

MEMORANDUM

TO: VICKI THOMAS, EXECUTIVE DIRECTOR
JOINT COMMITTEE ON ADMINISTRATIVE RULES

FROM: ALBERT A. COLL, ASSISTANT GENERAL COUNSEL
DEPARTMENT OF AGRICULTURE

RE: SECOND NOTICE

DATE: MARCH 12, 2019

- 1) NAME OF AGENCY: Illinois Department of Agriculture
- 2) TITLE AND ILLINOIS ADMINISTRATIVE CODE CITATION: Industrial Hemp Act (8 Ill. Adm. Code 1200)
- 3) DATE NOTICE PUBLISHED IN ILLINOIS REGISTER: Published at 42 Ill. Reg. 24360, December 28, 2018.
- 4) TEXT AND LOCATION OF ANY CHANGES MADE IN THE RULE DURING THE FIRST NOTICE PERIOD: See attached First Notice Changes Form.
- 5) RESPONSE TO RECOMMENDATIONS FROM THE ADMINISTRATIVE CODE DIVISION: No recommendations were made.
- 6) DOES THIS RULEMAKING INCLUDE ANY INCORPORATION BY REFERENCE PURSUANT TO SECTION 5-75 OF THE ILLINOIS ADMINISTRATIVE PROCEDURE ACT?: Yes

The Department incorporates the definitions used in the Industrial Hemp Act [505 ILCS 89].

- 7) FINAL REGULATORY FLEXIBILITY ANALYSIS:
 - a) Summary of issues raised by small businesses during the first notice period:

See 9(b)
 - b) A description of actions taken on any alternative to the proposed rulemaking suggested by small businesses during the first notice period, including reasons for rejecting any alternatives not utilized:

See 9(b)

8) CONSIDERATION OF SMALL BUSINESS, NOT-FOR-PROFIT CORPORATIONS AND SMALL MUNICIPALITIES:

The Department drafted this rulemaking taking full consideration of any industry suggestions and/or concerns.

9) AGENCY'S EVALUATION OF THE COMMENTS PRESENTED TO THE AGENCY BY INTERESTED PERSONS DURING THE FIRST NOTICE PERIOD:

a) A list of persons or organizations making comments on the proposed rulemaking:

The Department received comments from more than ninety individuals and entities during the First Notice period. The topics of comment and concern overlapped. Large associations, organizations, businesses, and interest groups are listed below:

Illinois Farm Bureau
Illinois Agricultural Association
P.O. Box 2901
Bloomington, IL 61702-2901
(309) 557-2111

Illinois Industrial Hemp Association
16235 State Highway 111
Brighton, IL 62012
(312) 925-5482

Illinois Crop Improvement Association, Inc.
3105 Research Road
Champaign, IL 61822
(217) 359-4053

Illinois Stewardship Alliance
230 Broadway Unit 200
Springfield, IL 62701
(217) 528-1563

American Association for Laboratory Accreditation
5202 President's Court, Suite 200
Frederick, MD 21703
(301) 644-3248

b) A list of specific criticisms, suggestions, and comments raised by interested persons, and the agency's analysis of each of these criticisms, suggestions, and comments:

The Department received comments from more than ninety individuals and entities during the First Notice period. The topics of comment and concerns overlapped. Large associations, organizations, businesses, and interest groups, and the major topics raised by all commenters are listed below:

The following comments were received large associations, organizations, businesses, and interest groups during the First Notice Period.

Illinois Farm Bureau (IFB) (These responses also apply to the Pike-Scott Farm Bureau and Cook County Farm Bureau comments)

IFB Comment 1: Sections 1200.20 a) and b) includes, “No person shall cultivate/process/handle hemp...without first receiving a...License from the Department.” IFB raises concerns that this would require any family member or employee to acquire a license before they could cultivate hemp.

Department Response to IFB Comment 1: The Department did not intend to require all family members or employees to be individually licensed/registered. The term “Agent” has been added to the proposed rules to make clear that only one license/registration is required for the farm or processing facility.

IFB Comment 2: Sections 1200.20 a) and b) in conjunction with the definition of “handle” appear to require a separate license to store hemp.

Department Response to IFB Comment 2: The Department agrees with the IFB and has added language to the definition of the term “Cultivate” to include “and storing,” to make clear that a farmer or processor may store hemp without an additional license.

IFB Comment 3: Section 1200.20 i) requires each non-contiguous land area to be separately licensed. IFB is concerned about fee for alterations which would be required for crop rotation over the 3 year period of the license.

Department Response to IFB Comment 3: The Department agrees with IFB and has removed language requiring a separate license for each non-contiguous field. Additionally, the fee for alterations has been removed and alterations require only notice from the licensee and approval by the Department.

IFB Comment 4: Section 1200.30 a) requires the applicant to file an application at least ninety (90) days before planting. IFB is concerned that this will virtually eliminate the possibility of planting hemp in 2019.

Department Response to IFB Comment 4: The Department agrees with

IFB's assessment and has removed the 90 day requirement.

IFB Comment 5: Section 1200.30 c) states, "No person who has been convicted of a felony, drug-related misdemeanor, or crime of dishonesty in the 5 years prior to the date of application shall be eligible to obtain a license or registration." IFB references the 2018 Agriculture Improvement Act (The Farm Bill), which states that no one convicted of a controlled substances felony for the 10 years prior to the application is eligible to grow Industrial Hemp. IFB recommends the Department mirror the Farm Bill language.

Department Response to IFB Comment 5: The Department agrees with the IFB's recommendation. The Department has changed the language in Section 1200.30(c) to mirror the Farm Bill.

IFB Comment 6: Section 1200.40 requires Reports to be submitted by the cultivator prior to planting, prior to harvest, and after harvest. The IFB relies on the 2018 Farm Bill which does not require a research component for the person to be licensed to cultivate hemp.

Department Response to IFB Comment 6: While the Department agrees with IFB in that the 2018 Farm Bill does not require a research component, the 2014 Farm Bill does require a research component. The USDA has not yet drafted the administrative rules for the 2018 Farm Bill and has instructed the individual States that hemp cultivation is allowed under the 2014 Farm Bill until the administrative rules are finalized at the Federal level. Therefore, the research component is still required under Federal law.

IFB Comment 7: Section 1200.90 regulates the transportation of hemp. The IFB raises a concern about licensure and requests clarification for whom can transport hemp and how it will coexist with the 2018 Farm Bill.

Department Response to IFB Comment 7: See response to IFB Comment 1. The Department added language to allow employees, family, and contractors to work for a farmer or processor. This is intended to include a third-party transporter as they would be contracted with the licensee or registrant.

IFB Comment 8: IFB raises concerns about the administrative penalties section and cites the 2018 Farm Bill as guidance regarding negligent violations.

Department Response to IFB Comment 8: The Department understands and concurs with the IFB's position. The Department has added a new section (Section 1200.120) to address the Farm Bill language as it pertains to negligent violations.

Illinois Industrial Hemp Association (IHA)

IHA Comment 1: The IHA would like to see Industrial Hemp as a stand-alone program, have a separate lab from medical cannabis, and be regulated by a separate regulating authority.

Department Response to IHA Comment 1: The Department has charged the Bureau of Medicinal Plants with regulating the Industrial Hemp program. The Bureau understands the difference between Industrial Hemp and medical cannabis and will regulate accordingly. The Department believes that this structure will provide for the efficient use of State resources.

IHA Comment 2: The IHA is concerned about the banking hurdles hemp growers and processors may face due to federal regulations.

Department Response to IHA Comment 2: The 2018 Farm Bill has addressed the legalities of financial institutions and their relationships with the hemp industry. The administrative code has not been drafted by the USDA to date.

IHA Comment 3: “A lot of infrastructure needs to be in place”

Department Response to IHA Comment 3: Without knowing exactly what the IHA means by “infrastructure,” the Department is prepared to handle the licensure and registration portion of the hemp program.

IHA Comment 4: The IHA is concerned about over-production of hemp without the sustainable markets for harvested hemp. IHA believes that hemp production should be postponed until the 2020 growing season.

Department Response to IHA Comment 4: The Department understands the concerns with over-production of Industrial Hemp. The Department expects 2019 will be a test year for most Industrial Hemp farmers in Illinois with 2020 being a much larger production year.

IHA Comment 5: See IFB Comment 1 and Department Response.

IHA Comment 6: IHA asks if a person that grows and processes hemp must apply for both a license and registration.

Department Response to IHA Comment 6: Yes, the rules contemplate that a grower must apply for a license and a processor must apply for a registration.

IHA Comment 7: IHA is concerned about a rogue third party growing “marijuana” in a hemp field without the licensee’s knowledge.

Department Response to IHA Comment 7: The Department would refer the matter to law enforcement authorities, if necessary. The burden of proof lies with the Department and/or law enforcement to prove the necessary *mens rea* of the suspected party.

IHA Comment 8: See IFB Comment 3 and Response.

IHA Comment 9: See IFB Comment 4 and Response.

IHA Comment 10: The IHA requests information on cost of background checks and if all workers must be checked.

Department Response to IHA Comment 10: The rules state that all applicants for a license or registration shall be “subject” to a background check. The cost of the background check is fluid and is not appropriate to be put into rule.

IHA Comment 11: Section 1200.30 d) states, “Incomplete applications will be rejected and an additional application fee will be collected for corrected and/or new applications.” IHA would like clarification on the term “incomplete.”

Department Response to IHA Comment 11: The application will be self-explanatory with a checklist of all required information. If the Department determines necessary information is missing, it may deem the application “incomplete” and require supplemental information and an addition application fee.

IHA Comment 12: The IHA believes the alteration fee is excessive.

Department Response to IHA Comment 12: The Department agrees and has removed that language.

IHA Comment 13: The IHA points out that farmers will be growing “Industrial Hemp,” not “cannabis.”

Department Response to IHA Comment 13: 505 ILCS 89 states, “‘Industrial Hemp’ means the plant *Cannabis sativa* L. and any part of that plant....” Hemp is still part of the Cannabis family.

IHA Comment 14: Section 1200.40 (b)(1) states the hemp grower must file a report that a purchase agreement with an in-state processor has been agreed upon. This is in violation of the 2018 Farm Bill.

Department Response to IHA Comment 14: The Department agrees and has removed the language in Section 1200.40(b)(1).

IHA Comment 15: Section 1200.40 c) requires a final report to be filed with the Department providing the following information: 1) Total acres or square feet of Industrial Hemp planted; 2) A description of each variety planted and harvested; and 3) Total acres or square feet harvested. IHA is concerned that the product may not be fully retted by February 1 of each year.

Department Response to IHA Comment 15: The Department understands the concern and has added Section 1200.40(b)(1-4) to clarify that the information sought is for the prior calendar year.

IHA Comment 16: The IHA requests information for which laboratories will be conducting testing and requests that Medical cannabis labs not be used for hemp testing.

Department Response to IHA Comment 16: The Department has added language in Section 1200.50(e)(10) to allow the Department or approved third-party laboratories to conduct hemp testing. The Department also added Section 1200.40 which describes the criteria for laboratory approval.

IHA Comment 17: The IHA requests all fees be reduced.

Department Response to IHA Comment 17: The Department reviewed Industrial Hemp fees in multiple other States. The fees proposed by the Department fall in the low- to mid-range in comparison to other States that have active Industrial Hemp programs.

IHA Comment 18: The IHA believes Section 1200.70 should be removed in its entirety due to the 2018 Farm Bill.

Department Response to IHA Comment 18: The Department agrees, in part, with the IHA. The language has been modified in 1200.70 a) to prevent a licensee or registrant from transferring live plants or viable seeds to an unlicensed person. Section 1200.70 b) has been similarly modified to prevent a licensee from transferring live or viable seeds to an unlicensed person outside of Illinois.

IHA Comment 19: The IHA requests clarification about transportation of finished hemp products.

Department Response to IHA Comment 19: The Department has added Section 1200.100(d) to allow any person to transport hemp following retail

sale.

IHA Comment 20: The IHA asks the maximum administrative penalty to be reduced from \$10,000.00 to \$2,500.00.

Department Response to IHA Comment 20: The Department believes a \$10,000.00 penalty is reasonable due to the likelihood of large corporations entering the industry. The penalty would be assessed based on the severity of the violation and the recommendation of the Department and potentially the ruling of an Administrative Law Judge.

Illinois Crop Improvement Association, Inc. (CIA)

CIA Comment 1: Section 1200.20 e) states, “All seeds, clones transplants and propagules used to cultivate Industrial Hemp in Illinois shall be certified under the Association of Official Seed Certifying Agencies (AOSCA) standards and guidelines for Industrial Hemp.” CIA suggests dissociating “clones, transplants, and propagules” from the AOSCA “standards and guidelines” because they are not addressed by AOSCA standards and guidelines.

Department Response to CIA Comment 1: The Department agrees that the proposed language would cause confusion and has addressed this issue by modifying Section 1200.20(e), by adding language for certificates of analysis for plants and seeds.

CIA Comment 2: CIA encourages the use of seed certification as well as similar authentication programs developed by AOSCA for specialty crops.

Department Response to CIA Comment 2: The Department understands the desire for mandatory seed certification or similar programs. The Department also received in excess of 25 public comments requesting the seed certification be an option for approved plants and seed. Through industry research, the Department has learned that there are several certified fiber strains of Industrial Hemp, however, there are zero certified cannabidiol (CBD) strains of Industrial Hemp. The main interest, both in Illinois and the rest of the United States, is currently CBD strains of Industrial Hemp. By requiring all strains planted in Illinois to be “certified,” we in effect prevent the Industrial Hemp industry from even beginning. The Department has added language to allow both certified seed and seed/plants accompanied by a Certificate of Analysis from a credentialed laboratory certifying that the plant will not produce in excess of 0.3% THC. This will allow the Illinois farmer an opportunity to grow CBD strains as well as fiber strains. Further the rules allow for testing of all Industrial Hemp to ensure compliance with the State and Federal statutes. Due to the fact that very little Industrial Hemp has been grown in Illinois, most seeds and plants will

be imported from other States and countries. Regardless of certification, the environment of Illinois will likely impact the final CBD and THC levels. Testing of Industrial Hemp in Illinois will allow the Department to gather information about specific strains and their adaptability to Illinois.

American Association for Laboratory Accreditation (A2LA)

A2LA Comment 1: Section 1200.50 provides requirements for laboratory testing to verify delta-9 THC concentration, however, requirements for the testing laboratory are not included.

Department Response to A2LA Comment 1: The Department agrees and has adopted the suggested language from A2LA for ISO certification, by adding Section 1200.60.

Illinois Stewardship Alliance (ISA)

ISA Comment 1: The Industrial Hemp Act (505 ILCS 89) defines “Land Area” as “a farm as defined in Section 1-60 of the Property Tax Code [35 ILCS 200] in this State or land or facilities under the control of an institution of higher education.” The ISA has requested the addition of the “farm” definition to the rules.

Department Response to ISA Comment 1: The Department agrees and has added the definition of “farm,” as used in the Property Tax Code.

ISA Comment 2: See CIA Comment 2 and Response.

ISA Comment 3: See IFB Comment 4 and Response.

ISA Comment 4: Section 1200.30 a)6) requires the applicant to provide documentation to prove the land area is a farm as defined in Section 1-60 of the Property Tax Code. The ISA requests the Department apply only the definition in 1-60 and not require the land to be taxed under 1-60.

Department Response to ISA Comment 4: The Department agrees and has removed Section 1200.30(a)(6) which included the documentation requirement.

ISA Comment 5: See IHA Comment 10 and Response.

ISA Comment 6: Section 1200.30 e) states a license or registration will be valid for 3 years. The ISA requests a scale fee system and a one-year license.

Department Response to ISA Comment 6: The Department agrees that

licensing options of 1, 2, or 3 years is appropriate and has added language to that affect. The Department believes the fees associated are fair and reasonable when compared to other States with hemp programs. A scaled fee structure would require more oversight and state resources to ensure compliance with any maximum acreage guidelines. The Department has added Section 1200.70, to create a scale fee system.

ISA Comment 7: Section 1200.50 e) 7) states all hemp that tests with a THC level in excess of 0.7% shall be destroyed. The ISA states there are other marketable uses for non-compliant plant materials.

Department Response to ISA Comment 7: By definition, if the THC is in excess of 0.3% delta-9 THC, it is not longer “hemp” and is “marijuana.” Use of any product in excess of 0.3% THC would constitute both a state and federal criminal violation.

ISA Comment 8: See ISA Comment 6 and Response.

ISA Comment 9: The ISA requests the sampling and testing fees be known through rule.

Department Response to ISA Comment 9: The Department is not in a position to mandate prices for third-party laboratories. Given the everchanging industry and the scientific advances, the Department cannot estimate the cost to a degree worthy of being made rule. Further, with the ability for ISO accredited, approved third-party laboratories to conduct testing, an entirely new ancillary industry can develop from the Industrial Hemp industry.

The following comments were received by the Department during a public hearing that was held on February 5, 2019. Ninety-one (91) people attended the hearing, of which eighteen (18) made oral comments. The subject matter of the comments and responses thereto are below:

Public Hearing Comment (PHC) 1 - Seed Certification: Eight individuals spoke in opposition to the seed certification requirement in Section 1200.20 e). One person spoke in support of seed certification.

Department Response to PHC Comment 1: The Department agrees that requiring all seeds and plants to be certified pursuant to AOSCA standards will have an adverse impact on the CBD hemp industry in Illinois. Currently, there are zero certified CBD strains of hemp. The Department has drafted new language to allow non-certified seeds and plants with the condition that they are accompanied by a Certificate of Analysis asserting the plants will not produce a THC concentration in excess of 0.3 percent.

PHC Comment 2 - Transportation of Hemp: Eleven people raised concerns about the restrictions on transportation of hemp. The public is concerned about licensing multiple people to transport hemp and the conflict with the 2018 Farm Bill which states that a state cannot interfere with the interstate commerce of hemp.

Department Response to PHC Comment 2: The Department agrees that the first notice language was not clear for licensing transporters of hemp. This has been modified to add agents of licensees and registrants to permit the transportation of hemp. Additionally, the restriction on transportation was modified to only restrict the transportation of live plants and viable seeds to licensed or registered cultivators or processors.

PHC Comment 3 - Native or Feral Seed: Four individuals spoke about the desire to harvest and cultivate native or feral hemp. The Department does not believe this is in the best interest of the State of Illinois because there is no information available about the feral hemp. This will potentially put the cultivator at risk of a negligent violation. The Department, however, will continue to license universities under The Industrial Hemp Pilot Program [720 ILCS 550] which does not include the seed certification or certificate of analysis requirements. This will allow universities to conduct research on feral hemp.

PHC Comment 4 - Section 1-60 of the Property Tax Code: Three individuals spoke in opposition of Section 1200.30 6) which requires documentation to prove the land area is a farm as defined in Section 1-60 of the Property Tax Code.

Department Response to PHC Comment 4: The Department agrees that the intended language of the Statute requires the land area to fall within the definition of a farm as defined in Section 1-60. The Department has added the definition of a “farm” to the rules and has removed the documentation requirement.

PHC Comment 5 – Other uses of non-compliant hemp: Three individuals requested an alternative to destruction for hemp which tests over 0.3 percent THC and suggested other possible uses.

Department Response to PHC 5: By definition, any hemp which tests in excess of 0.3 percent THC is no longer hemp, but is marijuana or cannabis. There are no Federal or State protections for the use of a crop which is in excess of 0.3 percent THC.

PHC Comment 6 – Ninety Day application requirement: Section 1200.30 a) requires an applicant to file an application with the Department at least 90 days prior to planting hemp. Four individuals commented that

this requirement is unnecessary and would be fatal for the 2019 growing season.

Department Response to PHC Comment 6: The Department agrees and has removed the 90 day requirement.

PHC Comment 7 - Fees: Section 1200.60 sets the fees for the hemp program. Four individuals commented that the fees are excessive, the three year licensure should be changed, and the alteration fee is unnecessary.

Department Response to PHC Comment 7: The Department agrees, in part. The Department has drafted new language to allow for one, two, or three-year licenses with a monetary incentive to apply for the three-year license. The alteration fee has been removed due to the likelihood of crop rotation.

PHC Comment 8 – Criminal History Exclusion: Section 1200.30 c) states, “No person who has been convicted of any felony... in the 5 years prior to the date of application shall be eligible to obtain a license or registration.” Commenters explained that this is unnecessary and in conflict with the 2018 Farm Bill.

Department Response to PHC Comment 8: The Department agrees and has changed the language to reflect the 2018 Farm Bill.

Written Public Comments were accepted by the Department beginning December 28, 2018 through February 11, 2019. The public was given the option of mailing comments directly to the Department or emailing agr.hemp@illinois.gov. Approximately 78 people provided written comments through US Mail or email. There was some crossover between the individuals that submitted written comment and those that spoke at the Public Hearing on February 5, 2019. The written comments are summarized by subject below:

Written Comment (WC) 1 – Seed Certification: Approximately 20 individuals commented. See PHC Comment 1 and Response.

WC Comment 2 – Section 1-60 of the Property Tax Code: Approximately 14 people commented. See PHC Comment 4 and Response.

WC Comment 3 – Transportation of hemp: Approximately 10 people commented. See PHC Comment 2 and Response.

WC Comment 4 – Other uses of non-compliant hemp: Approximately 6 people commented. See PHC Comment 6 and Response.

WC Comment 5 – Criminal History Exclusion: Approximately 8 people commented. See PHC 8 and Response.

WC Comment 6 – Pre-harvest report: Section 1200.40 b) requires licensees to file a report at least 30 days prior to harvest. Commenters raised concerns because it is difficult to make an accurate determination of a harvest date due to weather and crop condition.

Department Response to WC Comment 6: The Department understands the concerns brought forth and has modified the rule to include “to the best of their ability.” It is necessary for the Department to have an estimated harvest date to conduct sampling and testing of the crop prior to harvest to ensure the hemp is compliant and below 0.3 percent THC.

WC Comment 7 – Ninety Day application requirement: Approximately 13 people commented. See PHC Comment 6 and Response.

WC Comment 8 – Fees: Approximately 18 people commented. See PHC Comment 7 and Response.

WC Comment 9 – Floral Material: Section 1200.70 a) states, “A licensed person shall not sell or transfer...leaf material, or floral material to any person in the State of Illinois who does not hold a license or registration issued by the Department.” Commenters were concerned because leaf material and floral material are not viable and can be used and consumed by the public.

Department Response to WC Comment 9: The Department agrees and has removed “leaf material” and “floral material” from this Section.

WC Comment 10 – Unnecessary Regulation in General: Two people commented that it is unnecessary to regulate hemp. They raised concerns that it is simply a plant, it causes no harm, and it is now legal under the 2018 Farm Bill.

Department Response to WC Comment 10: The 2018 Farm Bill requires states to have a regulatory scheme to regulate hemp. Further, by its very nature and species, hemp (Cannabis) looks identical to marijuana, which is still unlawful under both Illinois and Federal law. The Department is required to regulate hemp in order to protect the farmer and the public.

c) Any changes made to the rules by the agency as a result of criticisms, suggestions, and comments made by interested persons:

Yes. See 9 (b) above.

d) The names of all persons or organizations requesting a public hearing and the date of any public hearings held on the proposed rulemaking:

A public hearing was requested by the Illinois Stewardship Alliance. A public hearing was held on February 5, 2019.

10) JUSTIFICATION AND RATIONALE FOR THE PROPOSED RULEMAKING, INCLUDING:

a) Citations to changes in Illinois laws which require the rulemaking:

The Industrial Hemp Act [505 ILCS 89].

b) Explanation of changes in agency policy and procedure that require the rulemaking:

None

c) Citations to federal laws, rules or regulations, or funding requirements which require the rulemaking:

None

d) Citations and copies of court orders or decisions which require the rulemaking:

None

e) A complete explanation of any other reasons for the rulemaking:

None

11) NAME OF THE AGENCY REPRESENTATIVE WHO WILL RESPOND TO THE JOINT COMMITTEE'S QUESTIONS REGARDING THE PROPOSED RULEMAKING:

Jeff Cox
Bureau Chief
Bureau of Medicinal Plants
Department of Agriculture
State Fairgrounds
P. O. Box 19281
Springfield, IL 62794-9281

Telephone: 217.524.4190

12) STATE MANDATES ACT ANALYSIS:

The new rules will not require a local government to establish, expand or modify its

activities in such a way as to necessitate additional expenditures from local revenues.

13) ECONOMIC AND BUDGETARY EFFECTS OF THE RULEMAKING:

Agency Impact:

Some additional time and expense will be experienced by the Department for the purpose of licensing and inspecting licensees to ensure compliance with the Industrial Hemp Act.

Impact on those Regulated:

The rulemaking permits the cultivation of hemp (*Cannabis sativa* L.). This action will increase and diversify the types of agricultural products available for production by Illinois farmers, and it will provide Illinois farmers with access to international and domestic hemp markets. The Hemp Business Journal estimated that in 2017, hemp generated \$820 M in U.S. sales. The Journal expects that activity to increase to \$2 B by 2022.

14) ANY NEW OR REVISED FORMS:

New forms will be created for the purpose of licensing and registering cultivators and processors, and for the purpose of enforcing the requirements of the Industrial Hemp Act.

FIRST NOTICE CHANGES

Agency: Department of Agriculture

Rulemaking: Industrial Hemp Act (8 Ill. Adm. Code 1200)

Changes:

1. In line 27 replace “relevant” with “for”.
2. In line 27 replace “included” with “located”.
3. In line 27 replace “XX” with “5”.
4. After line 31 add the new definition ““Agent” means any family member, employee, contracted employee, or farmhand of a licensed or registered hemp cultivator or processor.”.
5. In line 32 after the word “individual” add “or entity”.
6. In line 38 before the word “harvesting” delete the “and”.
7. In line 38 after the word “harvesting” add “and storing”.
8. After line 43 add the new definition ““Farm” means any property used solely for the growing and harvesting of crops; for the feeding, breeding and management of livestock; for dairying or for any other agricultural or horticultural use or combination thereof; including, but not limited to, hay, grain, fruit, truck or vegetable crops, floriculture, mushroom growing, plant or tree nurseries, orchards, forestry, sod farming and greenhouses; the keeping, raising and feeding of livestock or poultry, including dairying, poultry, swine, sheep, beef cattle, ponies or horses, fur farming, bees, fish and wildlife farming [35 ILCS 200/1-160].”.
9. In line 45 after “person” add “or entity, or the agent thereof,”.
10. After line 68 add new definition ““Licensee” means a person or entity that has applied for, and received, a license to cultivate Industrial Hemp from the Department.”.
11. Delete lines 69 through 76 and replace with ““Person” means any individual, partnership, firm, corporation, company, society, association, the State or any department, agency, or subdivision thereof, or any other entity, or the agent thereof.”
12. After line 83 add the new definition ““Registrant” means any person or entity that has applied for, and received, a Registration to process industrial hemp from the Department.”.
13. In line 96 replace “licensed persons” with “licensees”.

14. In line 96 replace “research information” with “reports”.
15. In line 97 replace “(b)” with “(a)” and immediately after add “and 1200.40(b)”.
16. In line 104 after “hemp” add “or shall be accompanied by a certificate of analysis from an accredited certified laboratory from a state with a regulated industrial hemp program that certifies the industrial hemp grown will not contain in excess of 0.3 percent THC”.
17. Delete lines 106 and 107 in their entirety.
18. Delete line 119 in its entirety.
19. Beginning in line 124 after “violations” delete “by a” and add “of the Act, this Part, or any Illinois or Federal Criminal Code may subject the”. Also after “registrant” delete “may be subject”. Also, replace “action” with “penalties”.
20. In line 125 replace “Section 1200.80” with “Section 1200.120 and Section 1200.130 of this Part and may be subject to criminal prosecution”.
21. Beginning in line 130 delete “at least 90 days prior to planting”.
22. In line 133 replace “applicant” with “person or entity applying for the cultivation license”.
23. In line 142 after “coordinates” add “of each Contiguous Land Area”.
24. Delete lines 148 and 149 in their entirety.
25. After line 152 add a new application requirement (7) “The variety(ies) of Industrial Hemp that are intended for cultivation.”.
26. In line 155 after “agency” add “or a private third-party background check agency”.
27. Beginning in line 159 after “any” add “controlled substances related”. Also, after “felony” delete “, drug related misdemeanor, or crime of dishonesty”.
28. In line 160 change the five year requirement to 10 years.
29. In line 168 after “for” add “a maximum of”.
30. In line 171 replace “plan” with “application”.
31. In line 172 delete everything after “implementation.”
32. In line 176 after “processors” delete “and handlers”.

33. In line 179 replace “registrant” with “person or entity applying for the processor registration”.
34. In line 187 delete “or handling”.
35. Delete (subpart (a)) lines 193 through 204 in its entirety.
36. In line 206 change subpart “(b)” to subpart “(a)”.
37. In line 206 after “harvest.” add “to the best of the licensee’s ability.”.
38. Delete subpart 1, lines 209 through 212.
39. In line 220 change subpart “(c)” to subpart “(b)”.
40. In line 223 after “planted” add “in the previous calendar year”.
41. In line 225 after “harvested” add “in the previous calendar year”.
42. In line 227 after “harvested” add “in the previous calendar year”.
43. In line 229 after “seeds” replace the “l” with “per”.
44. In line 230 replace “etc.” with “or other measurement approved by the Department.”.
45. In line 234 after “subject to” delete “one (1) mandatory inspection, and additional”.
46. In line 235 after “Department” delete “, of the Land Area and/or the indoor cultivation site, per year”.
47. In line 236 after “act” delete “and this Part”.
48. In line 239 after “licensee of the” delete “mandatory”.
49. In line 245 replace “A representative” with “An agent”.
50. After line 257 add a new subpart (2), “A representative sample will be taken by Department personnel or approved laboratory personnel.”
51. After line 288 add a new subpart (10), “Testing of Industrial Hemp will be completed by the Department or by a third-party laboratory approved by the Department pursuant to this Part.”
52. After the new subpart (10) referenced above, add a new subpart (11), “Approved laboratories will be published on the Department’s website.”

53. Beginning in line 289, renumber “Section 1200.60 Fees” as “Section 1200.80 Fees”.
54. Beginning in line 289, replace the language in Section 1200.60, with:

“Section 1200.60 Laboratory Approval

- a) No laboratory shall handle, test or analyze hemp unless approved by the Department in accordance with this Section. A list of approved laboratories will be made available by the department on its website.
- b) No laboratory shall be approved to handle, test or analyze cannabis unless the laboratory:
- 1) Is accredited to the ISO/IEX 17025 standard by a private non-profit laboratory accrediting organization;
 - 2) Is independent form all other persons involved in the hemp industry in Illinois, which shall mean that no person with a direct or indirect interest in the laboratory shall have a direct or indirect financial, management, or other interest in a cultivation license or processor registration;
 - 3) Has employed at least one person to oversee and be responsible for the laboratory testing who was eared, from a college or university accredited by a national or regional certifying authority, at least:
 - A) a master’s level degree in chemical or biological sciences and a minimum of two years post-degree laboratory experience; or
 - B) a bachelor’s degree in biological sciences and a minimum of four years post-degree laboratory experience.
- c) Each independent testing laboratory that claims to be accredited must provide the Department with a copy of the most recent annual inspection report granting accreditation and every annual report thereafter.

Section 1200.70 Testing Requirements

- a) Industrial Hemp sampled for testing may be transported to the approved laboratory by the Director, or one of his designees, or by approved laboratory personnel.
- b) The Industrial Hemp shall be tested using post-decarboxylation, or other similarly reliable methods, to detect delta-9 concentration levels of the sampled hemp.”

55. In line 300 after “\$1000.00” add “for a three (3) year license; \$700.00 for a two (2) year license; and \$375.00 for a one (1) year license”.
56. Delete line 303, 304, and 305 in its entirety.
57. In line 315 renumber “Section 1200.70” to “Section 1200.90”.
58. In line 318 after “plants” add “, or” and after “seeds” add “, leaf material, or floral material”.
59. In line 322 after “plants” add “, or” and after “seeds” add “, leaf material, or floral material”.
60. In line 323 replace “that state” with “the destination state”.
61. In line 330, renumber “Section 1200.80” to “Section 1200.100”.
62. In line 346, renumber “Section 1200.90” to “Section 1200.110”.
63. In line 348 replace “A non licensed or nonregistered person,” with “Only a licensed or registered person, or an agent thereof”, and after “may” add “not”.
64. In line 349 after “industrial hemp” add “that has not been processed”.
65. After line 353 add a new subpart (c), “(c) Approved laboratory personnel may transport hemp samples for testing to laboratories for testing purposes.”
66. After line 353, and after the new subpart (c) referenced above, add a new subpart (d), “(d) There is no State restriction on the transportation of Industrial Hemp product following retail sale to a member of the public.”
67. After line 353, and after the new subpart (d) referenced above, add a new Section,

“Section 1200.120 Violations

- a) A Licensee shall be subject to subparagraph b) of this paragraph if the Department determines that the Licensee has negligently violated the Act or this Part, including by negligently:
 1. Failing to provide a legal description of land on which the Licensee produces hemp;
 2. Failing to obtain a license; or
 3. Producing Cannabis sativa L. with a delta-9 THC concentration of more than 0.3 percent on a dry weight basis.

- b) A hemp Licensee described in subparagraph a) shall comply with a plan established by the Department to correct the negligent violation including:
1. A reasonable date by which the Licensee shall correct the negligent violation; and
 2. A requirement that the Licensee shall periodically report to the Department on the compliance of the Licensee for a period of not less than 2 calendar years.
- c) A Licensee that negligently violates the Act or the Part under 1200.120 a) shall not as a result of that violation be subject to any criminal enforcement action by any Federal, State, or local government.
- d) A Licensee that negligently violates Section 1200.120 a) three (3) times in a five (5) year period shall be ineligible to produce hemp for a period of five (5) years beginning on the date of the third violation.
- e) If the Department determines that a Licensee has violated the Act or this Part with a culpable mental state greater than negligence, the Department shall immediately report the Licensee to:
1. The Attorney General of the United States;
 2. The Attorney General of Illinois; and
 3. The Illinois State Police.”

68. In line 354 renumber “Section 1200.100” to “Section 1200.130”.