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John T. Salazar, Commissioner
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John Hickenlooper
Governor

NOTICE OF PUBLIC RULEMAKING HEARING

FOR ADOPTION OF

“Rules Pertaining to the Administration and Enforcement of the Industrial Hemp Regulatory Program Act”

8 CCR 1203-23

Notice is hereby given pursuant to § 24-4-103 C.R.S. that the Department of Agriculture will hold a public rulemaking hearing:

DATE: Wednesday, November 6, 2013
TIME: 2:00 p.m.
LOCATION: Colorado Department of Agriculture
700 Kipling Street, Suite 4000
Lakewood, Colorado 80215

The purpose of this rulemaking is to adopt rules to establish a process for registering growers of industrial hemp and set forth information and fees required; establish information reporting requirements; establish an inspection program to ensure compliance with the provisions of the Act and these Rules; create conditional penalty waiver provisions for registrants whose industrial hemp crop THC content tests between 0.3% and 1.0% by dry weight; and specify violations of these Rules for which penalties may be imposed.

The statutory authority for these rules is §§ 35-61-104(5) and 35-61-105(2), C.R.S.

Any interested party may file written comment with the Commissioner's office prior to the hearing, or present at the aforementioned hearing written data, views or arguments. A copy of the proposed rule is available on the Department of Agriculture's website at www.colorado.gov/ag or may be obtained by calling 303-239-4102. The proposed rule shall be available for public inspection at the Colorado Department of Agriculture at 700 Kipling Street, Suite 4000, Lakewood, Colorado during regular business hours.

Editing comments: This rule is a new rule so normal format editing marks are not indicated for new or removed language.

COLORADO DEPARTMENT OF AGRICULTURE

Plant Industry Division

Rules Pertaining to the Administration and Enforcement of the Industrial Hemp Regulatory Program Act

8 CCR 1203-23

Pursuant to the provisions and requirements of the Industrial Hemp Regulatory Program Act, Title 35, Article 61, C.R.S., the following Rules are hereby promulgated to regulate the registration of industrial hemp cultivation:

Part 1 DEFINITIONS

- 1.1 “Act” means the Industrial Hemp regulatory Program Act, Title 35, Article 61, C.R.S.
- 1.2 “Commercial” means engaged in commerce and having profit as a chief aim.
- 1.3 “Commissioner” means the Commissioner of Agriculture and any employee of the Department of Agriculture associated with the Industrial Hemp Regulatory Program.
- 1.4 “Composite Sample” means the combined total number of hemp samples taken from the plants in the growing area.
- 1.5 “Department” means the Colorado Department of Agriculture.
- 1.6 “Growing Area” means the land area on which industrial hemp is grown.
- 1.7 “Industrial Hemp” means a plant of the genus Cannabis and any part of the plant, whether growing or not, containing a delta-9 tetrahydrocannabinol (THC) concentration of no more than three-tenths of one percent (0.3%) on a dry weight basis.
- 1.8 “Law Enforcement” means the activities of the agencies responsible for maintaining public order and enforcing the law, particularly the activities of prevention, detection, and investigation of crime and the apprehension of criminals.
- 1.9 “Research and Development” means growth of industrial hemp for increase of seed stock from parent material intended for varietal development, phytoremediation, basic agronomic practices, and other activities for the purpose of discovering and enabling development of useful processes, information and products.

Part 2 REGISTRATION

- 2.1 Each applicant for a commercial industrial hemp registration shall submit a signed, complete, accurate, and legible application form provided by the Commissioner by May 1 of the year in which the applicant plans to grow industrial hemp, which includes the following:
 - 2.1.1 The name and address of the applicant.
 - 2.1.2 Type of business entity, such as corporation, LLC, partnership, sole proprietor, etc.

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- 2.1.3 Business name(s) if different from (2.1.1) above.
- 2.1.4 The legal description (Section, Township, Range) in which the growing area(s) are located.
- 2.1.5 The global positioning location coordinates taken at the approximate center of the growing area(s).
- 2.1.6 A map of the land area on the which the applicant plans to grow the industrial hemp, showing the boundaries and dimensions of the growing area(s) in acres or square feet, and the location of different varieties within the growing area(s), if applicable.
- 2.1.7 The applicant's acknowledgment and agreement to the following terms and conditions:
 - 2.1.7.1 Any information provided to the Department may be publicly disclosed and be provided to law enforcement agencies without further notice to the applicant or registrant.
 - 2.1.7.2 The registrant agrees to allow any inspection and sampling that the Department deems necessary.
 - 2.1.7.3 The registrant agrees to pay for any sampling and analysis costs that the Department deems necessary.
 - 2.1.7.4 The registrant agrees to submit all required reports by the applicable due-dates specified by the Commissioner.
- 2.2 Each applicant for a research and development industrial hemp registration shall submit a signed, complete, accurate, and legible application, by May 1 of the year in which the applicant plans to grow industrial hemp, on a form provided by the Commissioner, which shall include, at a minimum:
 - 2.2.1 The name and address of the applicant.
 - 2.2.2 Type of business or organization such as corporation, LLC, partnership, sole proprietor, etc.
 - 2.2.3 Business name(s) if different from (2.2.1) above.
 - 2.2.4 The legal description (Section, Township, Range) of the growing area.
 - 2.2.5 Global positioning system location taken at the approximate center of the growing area(s); a map of the land area on the which the applicant plans to grow the industrial hemp, showing the boundaries and dimensions of the growing area(s) in acres or square feet, and the location of different varieties within the growing area(s), if applicable.
 - 2.2.6 The applicant's acknowledgment and agreement to the following terms and conditions:
 - 2.2.6.1 Any information provided to the department may be publicly disclosed and be provided to law enforcement agencies without further notice to the applicant or registrant.

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- 2.2.6.2 The registrant agrees to allow any inspection and sampling that the Department deems necessary.
- 2.2.6.3 The registrant agrees to pay for any sampling and analysis costs that the Department deems necessary.
- 2.2.6.4 The registrant agrees to submit all required reports by the applicable due-dates specified by the Commissioner.
- 2.3 Any registration received after May 1, or that is not complete by May 1, will be denied.
- 2.4 In addition to the application form, each applicant for a registration shall submit the registration fee set by the Commissioner. If the registration fee does not accompany the application, the application for registration will be deemed incomplete.
- 2.5 The annual registration fee for commercial production of industrial hemp shall be \$200 plus \$1.00/acre.
- 2.6 The annual registration fee for production of industrial hemp for research and development shall be \$100 plus \$5/acre.
- 2.7 All registrations shall be valid for one year from date of issuance.
- 2.8 Any registrant that wishes to alter the growing area(s) on which the registrant will conduct industrial hemp cultivation for either commercial or research and development purposes shall, before altering the area, submit to the Department an updated legal description, global positioning system location, and map specifying the proposed alterations.

Part 3 REPORTS

- 3.1 Prior to planting each commercial industrial hemp registrant shall file a report with the Commissioner that includes:
 - 3.1.1 A statement of verification on a form provided by the Commissioner that the crop the registrant will plant is of a type and variety of industrial hemp that will produce a THC concentration of no more than 0.3% on a dry weight basis.
 - 3.1.2 A description of the industrial hemp varieties to be planted on the growing area(s) registered to the registrant and a map showing where they will be planted.
- 3.2 At least 7 days prior to harvest, each commercial industrial hemp registrant shall file a report with the Commissioner that includes:
 - 3.2.1 Documentation that the commercial registrant has entered into a purchase agreement with an in-state industrial hemp processor. If the registrant has not entered into such an agreement, the registrant shall include a statement of intended disposition of its industrial hemp crop.
- 3.3 Prior to planting, each research and development industrial hemp registrant shall file a report with the Commissioner that includes:
 - 3.3.1 A description of the hemp varieties to be planted on the growing area(s) registered to the registrant and a map showing where they are planted.

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3.4 At least 7 days prior to harvest, each research and development industrial hemp registrant shall file a report with the commissioner that includes:

3.4.1 A statement of the intended disposition of the registrant's industrial hemp crop.

3.5 Registrants must report any subsequent changes to the purchase agreement or disposition statement to the Commissioner within ten days of the change.

Part 4 INSPECTION PROGRAM

4.1 All registrants are subject to sampling of their industrial hemp crop to verify that the THC concentration does not exceed 0.3% on dry weight basis. The Commissioner shall select up to 33% of the registrants to be inspected, except that no registrant may be selected more than two years in row without cause. The Commissioner shall notify each registrant of their selection by certified mail. The notification shall inform the registrant of the scope and process by which the inspection will be conducted and require the registrant to contact the Department within 30 days to set a date and time for the inspection to occur.

4.2 During the inspection, the registrant or authorized representative shall be present at the growing operation. The registrant or authorized representative shall provide the Department's Inspector with complete and unrestricted access to all industrial hemp plants and seeds whether growing or harvested, all land, buildings and other structures used for the cultivation and storage of industrial hemp, and all documents and records pertaining to the registrant's industrial hemp growing business.

4.3 Sampling of industrial hemp plants will occur in the following manner:

4.3.1 Composite samples of each variety of industrial hemp may be sampled from the growing area(s) at the Department's discretion.

4.3.2 The sampled material will be divided into two equally sized parts. One part will be used for testing. The other part will be retained for retesting.

4.3.3 Quantitative laboratory determination of the THC concentration on a dry weight basis will be performed according to protocols approved by the Commissioner.

4.3.4 A composite sample test result greater than 0.3% THC will be considered conclusive evidence that at least one cannabis plant or part of a plant in the growing area contains a THC concentration over the limit allowed for industrial hemp and that the registrant of that growing area is therefore not in compliance with the Act. Upon receipt of such a test result, the Commissioner may summarily suspend and revoke the registration of a commercial industrial hemp registrant in accordance with § 24-4-104 (4), C.R.S.

4.3.4.1 Sample test results for commercial industrial hemp registrants that are greater than 1.0% THC concentration will be provided to the appropriate state law enforcement agency.

4.4 Fees

4.4.1 Registrants selected for inspection shall pay a charge of \$35 dollars per hour per inspector for actual drive time, mileage, inspection and sampling time.

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- 4.4.2 Registrants selected for inspection shall reimburse the Department for all laboratory analysis costs incurred by it.

Part 5 WAIVER

- 5.1 Notwithstanding the fact that a sample of a research and development registrant's industrial hemp tests higher than 0.3% THC content the registrant shall not be subject to any penalty if:
 - 5.1.1 The sampled industrial hemp was grown solely for research and development purposes by an individual or entity holding a research and development registration, and the crop is destroyed or utilized on site in a manner approved of and verified by the Commissioner.
 - 5.1.2 Test results from a research and development registrant may, at the Commissioner's discretion, be accepted in lieu of Department sampling.
- 5.2 Notwithstanding the fact that a sample of a commercial registrant's industrial hemp tests higher than 0.3% but less than 1% THC content the registrant shall not be subject to revocation or suspension of their registration if the crop is destroyed or utilized on site in a manner approved of and verified by the Commissioner.

Part 6 VIOLATIONS/DISCIPLINARY SANCTIONS/CIVIL PENALTIES

- 6.1 In addition to any other violations of Title 35, Article 61, C.R.S., or these Rules, the following acts and omissions by any registrant or authorized representative thereof constitute violations for which civil penalties up to \$2,500 and disciplinary sanctions, including revocation of a registration, may be imposed by the Commissioner in accordance with §§ 35-61-107 and 24-4-104, C.R.S.:
 - 6.1.1 Refusal or failure by a registrant or authorized representative to fully cooperate and assist the Department with the inspection process.
 - 6.1.2 Failure to provide any information required or requested by the Commissioner for purposes of the Act or these Rules.
 - 6.1.3 Providing false, misleading, or incorrect information pertaining to the registrant's cultivation of industrial hemp to the Commissioner by any means, including but not limited to information provided in any application form, report, record or inspection required or maintained for purposes of the Act or these Rules.
 - 6.1.4 Failure to submit any required report in accordance with Rule 3.0.
 - 6.1.5 Growing industrial hemp that when tested is shown to have a THC concentration greater than 0.3% on a dry weight basis.
 - 6.1.6 Failure to pay fees assessed by the Commissioner for inspection or laboratory analysis costs.

Parts 7 & 8 RESERVED

Part 9 STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE

- 9.1 Adopted November 12, 2013 – Effective December 30, 2013

Statutory Authority

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These rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Industrial Hemp Regulatory Program Act (the "Act"), §§ 35-61-104(5) and 35-61-105(2), C.R.S.

Purpose

The purposes of these proposed rules are to:

1. Adopt a Part 1 setting forth definitions of specific terms used in these Rules.
2. Adopt Rules in Part 2 establishing a process for registering growers of industrial hemp and setting forth the information and fees required.
3. Adopt Rules in Part 3 establishing the information reporting requirements with which registrants must comply.
4. Adopt Rules in Part 4 establishing an inspection program to ensure compliance with the provisions of the Act and these Rules.
5. Adopt Rules in Part 5 creating conditional penalty waiver provisions for registrants whose industrial hemp crop THC content tests between 0.3% and 1.0% by dry weight.
6. Adopt Rules in Part 6 specifying violations of these Rules for which penalties may be imposed.

Factual and Policy Basis

The factual and policy issues encountered when developing these rules include:

1. Senate Bill 13-241 authorized the creation of a program within the Department of Agriculture to regulate industrial hemp cultivation.
2. The bill created a nine-member advisory committee to work with the Department to develop rules establishing an Industrial Hemp Regulatory Program. This committee was appointed by Senator Gail Schwartz and Representative Randy Fischer.
3. The committee held three public meetings to determine what rules were necessary to implement this program and draft the appropriate language. The committee will continue to work with the Department to refine and update these Rules over the coming years, as well as review the testing protocols that Department staff is currently developing.



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John Hickenlooper
Governor

MEMORANDUM

To: Commissioner Salazar
Colorado Agricultural Commission Members
From: Jenifer Gurr, Chief Administrative Officer
Date: November 6, 2013

Re: Summary of rulemaking hearing for adoption of 8 CCR 1203-23, **“Rules Pertaining to the Administration and Enforcement of the Industrial Hemp Regulatory Act”**

Commissioner and Ag Commission Members:

A hearing was held on November 6, 2013 beginning at 2:06 p.m. at the Colorado Department of Agriculture, Commissioner’s Conference Room, 700 Kipling Street, Suite 4000, Lakewood, CO, 80215, to take public comments on the adoption of proposed “Rules Pertaining to the Administration and Enforcement of the Industrial Hemp Regulatory Program Act.”

Laura Pottorff presented the proposed rule. The purpose of the proposed rules are to adopt Part 1 setting forth definitions of specific terms used in these Rules. Adopt Rules in Part 2 establishing a process for registering growers of industrial hemp and setting forth the information and fees required. Adopt Rules in Part 3 establishing the information reporting requirements with which registrants must comply. Adopt Rules in Part 4 establishing an inspection program to ensure compliance with the provisions of the Act and these Rules. Adopt Rules in Part 5 creating conditional penalty waiver provisions for registrants whose industrial hemp crop THC content tests between 0.3% and 1.0% by dry weight. Adopt Rules in Part 6 specifying violations of these Rules for which penalties may be imposed.

Ms. Pottorff stated the factual and policy issues encountered when developing these rules. Senate Bill 13-241 authorized the creation of a program within the Department of Agriculture to regulate industrial hemp cultivation. The bill created a nine-member advisory committee to work with the Department to develop rules establishing an Industrial Hemp Regulatory Program. This committee was appointed by Senator Gail Schwartz and Representative Randy Fischer. The committee held three public meetings to determine what rules were necessary to implement this program and draft the appropriate language. The committee will continue to work with the Department to refine and update these Rules over the coming years, as well as review the testing protocols that Department staff is currently developing.

The following public comment was provided:

Chris Boucher with US Hemp Oil a division of Cannibas Inc. would like to build a hemp seed processing mill in Colorado. His concerns related to the import of seed. Mr. Boucher also commented on the growth of the industry in Canada and Europe and the shortage of an organic seed supply.

Ben Holmes from Centennial Seed and a member of the industrial hemp committee talked about the process of the committee, and the brevity and clarity of the rules. He stated that the committee gave a lot of thought to the costs of operators and producers. Mr. Holmes believes this is a great rule.

Summer Star Hauske of Enviro Textiles develops fiber and hemp textiles. She is concerned with the ability to get seed into the country and the state. She discussed logistics of removing seed from the stock and leaf separation, the interest of the Western slope for industrial hemp, bio-preferred status, and the organic seal.

James McVaney of Industrial Hemp in Colorado LLC talked about stakeholder meetings that he has held around the state. He agreed with comments previously made regarding seed stock. He presented proposed language for section 5.2 to allow crops with a THC content between 0.3% and 1% to be transferred to an in-state biofuel processor in an effort to help farmers recoup some of their costs. He referenced different varieties such as finola. Mr. McVaney also proposed the addition of section 2.2.7 that reads "No research and development registrant shall be required to disclose the origin of their industrial hemp seeds." He provided written comments related to his public testimony including a table of Canadian crop estimates from 2013.

Barbara Filippone with Enviro Textiles provided clarifying comments on seed versus hulled hemp seed and the lower THC percentages from hulled seed. She referenced Canadian regulations and encouraged the use of similar rules. Ms. Filippone commented on due diligence on import of seed; the lack of recommendation for finola as she believes it is not a value-added crop; feasibility and business plans; and multi-purpose uses. She provided a copy of the Canadian rules.

John Patterson of Colorado Industrial Hemp Supply LLC talked about the development of a market for the product; job creations; and the interest in building homes out of bio-based materials.

Gloria Castillo with BioRegional Strategies provides consulting services and is also a member of the New Mexico Hemp Coalition. Ms. Castillo recommended that a solution for crops or seeds surpassing the 0.3% THC content limit would be to identify businesses, such as the bio-fuels plant in the San Luis Valley, that could be a designated sight for appropriate use.

Written comment was received from Arnold Valdez regarding access to legal seed stock and the cost of inspection. Diana Mosher also submitted written comments regarding "NO GMO's."

There were a number of individuals present who did not wish to make public comment on the proposed rules. The hearing record was closed at 2:28 p.m.