

**Industrial Hemp Program Study Committee**

**Monday, November 21, 2016**

**12:30 p.m.**

**Room 103**

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## **PANEL #2**

**Colorado Revised Statutes**

**Title 35**

**Agriculture**

**Article 61**

**Industrial Hemp Regulatory Program**

TITLE 35  
AGRICULTURE

ARTICLE 61  
Industrial Hemp Regulatory Program

C.R.S. 35 - 61-109

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**35-61-101. Definitions**

As used in this article, unless the context otherwise requires:

- (1) "Certified seed" means industrial hemp seed, including Colorado heritage cannabis seed, that has been certified by an organization recognized by the department as having no more than three-tenths of one percent of delta-9 tetrahydrocannabinol concentration on a dry-weight basis.

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- (2) "Colorado heritage cannabis seed" means seed from the plant cannabis sativa that possesses characteristics of a unique and specialized cannabis seed variety that is present in Colorado or has been recognized as produced in Colorado.
- (3) "Commissioner" means the commissioner of agriculture.
- (4) "Committee" means the industrial hemp committee established in section 35-61-103.
- (5) "Delta-9 tetrahydrocannabinols" has the same meaning as "tetrahydrocannabinols" as set forth in section 27-80-203 (24), C.R.S.
- (6) "Department" means the department of agriculture.
- (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 concentration of no more than three-tenths of one percent on a dry weight basis.

### **35-61-102. Industrial hemp - permitted growth by registered persons**

- (1) Notwithstanding any other provision of law to the contrary, a person who holds a registration issued pursuant to section 35-61-104 may:
  - (a) Engage in industrial hemp cultivation for commercial purposes; or
  - (b) Grow industrial hemp for research and development purposes.
- (2) Notwithstanding any other provision of law, a person registered pursuant to section 35-61-104 is not subject to any civil or criminal actions for engaging in the activities described in subsection (1) of this section if the person is acting in compliance with this article.

### **35-61-103. Industrial hemp committee -appointments -duties - coordination with department**

- (1) (a) The industrial hemp committee is hereby established. The chair of the agriculture, livestock, and natural resources committee in the house of representatives and the chair of the agriculture, natural resources, and energy committee in the senate shall jointly appoint eleven members to the industrial hemp committee as follows:

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- (I) One member with experience in industrial hemp regulation;
  - (II) One member who is a farmer from a cooperative;
  - (III) One member who is a commercial farmer;
  - (IV) One member with experience in seed development and genetics;
  - (V) One member representing the hemp manufacturing industry;
  - (VI) One member representing small hemp businesses;
  - (VII) One member who is a representative of the attorney general's office;
  - (VIII) One member who is a citizen advocate for industrial hemp;
  - (IX) One member who is a representative from a research institution of higher education.
  - (X) One member who is a representative from the cannabinoid industry; and
  - (XI) One member who represents certified seed growers.
- (b) The term of office of members of the committee is three years; except that the members appointed pursuant to subparagraphs (I), (V), (VI), and (VIII) of paragraph (a) of this subsection (1) shall serve initial two-year terms to ensure staggered terms of office.
- (c) Each committee member holds office until his or her term of office expires or until a successor is duly appointed. If a vacancy occurs on the board, the appointing authorities shall appoint a new member meeting the qualifications of the member vacating the position to serve the remainder of the unexpired term of the member.
- (d) Members of the committee shall serve without compensation but are entitled to reimbursement for actual and necessary travel and subsistence expenses incurred in the performance of their official duties as members of the committee.
- (2) The committee shall work with the department to establish an industrial hemp registration program and a seed certification program pursuant to section 35-61-104, under which a person may obtain authorization to:
- (a) Engage in industrial hemp cultivation; or

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- (b) Grow industrial hemp for purposes of research and development.
- (3) The committee shall assist the department in determining the qualifications and other criteria a person must satisfy to qualify for registration under this article. The committee shall assist the department in the development of a seed certification program.
- (4) The committee shall meet at least once a year.

**35-61-104. Registration - cultivation of industrial hemp - research and development growth - rules**

- (1) (a) A person wishing to engage in industrial hemp cultivation for commercial purposes or to grow industrial hemp for research and development purposes shall apply to the department for a registration in a form and manner determined by the commissioner, in consultation with the committee, prior to planting the industrial hemp for commercial or research and development purposes. The application must include the name and address of the applicant and the legal description, global positioning system location, and map of the land area on which the applicant plans to engage in industrial hemp cultivation or research and development growth operations. The applicant shall also submit to the department the fee required by section 35-61-106 (2). Application for registration pursuant to this section is a matter of statewide concern.  
  
(b) If a person registered under the industrial hemp remediation pilot program prior to May 28, 2013, applies for a registration pursuant to paragraph (a) of this subsection (1) within sixty days after the applications are made available, the person may continue to engage in industrial hemp activities as authorized under the pilot program until the commissioner makes a determination on the person's application.
- (2) If a person applies for registration in accordance with subsection (1) of this section and the commissioner determines that the person has satisfied the requirements for registration pursuant to this article, the commissioner shall issue a registration to the person.
- (3) A registration issued pursuant to this section is valid for one year. In order to continue engaging in industrial hemp cultivation or research and development growth operations in this state, the registrant must annually apply for a registration in accordance with subsection (1) of this section.
- (4) If the registrant wishes to alter the land area on which the registrant will conduct industrial hemp cultivation or research and development growth operations, before altering the area, the registrant shall submit to the department an updated legal

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description, global positioning system location, and map specifying the proposed alterations.

- (5) The commissioner shall adopt rules by March 1, 2014, and as necessary thereafter to implement the registration program and to implement and administer this article.

### **35-61-104.5. Research – certified seed program – fees**

- (1) (a) The department shall administer an industrial hemp grant research program so that state institutions of higher education may conduct research to develop or recreate strains of industrial hemp best suited for industrial applications. The purpose of the research may include growing industrial hemp to provide breeding strains to aid Colorado's industrial hemp program and to create Colorado strains of industrial hemp.

(b) An institution of higher education that conducts industrial hemp seed research may accept seed varieties that are approved by the committee or the department. The institution of higher education may work with private hemp developers and other stakeholders to develop a Colorado heritage seed.

- (1.5) The department shall administer a certified seed program that identifies seeds that produce industrial hemp. In accordance with all federal and state laws and regulations, the department may import seeds to develop the certified seed program.
- (2) In addition to the fees collected pursuant to section 35-61-106, the commissioner may collect an additional fee, established by the committee, from each registrant for the purpose of funding industrial hemp research and certification programs, including by making grants to institutions of higher education as specified in subsection (1) of this section. The fees collected shall be deposited in the industrial hemp research grant fund created in section 35-61-106 (3). The department may solicit, apply for, and accept moneys from other sources for the grant program.

### **35-61-105. Report of growth and sales activities - verification of crop content - testing - waiver of concentration limits – rules**

- (1) At least annually and more often as required by the commissioner, a person who obtains a registration under this article to engage in industrial hemp cultivation for commercial purposes shall file with the department a report that includes the following information:

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- (a) Prior to planting, a verification that the crop the registrant will plant is of a type and variety of hemp that will produce a delta-9 tetrahydrocannabinol concentration of no more than three-tenths of one percent on a dry weight basis;
  - (b) Documentation demonstrating that the registrant has entered into a purchase agreement with an in-state industrial hemp processor; and
  - (c) Any other information required by the commissioner by rule.
- (2) The commissioner, in consultation with the committee, shall adopt rules to establish an inspection program to determine delta-9 tetrahydrocannabinol levels and ensure compliance with the limits on delta-9 tetrahydrocannabinol concentration. The rules shall also establish a process by which a registrant may apply to the commissioner for a waiver from the delta-9 tetrahydrocannabinol concentration limits under circumstances specified in the rules.

### **35-61-105.5. Testing laboratories**

If a person registered pursuant to this article wants a licensed retail marijuana testing facility to perform testing on the industrial hemp that the registrant is cultivating, that person shall use a radio frequency identification-based inventory tracking system approved by the commissioner for a sample of the registrant's industrial hemp crop. The commissioner shall only approve an inventory tracking system if that system is compatible with the state licensing authority's seed-to-sale tracking system required pursuant to section 12-43.4-202 (1), C.R.S. A licensed retail testing facility shall provide the test results to the registrant and the commissioner. All test results shall be considered confidential business information. This section shall not be construed to prevent the use of the tracking system for other purposes

### **35-61-106. Industrial hemp registration program cash fund – industrial hemp research grant cash fund - fees**

- (1) There is hereby created in the state treasury the industrial hemp registration program cash fund, referred to in this article as the "fund". The fund consists of fees collected by the commissioner pursuant to subsection (2) of this section and any general fund moneys appropriated to the fund by the general assembly. The moneys in the fund are subject to annual appropriation by the general assembly to the department for the direct and indirect costs associated with implementing this article.

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- (2) The commissioner shall collect a fee from persons applying for a registration pursuant to this article. The commissioner shall set a fee schedule based on the size and use of the land area on which the person will conduct industrial hemp operations and shall set the fee at a level sufficient to generate the amount of moneys necessary to cover the department's direct and indirect costs in implementing this article. The commissioner shall transmit the fees collected pursuant to this section to the state treasurer for deposit in the fund.
- (3) There is hereby created in the state treasury the industrial hemp research grant fund. The fund consists of:
  - (a) Fees collected by the commissioner pursuant to section 35-61-104.5 (2);
  - (b) Any moneys from foundations, private individuals, or any other funding sources that can be used to expand the scope or time frame of any hemp research authorized pursuant to this article;
  - (c) On and after July 1, 2015, up to ten million dollars from the marijuana tax cash fund created in section 39-28.8-501, C.R.S., as enacted by Senate Bill 14-215. The moneys in the fund are subject to annual appropriations by the general assembly to the department to establish and administer an industrial hemp research grant program and to conduct hemp research.

### **35-61-107. Violations – penalties**

- (1) The commissioner may deny, revoke, or suspend a registration if the applicant or registrant:
  - (a) Violates any provision of this article or rules adopted pursuant to this article;
  - (b) Engages in fraud or deception in the procurement of or attempt to procure a registration under this article or provides false information on a registration application; or
  - (c) Fails to comply with any lawful order of the commissioner.
- (2) The commissioner may impose a civil penalty, not to exceed two thousand five hundred dollars per violation, on any person who violates this article or any rule adopted under this article.
- (3) The commissioner shall not impose a penalty against a person alleged to have violated this article or a rule adopted under this article until the commissioner has notified the

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person of the charge and has given the person an opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

- (4) If the commissioner is unable to collect a civil penalty or if a person fails to pay all or a portion of a civil penalty imposed pursuant to this section, the commissioner may bring an action in a court of competent jurisdiction to recover the civil penalty plus attorney fees and costs.
- (5) The commissioner shall neither revoke nor suspend an institution of higher education's registration or a research-and-development registrant's registration when a sample of the registrant's industrial hemp tests higher than the limits established by rule of the commissioner if the crop is destroyed or utilized in a manner approved of and verified by the commissioner.

### **35-61-108. Exportation of industrial hemp – processing, sale, and distribution - rules**

- (1) Nothing in this article limits or precludes the exportation of industrial hemp in accordance with the federal "Controlled Substances Act", as amended, 21 U.S.C. sec. 801 et seq., federal regulations adopted under the act, and case law interpreting the act.
- (2) Notwithstanding any other provision of law, a person engaged in processing, selling, transporting, possession, or otherwise distributing industrial hemp cultivated by a person registered under this article, or selling industrial hemp products produced therefrom, is not subject to any civil or criminal actions under Colorado law for engaging in such activities. The department may promulgate rules to require approved shipping documentation for the transportation of hemp.

### **35-61-109. Repeal of article**

- (1) This article is repealed if one of the following occurs:
  - (a) The United States congress enacts, the president signs, and the federal government implements federal law authorizing the United States department of agriculture to regulate the cultivation and research and development of industrial hemp; or

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- (b) The commissioner determines, in consultation with the committee, that industrial hemp, as a commodity in the market, is financially and economically stable, and state regulation of industrial hemp cultivation is no longer necessary.
- (2) Upon the occurrence of one of the conditions described in subsection (1) of this section, the commissioner shall notify the reviser of statutes, in writing, that one of the conditions has occurred.

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