

**CERTIFICATION OF ADMINISTRATIVE RULES
FILED WITH THE LEGISLATIVE SERVICES AGENCY
OTHNI LATHRAM, DIRECTOR**

(Pursuant to Code of Alabama 1975 §41-22-6, as amended).

I certify that the attached is/are correct copy/copies of rule/s as promulgated and adopted on the 13th day of November 2018 and filed with the agency secretary on the 13th day of November 2018.

AGENCY NAME: Alabama Department of Agriculture and Industries

 Amendment **X** New Repeal (Mark appropriate space)

Chapter No.: 80-10-21

(If amended rule, give specific paragraph, subparagraphs, etc., being amended)

80-10-21-.02 paragraph # 6, **80-10-21.03**, paragraphs # 1(b), (h)1, and #4, **80-10-21-.04** paragraphs 1(d), K (1), and #5, **80-10-21-.05** paragraphs J (1), and #4, **80-10-21-.08** paragraphs #1 and #2, **80-10-21-.09** paragraphs #2, #3(a), (c), #4, **80-10-21-.13** paragraph #3

Chapter Title: Industrial Hemp

ACTION TAKEN: State whether the chapter was adopted with or without changes from the proposal due to written or oral comments:

Adopted with changes.

NOTICE OF INTENDED ACTION PUBLISHED IN VOLUME XXXVI
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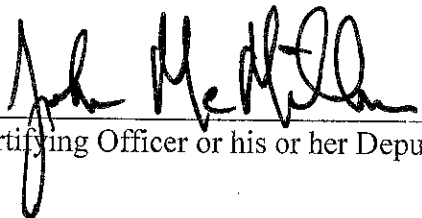
Statutory Rulemaking Authority: Code of Ala. 1975, §20-1-2

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Certifying Officer or his or her Deputy

(NOTE: In accordance with §41-22-6(b), as amended, a proposed rule is required to be certified within 90 days after completion of the notice.)

ALABAMA DEPARTMENT OF AGRICULTURE AND INDUSTRIES

PLANT INDUSTRY

ADMINISTRATIVE CODE

CHAPTER 80-10-21

INDUSTRIAL HEMP

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80-10-21-.01 Purpose. To authorize the Alabama Department of Agriculture & Industries to administer an industrial hemp program and to authorize the production of industrial hemp to be used for the manufacture of industrial hemp products.

Author: N. Gunter Guy Jr.

Statutory Authority: Code of Ala. 1975, §2-8-380, et seq.

History: New Rule Filed: November 15, 2018; effective December 30, 2018.

80-10-21-.02 Definitions.

(1) "Act" means the Alabama Industrial Hemp Research Program Act, Code of Ala. 1975, §§ 2-8-380, et seq.

(2) "Applicant" means a person that is an individual residing in Alabama or an institution of higher education as defined in section 101 of the Higher Education Act of 1965 (20 U.S. Code § 1001(a)), a sole proprietorship, partnership, association, corporation, limited liability corporation, limited partnership, or any other business entity having any:

(a) Place of business permanently located within this state;

(b) Employees permanently assigned to work stations or areas located within this state; or

(c) Tangible assets permanently located within this state;

and who submits an application to grow industrial hemp.

(3) "Grower" means someone who is licensed to grow industrial hemp by the Alabama Department of Agriculture & Industries.

(4) "Commissioner" means the Commissioner of Agriculture & Industries and any employee of the Department of Agriculture associated with the Industrial Hemp Regulatory Program.

(5) "Industrial Hemp" means all parts and varieties of the plant *Cannabis sativa*, cultivated or possessed by a licensed grower, whether growing or not, that contain a delta-9 tetrahydrocannabinol concentration of not more than 0.3 % on a dry weight basis. Industrial hemp shall be considered an agricultural crop or an agricultural commodity, or both, in all respects under state law. The term excludes marijuana as defined in subdivision (14) of Section 20-2-2 of the Code of Alabama 1975.

(6) "Sample" means parts taken as representative of the combined total number of plants in the growing area, research site, storage area, or other building facility.

(7) "Department" means the Alabama Department of Agriculture & Industries.

(8) "Institution of Higher Education" means a postsecondary institution, as defined in 20 U.S. Code 1001(a).

(9) "Growing Area" means the land area on which the industrial hemp is grown.

(10) "Viable" means able to regenerate, reproduce, or survive.

(11) "Processor" means a person or business who treats or transforms harvested industrial hemp from its natural state for distribution in commerce.

(12) "Propagule" means any viable plant material cultivated from a mother plant.

Author: N. Gunter Guy Jr.

Statutory Authority: Code of Ala. 1975, §§2-8-381, 2-8-383

History: New Rule Filed: November 15, 2018; effective December 30, 2018.

80-10-21-.03 Industrial Hemp Institution of Higher Learning License.

(1) Each Institution of Higher Learning seeking an industrial hemp grower's license shall submit a signed, completed, accurate, and legible application form provided by the Commissioner by November 1 of the preceding year in which the applicant plans to grow industrial hemp, which includes the following:

(a) The university's name, mailing address, and phone number in Alabama and, if applicable, their electronic-mailing address;

(b) The cultivated variety that will be sown, and/or grown;

(c) The source and amount of certified seed to be used;

(d) The number of acres to be cultivated for seed, viable grain, industrial products, or any combination thereof;

(e) The Global Positioning System coordinates in decimal degrees from the central most point of the growing area to

be cultivated and a map showing the location of the growing area in terms of its address or legal description;

(f) The address of the place in Alabama where the university will keep the records, books, electronic data, or other documents that are required by these regulations;

(g) The name and address of each place where the industrial hemp is to be stored, sold, or provided, indicating for each place the form of the industrial hemp; and

(h) The university's acknowledgment and agreement to the following terms and conditions:

(1) Any information obtained by the Department may be publicly disclosed pursuant to the Alabama Open Records Act and/or provided to law enforcement agencies without further notice to the applicant or licensee.

(2) The university agrees to allow any inspection and sampling that the Department deems necessary.

(3) The university agrees to pay for any sampling and analysis costs that the Department deems necessary.

(4) The university agrees to submit all required reports by the applicable due dates specified by the Commissioner.

(2) Any application for a license received after November 1 of the preceding year in which an applicant applies will be denied except for good cause shown. Failure to complete an accurate application by November 1 of the preceding year will also be denied.

(3) In addition to the application form, each applicant for a license shall submit an application fee of \$200. If the fee does not accompany the application, the application for a license will be deemed incomplete. The application fee is non-refundable.

(4) The annual participant fee for production of industrial hemp shall be \$1000 per growing address. Upon notification that your application has been accepted into the program, the annual participant fee shall be submitted to the Department within 10 business days.

(5) All licenses shall be valid for one year from the date of issuance.

(6) A site modification fee of \$1000 per change or addition of GPS coordinates will be charged. Any university that wishes to alter the growing areas on which the licensee will conduct industrial hemp cultivation shall, before altering the area, submit to the Department for approval, in addition to the site modification fee, an updated address, Global Positioning System location, and map specifying the proposed alterations.

Author: N. Gunter Guy Jr.

Statutory Authority: Code of Alabama 1975, §2-8-383

History: New Rule Filed: November 15, 2018; effective December 30, 2018.

80-10-21-.04 Industrial Hemp Grower License.

(1) Each applicant for an industrial hemp grower's license shall submit a signed, completed, accurate, and legible application form provided by the Commissioner by November 1 of the preceding year in which the applicant plans to grow industrial hemp, which includes the following:

(a) The applicant's name, mailing address, phone number in Alabama, and if applicable, their electronic mailing address;

(b) If the applicant is an individual or partnership, the date of birth of the individual or partners;

(c) If the applicant is any business entity other than an individual, partnership, or institution of higher learning, documentation that the entity is authorized to do business in Alabama;

(d) The cultivated variety that will be sown ~~and/or~~ grown;

(e) The source and amount of certified seed to be used;

(f) The number of acres to be cultivated for seed, viable grain, industrial products, or any combination thereof;

(g) The Global Positioning System coordinates in decimal degrees from the central most point of the growing area to be cultivated and a map showing that location of the growing area in terms of its address or legal description;

(h) A statement that the applicant is the owner of the growing area to be used for the cultivation or a statement, signed

by the owner of the growing area, indicating that he has consented to that use;

(i) The address of the place in Alabama where the applicant will keep the records, books, electronic data, or other documents that are required by these regulations;

(j) The name and address of each place where the industrial hemp is to be stored, sold, or provided, indicating for each place the form of the industrial hemp; and

(k) The applicant's acknowledgment and agreement to the following terms and conditions:

(1) Any information obtained by the Department may be publicly disclosed pursuant to the Alabama Open Records Act and/or provided to law-enforcement agencies without further notice to the applicant or licensee.

(2) The licensee agrees to allow any inspection and sampling that the Department deems necessary.

(3) The licensee agrees to pay for any sampling and analysis costs that the Department deems necessary.

(4) The licensee agrees to submit all required reports by the applicable due dates specified by the Commissioner.

(5) The applicant, any partners, directors, or members that have not been convicted of any felony related to the possession, production, sale, or distribution of a controlled substance in any form in this or any other country.

(2) An application shall be signed by the applicant or, in the case of a corporation, cooperative, or partnership, one of its officers, directors, or partners and indicate that all information and documents submitted in support of the application are true and complete to the best of their knowledge.

(3) Any application for a license received after November 1 of the preceding year in which an applicant applies will be denied except for good cause shown. Failure to complete an accurate application by November 1 of the preceding year will also be denied.

(4) In addition to the application form, each applicant for a license shall submit an application fee of \$200. If the fee does not accompany the application, the application for a license will be deemed incomplete. The application fee is non-refundable.

(5) The annual participant fee for production of industrial hemp shall be \$1000 per growing address. Upon notification that your application has been accepted into the program, the annual participant fee shall be submitted to the Department within 10 business days.

(6) All licenses shall be valid for one year from the date of issuance.

(7) A site modification fee of \$1000 per change or addition of GPS coordinates will be charged. Any licensee that wishes to alter the growing areas on which the licensee will conduct industrial hemp cultivation shall, before altering the area, submit to the Department for approval, in addition to the site modification fee, an updated address, Global Positioning System location, and map specifying the proposed alterations.

Author: N. Gunter Guy Jr.

Statutory Authority: Code of Alabama 1975, §2-8-383

History: New Rule Filed: November 15, 2018; effective December 30, 2018.

80-10-21-.05 Industrial Hemp Processor License.

(1) Each applicant for an industrial hemp processor license shall submit a signed, complete, accurate, and legible application form provided by the Commissioner, which includes the following:

(a) The applicant's name, mailing address, and phone number in Alabama and, if applicable, their electronic-mailing address;

(b) If the applicant is an individual or partnership, the date of birth of the individual or partners;

(c) If the applicant is any business entity other than an individual, partnership, or institution of higher learning, documentation that the entity is authorized to do business in Alabama;

(d) The intended use of the crop;

(e) The form in which the crop is to be sold or distributed;

(f) The Global Positioning System coordinates in decimal degrees of each building;

(g) A statement that the applicant is the owner of the business, or a statement, signed by the owner of the growing area, indicating that the individual has consented to that use;

(h) The address of the place in Alabama where the applicant will keep the records, books, electronic data, or other documents that are required by these regulations;

(i) The name and address of each place where the industrial hemp is to be processed;

(j) The applicant's acknowledgment and agreement to the following terms and conditions:

(1) Any information obtained by the Department may be publicly disclosed pursuant to the Alabama Open Records Act and/or provided to law enforcement agencies without further notice to the applicant or licensee.

(2) The licensee agrees to allow any inspection and sampling that the Department deems necessary.

(3) The licensee agrees to pay for any sampling and analysis costs that the Department deems necessary.

(4) The licensee agrees to submit all required reports by the applicable due dates specified by the Commissioner.

(5) The applicant, any partners, directors, or members have not been convicted of any felony related to the possession, production, sale, or distribution of a controlled substance in any form in this or any other country.

(2) An application shall be signed by the applicant or, in the case of a corporation, cooperative, or partnership, one of its officers, directors, or partners and indicate that all information and documents submitted in support of the application are correct and complete to the best of their knowledge.

(3) In addition to the application form, each applicant for a license shall submit an application fee of \$200. If the fee does not accompany the application, the application for a license will be deemed incomplete. The application fee is non-refundable.

(4) The annual participant fee for production, ~~of~~ or research and development of industrial hemp shall be \$1000 per growing address, or research and development facility address. Upon notification

that your application has been accepted into the program, the annual participant fee shall be submitted to the Department within 10 business days.

(5) All licenses shall be valid for one year from the date of issuance.

(6) A site modification fee of \$1000 per change or addition of GPS coordinates will be charged. Any licensee that wishes to alter the growing areas on which the licensee will conduct industrial hemp cultivation shall, before altering the area, submit to the Department for approval, in addition to the site modification fee, an updated address, Global Positioning System location, and map specifying the proposed alterations.

Author: N. Gunter Guy Jr.

Statutory Authority: Code of Alabama 1975, §2-8-383

History: New Rule Filed: November 15, 2018; effective December 30, 2018.

80-10-21-.06 License Evaluation.

The Alabama Department of Agriculture & Industries is not required to approve all applications, even if the applicant meets the requirements for a license. There are a limited number of applications that will be approved each year. The Department will consider factors such as:

- (1) Demographics;
- (2) Venue;
- (3) Diversification;
- (4) Experience of the grower;
- (5) Knowledge of the grower;
- (6) Location of the cultivation site;
- (7) Criminal history of the applicant, subcontractors, or employee(s); and
- (8) Prior administrative actions taken by the Department against the applicant.

Author: N. Gunter Guy Jr.

Statutory Authority: Code of Alabama 1975, §2-8-383

History: New Rule Filed: November 15, 2018; effective December 30, 2018.

80-10-21-.07 Acquisition of Seed and Propagules.

(1) Each licensee shall be responsible for acquisition and transport of seed or propagules used for growth of industrial hemp. Prior to acquisition of propagating material, the licensee shall submit on forms provided by the Department a seed acquisition request, which may require:

(a) A copy of the industrial hemp license for which the propagating material is requested;

(b) The scientific or common name for the variety requested;

(c) The name, address, telephone number, and email address of the person providing the requested material;

(d) Evidence that the source of the variety is:

(1) A university;

(2) A state department of agriculture authorized to conduct an industrial hemp pilot program. If the source is a pilot program participant in this or another state, a copy of that participant's industrial hemp license is sufficient to fulfill the requirement; or,

(3) A lawful vendor of industrial hemp in the jurisdiction where it is distributed;

(e) The form of material to be acquired (e.g. seed, seedlings, cuttings, etc.);

(f) The quantity in pounds of seed or number of propagules to be acquired;

(g) Test results from an ISO-accredited or state department of agriculture approved, third party laboratory certifying that material from the variety has been shown to contain no more than 0.3% THC on a dry mass basis; and,

(h) Evidence that the licensee is authorized to propagate industrial hemp from the material, if applicable.

(2) Prior to cultivation by any licensee, all propagating material acquired through the Alabama Department of Agriculture & Industries' controlled substance registration or

acquired for growth by non-university licensees shall first be inventoried by the Department at: Alabama Department of Agriculture & Industries, Industrial Hemp Program, 1445 Federal Drive, Montgomery, AL 36107.

(3) Costs. Licensees shall pay all costs incurred for acquisition and delivery of any seed or propagules, including but not limited to costs for procurement, taxes, shipping, and customs brokerage.

(4) Return. The Department may return to its sender any industrial hemp in the Department's possession that was requested for shipment or distribution to an ineligible person or that was not approved for use in their industrial hemp pilot program. The Department may destroy any industrial hemp that is not retrieved by its intended recipient in a timely manner.

Author: N. Gunter Guy Jr.

Statutory Authority: Code of Alabama 1975, §2-8-383

History: New Rule Filed: November 15, 2018; effective December 30, 2018.

80-10-21-.08 Reports.

(1) At least 10 business days prior to harvest, each industrial hemp licensee shall file a report with the Commissioner that shall include a statement of intended disposition of its industrial hemp crop.

(2) Licensees must report any subsequent changes to the purchase agreement or disposition statement to the Commissioner within 10 business days of the change.

(3) At least 3 business days prior to the movement of the industrial hemp grain or plant material from the permitted location, the licensee shall submit to the Commissioner an application for movement permit. The application shall include the mode and location to which the product is to be transported. An inspection of the product may occur prior to movement. Out-of-state movement of industrial hemp may occur only by lawful passage through states that have authorized the possession and distribution of industrial hemp.

(4) Licensees must immediately report the theft or loss of industrial hemp to the Department.

(5) On forms provided by the Department, a licensee must immediately report to the Department:

(a) Changes to the name, address, email, or telephone number of the licensee;

(b) Changes in the ownership or structure of the entity holding an industrial hemp license;

(c) Changes in location or the addition of a field or growing area.

(6) Growers and processors must ensure that all laboratory THC test results for all harvest lots are timely reported to the Department and that any failed test report is immediately reported to the Department.

Author: N. Gunter Guy Jr.

Statutory Authority: Code of Alabama 1975, §2-8-383

History: New Rule Filed: November 15, 2018; effective December 30, 2018.

80-10-21-.09 Inspections and Sampling.

(1) All licensees are subject to sampling of their industrial hemp crop to verify that the THC concentration does not exceed 0.3% on a dry mass basis.

(2) During the inspection, the licensee or authorized representative shall be present at the growing area, research site, storage area, or other building facility. The licensee 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 licensee's industrial hemp business.

(3) Sampling of industrial hemp plants will occur in the following manner:

(a) Samples of each variety of industrial hemp may be sampled from the growing areas, research site, storage area, or building facility at the Commissioner's discretion.

(b) Quantitative laboratory determination of the THC concentration on a dry mass basis will be performed according to protocols approved by the Commissioner.

(c) A 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, research site, storage area, or building facility contains a THC concentration over the limit allowed for industrial hemp and that the licensee of that growing area, research site, storage area, or building facility 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 an industrial hemp licensee. The Commissioner shall furnish to the licensee a portion of the violative sample if the licensee requests it within 30 days of notification.

(d) After the Department obtains a sample, licensees shall not move any Cannabis plant or plant product from the area represented by the sample until the Department determines the same tests no higher than 0.3% THC on a dry mass basis.

(4) Fees. Licensees shall pay a charge of \$250 dollars per inspection for each growing area, research site, storage area, or building facility.

(5) Destruction.

(a) Cannabis plants found to be in violation of the Act or this Chapter shall be destroyed in accordance with a departmental directive or destruction order.

(b) Destruction of any plants or plant products under this rule shall be performed in accordance with a directive from the Commissioner, which may include destruction by any means necessary for reasonable that all Cannabis plants exceeding allowable limits of THC concentration are destroyed, e.g. by removal and incineration, field burning, deep burial, or other means authorized by the Department.

(6) Administrative Appeal. Any licensee aggrieved by an order issued under this Chapter may submit a written request for a hearing within 15 days of the date of the destruction order being issued. If no petition is filed with the department within the 15-day period, the Department's order shall become final and will not be subject to review. For purposes of any hearing under this Chapter, any Cannabis plant grown or processed by a licensee under the Department's industrial hemp pilot program shall be considered property of the Department for researching the growth, cultivation, and marketability of industrial hemp and not a legal right, duty, or privilege of the licensee.

Author: N. Gunter Guy Jr.

Statutory Authority: Code of Alabama 1975, §2-8-383

History: New Rule Filed: November 15, 2018; effective December 30, 2018.

80-10-21-.10 Records. Growers shall retain the following records for no less than 5 years from the date the record is obtained or generated:

(1) All records relating to information supplied in the application for a license;

(2) All records relating to the use and disposition of industrial hemp harvested or any plant parts thereof;

(3) All records relating to the storage or processing of industrial hemp or any plants parts thereof;

(4) All records relating to the destruction of industrial hemp harvested or any plant parts thereof, including but not limited to, any affidavits, notifications, and electronic records required by this subchapter.

Author: N. Gunter Guy Jr.

Statutory Authority: Code of Alabama 1975, §2-8-383

History: New Rule Filed: November 15, 2018; effective December 30, 2018.

80-10-21-.11 Violations. In addition to any other violations of the Code of Alabama or this Chapter, the following acts and omissions by any licensee or authorized representative thereof constitute violations for which civil penalties up to \$500 and disciplinary sanctions, including revocation of an application, may be imposed by the Commissioner:

(1) Refusal or failure by a licensee or authorized representative to fully cooperate and assist the Department with the inspection process.

(2) Failure to provide any information required or requested by the Commissioner.

(3) Providing false, misleading, or incorrect information pertaining to the licensee'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.

(4) Failure to submit any required report.

(5) Growing industrial hemp that when tested is shown to have a THC concentration greater than 0.3% on a dry mass basis.

(6) Failure to pay fees assessed by the Commissioner for inspection or laboratory analysis costs.

(7) Cultivating, handling, processing, or marketing living industrial hemp plants or viable seeds, leaf materials, or floral materials derived from industrial hemp without a license.

Author: N. Gunter Guy Jr.

Statutory Authority: Code of Alabama 1975, §2-8-383

History: New Rule Filed: November 15, 2018; effective December 30, 2018.

80-10-21-.12 Disqualification Process.

(1) A "Notice of Disqualification" will be sent to the grower via certified mail.

(2) The notice will explain the cause(s) for the action and the effective date of the action.

(3) Disqualification takes effect on the 10th day from the date on the letter, during which time the grower may appeal the adverse action.

Author: N. Gunter Guy Jr.

Statutory Authority: Code of Alabama 1975, §2-8-383

History: New Rule Filed: November 15, 2018; effective December 30, 2018.

80-10-21-.13 Pre-Disqualification Meeting.

(1) Growers may request a pre-disqualification meeting with the Director of the Industrial Hemp Program. Growers may request that employees of the Alabama Department of Agriculture & Industries that are directly involved in the action be present for the meeting. However, representatives of other entities will not be allowed.

(2) The appeal will be heard by the Director of the Industrial Hemp Program.

(3) Growers will receive written notice acknowledging the request of the meeting within 10 business days.

- (4) The meeting may result in:
 - (a) Disqualification;
 - (b) Suspension and placed on probation;
 - (c) Sanction lifted with the grower being placed on probation; or
 - (d) Ruled in favor of the grower.

Author: N. Gunter Guy Jr.

Statutory Authority: Code of Alabama 1975, §2-8-383

History: New Rule Filed: November 15, 2018; effective December 30, 2018.

80-10-21-.14 Administrative Appeal from Denial of Application.

(1) If no pre-disqualified meeting is requested, or if the outcome of the meeting is not satisfactory an applicant and wishing to appeal the Department's denial or partial denial of an application shall submit a written request for a hearing postmarked within 15 days of the date of the Department's notification letter or email.

(2) An appealing applicant shall mail a hearing request letter to the Alabama Department of Agriculture & Industries, Industrial Hemp Program, located at 1445 Federal Drive, Montgomery, Alabama 36107-1123.

(3) Notice of the time and date of the appeal hearing will be given for preparation of the hearing.

(4) The applicant may request that the date of the hearing be rescheduled one time.

(5) The hearing will be conducted by an impartial hearing officer.

(6) Applicants will have an opportunity to confront the person or entity that denied their application.

(7) The basis of the hearing officer's decision will be delivered to the applicant in writing.

(8) If the disqualification is substantiated, the applicant will automatically be disqualified.

(9) Applicants may request a judicial review at their own expense.

Author: N. Gunter Guy Jr.

Statutory Authority: Code of Alabama 1975, §2-8-383

History: New Rule Filed: November 15, 2018; effective December 30, 2018.