the seed or transplants is seed or a transplants produced from seed or a living plant part which meets the criteria for Breeder, Foundation, Registered, or Certified categories as defined by the North Carolina Crop Improvement Association (NCCIA), including certification by other seed agencies recognized by NCCIA, and include a certifying tag of varietal purity issued by NCCIA or another official certifying agency as defined in G.S. 106-277.2(23).

(d) If industrial hemp plant parts are harvested from a field, greenhouse, or a variety within a field or greenhouse, and are co-mingled with plant parts from another field, greenhouse, or variety within a field or greenhouse, prior to having knowledge of the results of the sample, the license holder does so at his or her own risk and with full knowledge that if an analysis of greater than 0.3% THC is returned, all co-mingled plant parts shall be destroyed.

(e) No plants parts harvested from a planting being tested shall be marketed until released by the division.

Authority G.S. 106-568.50 through 58.

02 NCAC 62 .0105 LICENSES

(a) A license to cultivate industrial hemp in North Carolina issued by the Industrial Hemp Commission shall allow the license holder to obtain seed pursuant to these Rules for planting, possess seed for planting, cultivate the crop, harvest plant parts, possess and store harvested plant parts, and transport plant parts to a market for sale.

(b) Two types of licenses shall be issued by the Commission for cultivation of industrial hemp in North Carolina:

(1) Research Only – for a university or government agency to cultivate industrial hemp for purposes of research only, with no intention to market the final product; and

(2) Research with Intent to Market – for a university, government agency, or private entity working with a university to cultivate industrial hemp with intent to market a final product.

(c) Applications for cultivation of industrial hemp in North Carolina may be made at any time during the year.

(d) Applications shall be handled and processed by the North Carolina Department of Agriculture and Consumer Services' Plant Industry Division and reviewed for approval or denial at the next scheduled meeting of the Industrial Hemp Commission.

(e) Licenses may be applied for and issued for one or three years and shall be valid for 12 or 36 months after the date of issue, whichever is applicable.

(f) Failure to comply with any of these Rules or the provisions of G.S. 106-568.53(A) shall result in an automatic revocation of the license for the full remaining period of the license.

(g) An analytical testing of THC levels greater than 0.3% shall not result in revocation of a license so long as the crop is destroyed in accordance with these rules.

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Authority G.S. 106-568.50 through 58.

02 NCAC 62 .0106 FEES

- (a) This section applies only to the license type "Research with Intent to Market".
- (b) There shall be an initial fee for first time license holders. The graduated fee shall be two hundred fifty dollars (\$250.00) for up to and including 49 acres and five hundred dollars (\$500.00) for 50 acres or more.
- (c) If a license is issued for one year, an annual fee of two hundred fifty dollars (\$250.00) plus two dollars (\$2.00) per acre, or two dollars (\$2.00) per 1,000 square feet of greenhouse, whichever is applicable, shall be assessed.
- (d) If a license is issued for three years, the same fee schedule will apply as in Paragraph (c) of this Rule. The annual fee assessed each licensee shall be based on a revised reporting of intended acreage or greenhouse space for industrial hemp in each year. It shall be the responsibility of the license holder to report to the division each year the intended area to be cultivated.
- (e) Fees paid for a license are not refundable once the licensee takes possession of seed or transplants or if the license is revoked for any cause over the duration of the license.
- (f) The initial and annual fees are due annually within 30 days of the date of the issuance of the license or before the licensee takes possession of the seed or transplants, whichever is earlier.
- (g) The license holder shall be responsible for the cost of all laboratory analytical services.

Authority G.S. 106-568.50 through 58.

02 NCAC 62 .0107 APPLICATION FOR LICENSES

- (a) Growers in North Carolina who wish to cultivate industrial hemp shall submit to the Industrial Hemp Commission an application for a license to do so. The application shall include the following information for consideration by the commission:
 - (1) Type of License as set forth in Section 4(b);
 - (2) Name, address, and business name and address, if applicable, of applicant, updated annually, or as needed;
 - (3) Duration of License (one or three years);
 - (4) Intended location(s) of planting, including address, GPS coordinates, and acreage, or square feet of greenhouse space;
 - (5) Intended variety name, origin, and seed or plant certifying agency for each planting. This information must conform to Rule .0101 of this Section;
 - (6) Intended marketable portion of the plant (seed, fiber, hurd, cannabinoids, not including THC, or certified planting seed or propagule as set forth in Rule .0101 of this Section);
 - (7) Intended market, and intended purchaser's name and address if license is of the type "Research with Intent to Market";
 - (8) Written statement of the research objective and data or observations to be collected and reported to North Carolina State University (NC State) or North Carolina A&T State University (NCA&T). The research objective must conform to the authorized research purposes set forth in G.S. 106-568.55. The written statement in this section constitutes a written agreement between the license holder and NC STATE or NCA&T;
 - (9) Evidence of income from a farming operation. At least one of the following from the previous year must be included and show income from crop or animal production for the applicant:
 - (A) For individual filers, Schedule F of the Form 1040, U.S. Individual Income Tax Return;
 - (B) For S corporation filers, Page 1 and Schedule B, of the Form 1120S, U.S. Income Tax Return for S Corporation;
 - (C) For C corporation filers, Page 1 and Schedule K, of the form 1120, U.S. Corporation Income Tax Return; or
 - (D) For partnership filers, Page 1 of the Form 1065, U.S. Return of Partnership Income and Schedule F of the Form 1040, U.S. Individual Income Tax Return.
 - (10) Intended storage location (expressed in GPS coordinates) for harvested plant parts;
 - (11) Agreement to provide access to the North Carolina Department of Agriculture and Consumer Services' Plant Industry Division and law enforcement agencies at any time for sampling in the field or storage;
 - (12) Agreement to ensure the monitoring and destruction of volunteers for three years following cultivation regardless of land lease or ownership status during that period;
 - (13) Agreement to maintain all records, including but not limited to those for agronomics, contracts, sampling, storage, expenses, transportation and delivery, and income, while the license is valid and for three years thereafter;
 - (14) Agreement to notify the division and the commission if there are any changes or deviations from the intentions stated in the license within one month of a known change or deviation; and
 - (15) Agreement to notify the division if there are any changes to the license holder's address within one month of a change for the duration of the license.
- (b) Applicants shall disclose the date and location of any conviction of any criminal offense (other than misdemeanor traffic offenses) committed in any jurisdiction. Failure to comply with this requirement in a complete and truthful manner shall be grounds for denial, suspension, or revocation of a permit, as may be determined by the Industrial Hemp Commission.
- (c) The following applicants shall not be granted a permit:
 - (1) Any applicants with any felony conviction in the prior 10 years or; or
 - (2) Any drug-related or controlled substance felony conviction at any time.

Authority G.S. 106-568.50 through 58.

02 NCAC 62 .0108 REPORTING REQUIREMENTS

(a) License holders shall report, annually and at the time of the license expiration, to the Industrial Hemp Commission, the following information:

- (1) Acreage, or greenhouse space planted, harvested, and varieties grown;
- (2) Weight and type of plant part marketed, purchaser, and research information provided to NC State or NCA&T; and
- (3) Current industrial hemp plant parts in storage and location of storage.

(b) License holders shall report annually to NC State or NC A&T data or observations to be collected and reported in provided forms or templates from the cultivation of industrial hemp as stated on the license application set forth in Rule .0107 of this Section.

(c) Processors of industrial hemp in North Carolina shall register with the commission and at the end of each calendar year report the total weight and type of industrial hemp processed from the North Carolina Industrial Hemp pilot program to the Industrial Hemp Commission.

Authority G.S. 106-568.50 through 58.

02 NCAC 62 .0109 ADOPTION BY REFERENCE

The North Carolina Industrial Hemp Commission adopts by reference Section 7606 of the Agricultural Act of 2014 (Public Law 113-79) and all subsequent amendments.

Authority G.S. 106-568.50 through 58.