

LOUISIANA DEPARTMENT OF AGRICULTURE & FORESTRY
REPORT OF COMMENTS RECEIVED AND RESPONSE TO COMMENTS
TO
THE HOUSE AND SENATE COMMITTEES ON AGRICULTURE, FORESTRY,
AQUACULTURE AND RURAL DEVELOPMENT
AND TO
COMMITTEES REQUIRED PURSUANT TO R.S. 49:968(D)(1)(b)

RE: Industrial Hemp (LAC 7:XIII.1301-1343)

I. PRELIMINARY MATTERS

The Louisiana Department of Agriculture and Forestry ("LDAF") filed a Notice of Intent to enact LAC 7:XIII.1301-1343 relative to the regulation, licensure, and enforcement of the cultivation, processing, and transportation of industrial hemp. The proposed regulations and necessary accompanying information, including the approved fiscal and economic impact statement, were submitted to the State Register, the Speaker of the House, the President of the Senate, and the respective oversight committees on or about October 10, 2019. The Notice of Intent was published in the Register at LR 45:10 pages 1479-1487.

The notice of intent stated that a public hearing would be held on December 3, 2019 at 9:00 a.m. in the Veterans' Auditorium at the Louisiana Department of Agriculture and Forestry, and all interested persons had through November 22, 2019 to submit written comments on the proposed rules. The name and address of the person designated to receive comments was provided in the notice.

II. CURRENT REGULATIONS

There are currently no regulations in Title 7 of the Louisiana Administrative Code addressing the regulation, licensure, and enforcement of the cultivation, processing, and transportation of industrial hemp. The proposed regulations that are the subject of this report will be LDAF's first set of regulations on this issue.

III. PROPOSED REGULATIONS

The proposed regulations, as published in the October 2019 edition of the Louisiana Register, are being adopted pursuant to R.S. 3:1461 et seq. regarding the regulation, licensure, and enforcement of the cultivation, processing, and transportation of industrial hemp.

More specifically, Section 1301 sets forth the Department's authority to adopt regulations. Section 1303 sets forth the definitions used in the industrial hemp regulations. Section 1305 addresses the general requirements for industrial hemp licenses. Section 1307 outlines the requirements for an industrial hemp seed producer license. Section 1309 outlines the requirements for an industrial hemp grower license. Section 1311 outlines the requirements for an industrial hemp processor license. Section 1313 outlines the requirements for an industrial hemp contract carrier license. Section 1315 addresses the background check requirements and procedures for applicants. Section 1317 sets forth the license and testing fees. Section 1319 addresses the requirements for industrial hemp growers and seed producers.

Section 1321 addresses the procedures for industrial hemp seed acquisition. Section 1323 establishes land restrictions for production and processing of industrial hemp. Section 1325 provides restrictions for certain industrial hemp sales and transfers. Section 1327 sets forth prohibited activities. Section 1329 outlines the requirements for submission of annual production reports to the Department. Section 1331 addresses maintenance and retention of records. Section 1333 outlines the authority of the commissioner or his authorized agent(s) to access a grower or processor facility for the purpose of inspection. Section 1335 requires that all industrial hemp be sampled for THC concentration levels and outlines testing procedures. Section 1337 addresses destruction methods for industrial grown in violation of this Part. Section 1339 outlines adjudicatory proceedings for violations of the law or regulations. Section 1341 outlines a plan for corrective action for negligent violations of the law or regulations. Section 1343 outlines the issuance of stop orders for alleged violations.

IV. CHANGES TO PROPOSED RULES PURSUANT TO FEDERAL RULES AND REGULATIONS

After the publication of the Notice of Intent, the United States Department of Agriculture (USDA) released rules and regulations regarding industrial hemp which outlined provisions for the USDA to approve plans submitted by States for the domestic production of industrial hemp. As a result, substantive changes to LDAF's proposed rules and regulations were made to ensure compliance with federal rules and regulations. Attached to this report is an underline-strikethrough version of all changes that were made to the proposed rules after the Notice of Intent was published. The Potpourri notice of the substantive changes was published in the Louisiana Register at LR 45:11 pages 1686-1690 and is attached to this Report. The Potpourri stated that a public hearing would be held on December 20, 2019 at 9:00 a.m. in the Veterans' Auditorium at the Louisiana Department of Agriculture and Forestry, and all interested persons had through December 20, 2019 to submit written comments on the proposed rules. The name and address of the person designated to receive comments was provided in the notice.

V. SUMMARY OF THE PUBLIC COMMENTS & DEPARTMENT RESPONSE

LDAF received one written public comment on the proposed rules after the Notice of Intent was published. The comment and LDAF's response to the comment is attached to this report. A public hearing was held on December 3, 2019. A summary of the comments received and LDAF's response thereto is listed below.

Oral Comments

Rob Dupont, III

Comments from Rob Dupont, III:

Mr. Dupont expressed concerns of the national THC testing protocol requiring total THC level of 0.3% post-decarboxylation. He stated there are no varieties in the country that will produce high CBD (>10%) with less than 0.3% total THC. He further stated that potential Industrial Hemp Producers/Growers believe they will not be able to comply with the new USDA rule. Rather, they would like the allowed total THC percentage to be raised to 0.5% or 1.0% total THC. Additionally, Mr. Dupont had concerns for the 15 day harvest-period requirement. He feels this period is too short and would like to see it increased to 30 days.

LDAF response to comments:

These regulations are requirements of the USDA federal guidelines, and must be part of Louisiana's regulations to remain federally compliant. LDAF encouraged Mr. Dupont to contact USDA during the federal public comment period.

Comments from Robert Dupont, III:

Mr. Dupont asked when does LDAF expect the final rule from USDA?

LDAF response to comments:

The federal public comment period ends January 29, 2020. They will have two years to process data and changes are not expected until after that two year period.

Dave Woolridge

Comments from Dave Woolridge:

Mr. Woolridge expressed concerns about the use of "certified" seed by growers and cost may eliminate small growers in Louisiana.

LDAF response to comments:

LDAF is aware there will be a challenge and the regulations require "certified seed or seed otherwise approved by LDAF". The intent of this requirement is to allow non-certified seed to be brought into and grown in Louisiana until a supply of certified seed is in adequate supply.

Comments from Dave Woolridge:

Mr. Woolridge also expressed concern that varieties have not been tested in the South and is doubtful the existing varieties would remain within .3% total THC level, and that conducting research trials for strains will be beneficial in Louisiana. He would like to see private industry allowed to do research in addition to the universities.

Mr. Woolridge asked if the requirement that "no licensee shall allow any unlicensed person who is not an employee of that licensee to grow, cultivate, etc..." prohibits independent contractors, or was there intent to use employees vs. independent contractors.

LDAF response to comments:

LDAF responded that this language mimics the wording in the statute. It does not prohibit independent contractors as long the licensee has direct supervision and is responsible for the person employed whether or not contracted.

Comments from Dave Woolridge:

Mr. Woolridge commented about the cost of licensing and testing fees. He thought \$500 license fee was excessive. He was also concerned about the cost of testing fees, if there were to be multiple testing required.

LDAF response to comments:

The statute allows for a \$500 for license fee and a \$250 sampling fee to be charged for each contiguous plot for sampling and analysis. At licensee request, a re-sampling fee will be applicable. Any other sampling/testing initiated by LDAF would not be charged to licensee.

Comments from Dave Woolridge:

Mr. Woolridge inquired about the alternative payment arrangements wording; asking if LDAF would waive/reduce fee due to hardship.

LDAF response to comments:

LDAF responded that the testing fee is set by statute, and it will not be reduced. The alternative payment arrangements apply to collecting payment at time of sample or making pre-arrangements for invoiced billing.

Comments from Dave Woolridge:

Mr. Woolridge noted that there was a typo in section 1335.D.4 of the regulations.

LDAF response to comments:

LDAF responded that it was corrected in Potpourri amendments.

Comments from Dave Woolridge:

Mr. Woolridge commented on the level of civil penalties for violations.

LDAF response to comments:

LDAF responded that section 1470.A of the Industrial Hemp Law makes it clear that violations can be as much as \$500 per day of violation.

Dr. Phil Elzer

Comments from Dr. Phil Elzer:

Dr. Elzer asked how LDAF plans to sample hemp when looking at CBD matured plants varieties verses varieties grown for fiber/seed.

LDAF response to comments:

LDAF responded that guidance from USDA does not distinguish between sampling of varieties. There is one sampling protocol which LDAF will follow. The grower will provide the harvest/crop destruction report and LDAF will collect the sample and harvest must be within 15 days of sampling.

Comments from Dr. Phil Elzer:

Dr. Elzer asked how LDAF plans to test plants that will be cuttings, transplants, etc.

LDAF response to comments:

LDAF responded that the staff will be traveling to other states to gain knowledge about this. LDAF will respond once answers are known. However, the parent material from which the cuttings or transplants originated are subject to THC testing.

Comments from Dr. Phil Elzer:

Dr. Elzer asked about blending of samples and if material will continue to gain in THC level post-sampling.

LDAF response to comments:

LDAF responded that blending or comingling of lots is not allowed under the industrial hemp program. LDAF will resample from the harvested product in which the integrity of the lot is maintained until the laboratory result is returned with an acceptable THC level.

Katelyn Castleberry

Comments from Katelyn Castleberry:

Ms. Castleberry asked if plants will be de-carboxylated prior to testing.

LDAF response to comments:

LDAF responded that total THC analysis must be in compliance with USDA guidelines, specifically Delta 9 THC + THCA = Total THC. The LDAF laboratory will be using liquid chromatography to detect Delta 9 THC and THCA in the sample, therefore, de-carboxylation is not required.

Comments from Katelyn Castleberry:

Ms. Castleberry asked if a crop is determined to be hot, will growers be allowed to cut off the top 12" – 14", destroy that, then retest stalks as a fiber use which may have a lower THC.

LDAF response to comments:

LDAF responded that the USDA does not allow remediation. Our regulations were amended with the Potpourri regulations to be in compliance with the USDA by removing the alternative path for fiber/non-consumer venue. The only option is to destroy the non-compliant crop.

Michelda West

Comments from Michelda West:

Ms. West asked if LDAF will allow third party testing during harvest time.

LDAF response to comments:

LDAF responded that regulatory samples will be processed by the LDAF Agricultural Chemistry Laboratory. If demand requires, LDAF does have an option to have samples analyzed by another DEA registered laboratory approved by LDAF.

Collis Temple

Comments from Collis Temple:

Mr. Temple inquired of Southern & LSU University roles in the Industrial Hemp Program.

LDAF response to comments:

LDAF responded that those universities will maintain the roll as they would with any other agronomic crop in Louisiana.

Comments from Collis Temple:

Mr. Temple inquired about the timeline in regards to legally growing industrial hemp in Louisiana.

LDAF response to comments:

LDAF responded that many regulatory hurdles have been crossed. With no substantive changes coming from federal regulations comment period, LDAF intends to issue licenses in latter February or early March 2020, once current rules are adopted. The anticipated date of license issuance is February 20, 2020.

Comments from Collis Temple:

Mr. Temple asked if there was a point person for LDAF, and if there had been point persons identified for Southern and LSU universities.

LDAF response to comments:

LDAF responded that the LDAF point person for LDAF is Lester Cannon but proxy through Dr. Angela Guidry, LDAF Industrial Hemp Program Coordinator. The LSU point person is Dr. Ashley Mullins, and LDAF was not aware of a point person for Southern University.

David Brown

Comments from David Brown:

Mr. Brown inquired how the designation of “Industrial” Hemp terminology created was.

LDAF response to comments:

LDAF responded that it is LDAF’s understanding that it was borrowed from the national level as it was used in the 2014 Farm Bill.

Comments from David Brown:

Mr. Brown expressed concern that other stakeholders were absent from meetings during legislative sessions and joint meetings with other agencies.

LDAF response to comments:

LDAF responded that the LA Industrial Hemp State Plan was developed in conjunction with other state agencies. LDAF has also met with ATC and DHH to develop a clear delineation of authority between the agencies.

Comments from David Brown:

Mr. Brown commented on the labeling requirements which prohibit CBD in dietary supplements, and that agencies involved should clean up their respective rules once USDA sets guidance on allowing these products because Louisiana regulations will be out of compliance with federal regulations once that passes.

LDAF response to comments:

LDAF responded that it is unfortunate that Louisiana did not participate in the 2014 Farm Bill and LDAF will continue working with other agencies in open dialog to move this program forward.

Audience (possibly Dave Woolridge)

Comments from Audience:

A question was asked about when the responses to the comments will be available.

LDAF response to comments:

LDAF responded that pursuant to R.S. 49:953(A)(2)(b)(i)(ii) timeframes vary depending on whether there is a committee hearing. If no hearing, then it would be prior to publication of final rule. We anticipate we will have comment by the end of December beginning of January when we send in the legislative report. It will be published on our website.

Delilah Ballou

Comments from Delilah Ballou:

Ms. Ballou asked if there will be any restrictions on seed sourced outside of Louisiana.

LDAF response to comments:

LDAF responded that LDAF will have to approve seed acquisition through the Seed Acquisition Request Form. There will be no restrictions on seed sources as long as the certificate of analysis of the parent material is not greater than 0.3%THC. Phytosanitary paperwork is required for seed obtained out of the country.

Comments from Delilah Ballou:

Ms. Ballou inquired if the state of Colorado will be required to have a seed dealer license.

LDAF response to comments:

LDAF responded that anyone selling seed into Louisiana is required to have a current Louisiana Seed Dealer License.

Paul Breaux

Comments from Paul Breaux:

Mr. Breaux inquired if the LDAF lab is DEA registered.

LDAF response to comments:

LDAF responded that the LDAF Ag Chemistry laboratory is in the process of obtaining the DEA registration accreditation.

Comments from Paul Breaux:

Mr. Breaux asked if LDAF has a list of third party labs to accommodate grower testing throughout growing season.

LDAF response to comments:

LDAF responded that USDA will publish a list of DEA approved labs so growers can monitor THC levels during growing season. USDA has published a list of DEA approved labs for growers to use to monitor THC levels during the growing season.

VI. THE DEPARTMENT'S RESPONSE TO COMMENTS

The department sent written responses to all commenters on or about January 7, 2020. Because of the large overlap of comments between commenters, LDAF summarized all comments received and LDAF's responses thereto (as in Section V of this Report) and included all comments in the written response to commenters.

VII. PUBLIC HEARING ON SUBSTANTIVE CHANGES

A public hearing on the substantive changes to the proposed rules was held 9:00 a.m. on December 20, 2019 in the Veterans' Memorial Auditorium at the Louisiana Department of Agriculture and Forestry, 5825 Florida Blvd., Baton Rouge, LA 70806. Two members of the public attended the hearing; however, there were no verbal or written comments on the proposed substantive changes to the rules and regulations.

Interested persons were also afforded the opportunity submit written comments on the substantive changes to the proposed rules. The deadline for receipt of the written comments was 4:30 p.m. on December 20, 2019. The name and address of the person designated to receive comments was provided in the notice. No written comments were received by the department.

VIII. CONCLUSION

The proposed regulations have not been amended, changed, modified, or revised since the publication of the Potpourri at LR 45:11 pages 1686-1690. After full consideration of both written and oral comments, LDAF has determined that no additional substantive changes to the proposed rules and regulations are required at this time. Subject to legislative oversight, the department intends to submit a Rule to the Office of the State Register on February 10, 2019 for publication.

Signed this  day of January, 2020, at Baton Rouge, Louisiana.



Amanda M. LaGroue, Attorney
Louisiana Department of Agriculture and Forestry

Attachments: Notice of Intent
Public Comments Received & Department Response to Commenters
Potpourri Notice of Substantive Changes
Underline Strikethrough Version of Substantive Changes