

## ILLINOIS DEPARTMENT OF AGRICULTURE

## NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Industrial Hemp Act
- 2) Code Citation: 8 Ill. Adm. Code 1200
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
1200.10	New Section
1200.20	New Section
1200.30	New Section
1200.40	New Section
1200.50	New Section
1200.60	New Section
1200.70	New Section
1200.80	New Section
1200.90	New Section
1200.100	New Section
- 4) Statutory Authority: Implementing and authorized by Section 15 of the Industrial Hemp Act [505 ILCS 89/15].
- 5) A Complete Description of the Subjects and Issues Involved: The Definitions and Incorporations Section provides the definitions and incorporations for terms and phrases that are common to the industrial hemp industry.

General Provisions provide the basic rules for licensing and registration of cultivators and processors, ownership transfer, prohibition of plants in excess of 0.3 percent THC, and minimum land area.

The Application and Licensure Section explains the application process, requirements, and timeline for applications.

The Reports Section provides rules for reporting to the Department prior to planting, prior to harvest, and final report. These reports are needed to ensure certified seed is planted and to collect statistical data of production.

The Inspection and Sampling Section provides the guidelines for a single mandatory inspection and further inspections at the discretion of the Department. This Section also provides testing guidelines and the option of re-testing should a sample be out of compliance.

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The Fees Section provides the rules for monetary fees to cover the administrative costs of the program.

The Restrictions for Sale and Transfer Section provides rules that restrict the sale and transfer of Industrial Hemp to licensed growers in Illinois and other regulated states.

The Other Prohibited Activities Section requires a cultivator to adhere to the application and to prohibit the growing of any plant with a delta-9 THC level in excess of 0.3 percent.

The Transportation Section provides the rules for transporting harvested Industrial Hemp by licensed entities.

The final Section is Administrative Penalties, which provides that any violations shall be conducted in accordance with the Department's rules applicable to formal administrative proceedings and sets a limit on the amount of an administrative fine.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rule in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes. 505 ILCS 89
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: The proposed rulemaking neither creates nor expands any State mandate on units of local government, school districts, or community college districts.
- 12) Time, Place and Manner in which interested persons may comment on this rulemaking:  
A 45-day written comment period will begin on the day the Notice of proposed rules appears in the *Illinois Register*. Please mail written comments on the proposed rulemaking to the attention of:

Pamela Harmon  
Illinois Department of Agriculture

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State Fairgrounds  
P. O. Box 19281  
Springfield IL 62794-9281

217/524-6905  
fax: 217/785-4505

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: None
  - B) Reporting, bookkeeping or other procedures required for compliance: Reporting and bookkeeping procedures will be required.
  - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent agendas because the Illinois Department of Agriculture did not anticipate the filing of this rulemaking at the time for submittal of a regulatory agenda.

The full text of the Proposed Rules begins on the next page:

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TITLE 8: AGRICULTURE AND ANIMALS  
CHAPTER I: DEPARTMENT OF AGRICULTURE  
SUBCHAPTER v: LICENSING AND REGULATIONSPART 1200  
INDUSTRIAL HEMP ACT

Section	
1200.10	Definitions and Incorporations
1200.20	General Provisions
1200.30	Application and Licensure
1200.40	Reports
1200.50	Inspection and Sampling
1200.60	Fees
1200.70	Restrictions on Sale and Transfer
1200.80	Other Prohibited Activities
1200.90	Transportation of Industrial Hemp
1200.100	Administrative Penalties

AUTHORITY: Implementing and authorized by Section 15 of the Industrial Hemp Act [505 ILCS 89].

SOURCE: Adopted at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 1200.10 Definitions and Incorporations**

Definitions relevant this Part are included in Section XX of the Industrial Hemp Act [505 ILCS 89]. The following definitions shall also apply to this Part:

"Act" means the Industrial Hemp Act [505 ILCS 89].

"Applicant" means the individual who is applying for a license or registration.

"Contiguous Land Area" means land areas used for cultivation of industrial hemp that are not separated by more than 100 feet by waterways, fences, railroads, lanes, roads, highways, interstates or other separations.

"Cultivating" means planting, growing and harvesting a plant or crop.

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*"Department" means the Illinois Department of Agriculture.*

*"Director" means the Director of Agriculture.*

"Handle" means possessing, transportation or storing of industrial hemp for any period of time on premises owned, operated or controlled by a person licensed to cultivate industrial hemp or registered to process industrial hemp.

"Indoor Cultivation" means the process of cultivating industrial hemp in a greenhouse or in an enclosed building or structure capable of continuous cultivation throughout the year. Continuous cultivation is not required.

*"Industrial Hemp" means the plant Cannabis sativa L. and any part of that plant, whether growing or not, with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3% on a dry weight basis that has been cultivated under a license issued under the Act or is otherwise lawfully present in this State, and includes any intermediate or finished product made or derived from industrial hemp.*

*"Land Area" means 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.*

"Law Enforcement" means the officers and activities of the federal, State, and local agencies responsible for maintaining public order and enforcing the law.

"License" means authorization by the Department for any individual or legal entity to grow industrial hemp in the State.

*"Person" means:*

*any individual, partnership, firm, corporation, company, society, or association;*

*the State or any department, agency, or subdivision thereof; or*

*any other entity.*

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*"Process" means the conversion of raw industrial hemp plant material into a form that is presently legal to import from outside the United States under federal law.*

"Registration" means authorization by the Department for any individual or legal entity to process or handle industrial hemp.

"Variety" means a group of plants or an individual plant that exhibits distinctive observable physical characteristics or has a distinct genetic composition. This includes the terms "cultivar" and "strain".

**Section 1200.20 General Provisions**

- a) No person shall cultivate industrial hemp in the State without first receiving an Industrial Hemp Cultivation License from the Department.
- b) No person shall process or handle industrial hemp in the State without first receiving a processor/handler registration from the Department.
- c) All licensed persons in the State must provide research information as outlined in Section 1200.40(b).
- d) Licensed industrial hemp cultivators are solely responsible for procuring seeds, clones, transplants or propagules for planting.
- e) 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.
- f) Licenses and registrations cannot be transferred or assigned, in whole or in part, to another business, individual or other entity.
- g) No land area may contain cannabis plants or parts of cannabis plants that the licensee knows or has reason to know are of a variety that will produce a plant that, when tested, will produce more than 0.3% THC concentration on a dry weight basis. No licensee shall use any such variety for any purpose associated with the cultivation of industrial hemp.

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- h) The minimum land area for industrial hemp cultivation shall be a contiguous land area of one quarter of an acre for outdoor cultivation and 500 square feet for indoor cultivation.
- i) Each noncontiguous land area shall require a separate application fee.
- j) Licensee information may be shared with law enforcement without notice to the licensee.
- k) Any violations by a licensee or registrant may be subject to administrative action as set forth in Section 1200.80.

**Section 1200.30 Application and Licensure**

- a) Each applicant for an industrial hemp cultivation license shall submit a signed, complete, accurate and legible application form provided by the Department at least 90 days prior to planting. The applicant shall provide the following:
  - 1) The name and address of the applicant;
  - 2) The type of business or organization, such as corporation, LLC, partnership, sole proprietor, etc.;
  - 3) Business name and address, if different than the ones submitted in response to subsection (a)(1);
  - 4) The legal description of the land area, including Global Positioning System coordinates, to be used to cultivate industrial hemp;
  - 5) A map of the land area on which the applicant plans to grow industrial hemp, showing the boundaries and dimensions of the growing area in acres or square feet;
  - 6) Documentation to prove the land area is a farm as defined in Section 1-60 of the Property Tax Code; and
  - 7) The applicable fee prescribed by Section 1200.60.

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- b) An applicant for a license or registration issued by the Department shall be subject to a criminal background check conducted by the Illinois State Police or another State or federal law enforcement agency approved by the Department and paid for by the applicant. Background check forms will be supplied by the Department.
- c) No person who has been convicted of any 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.
- d) Within 30 days after receipt of a completed application and the associated fee, the Department will either issue a license or deny the application. Incomplete applications will be rejected and an additional application fee will be collected for corrected and/or new applications.
- e) A license or registration shall be good for 3 calendar years from the date of issuance.
- f) Any changes to the licensee's cultivation plan as outlined in the original application must be approved by the Department prior to implementation. Changes to the cultivation plan are subject to an alteration fee as set forth in Section 1200.60.
- g) All processors and handlers of industrial hemp shall register with the Department on a form provided by the Department, which shall include:
  - 1) The name and address of the registrant;
  - 2) The business type, such as a corporation, LLC, partnership, sole proprietor, etc.;
  - 3) The business name and address if different than the one submitted in response to subsection (g)(1);
  - 4) The nature of the processing or handling by the registrant; and
  - 5) The applicable fee set forth in Section 1200.60.

**Section 1200.40 Reports**

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- a) Thirty days prior to planting, each licensee shall file, on a form provided by the Department, a Pre-Planting Report that includes:
- 1) A statement of verification that the licensee has reasonable grounds to believe that the crop the licensee will plant is of a type and variety of cannabis that will produce a delta-9 THC concentration of no more than 0.3% on a dry weight basis;
  - 2) The varieties of industrial hemp the applicant plans to cultivate and the intended purpose of the harvested material; and
  - 3) The seed source, clone source, or propagule source of the intended crop.
- b) At least 30 days prior to harvest, each licensee shall file a Harvest Report, on a form provided by the Department, that includes:
- 1) Documentation that the licensee has entered into a purchase agreement with an in-state industrial hemp processor registered with the Department. If there is no such agreement, the licensee shall include a statement of intended disposition of the industrial hemp crop.
  - 2) The expected harvest dates and locations of each variety of industrial hemp cultivated by the licensee.
  - 3) The licensee shall notify the Department if the harvest dates change in excess of 5 days.
- c) No later than February 1 of each year, each licensee shall submit an Industrial Hemp Cultivator Final Report to the Department that includes:
- 1) Total acres or square feet of industrial hemp planted;
  - 2) A description of each variety planted and harvested;
  - 3) Total acres or square feet harvested; and
  - 4) Total yield in the appropriate measurement, such as tonnage, seeds/acre, etc.

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**Section 1200.50 Inspection and Sampling**

- a) All licensees shall be subject to one mandatory inspection, and additional inspections at the discretion of the Department, of the land area and/or the indoor cultivation site, per year to ensure compliance with the Act.
- b) The Department shall provide a minimum of 5 business days' notice to the licensee of the mandatory inspection. The notification shall inform the licensee of the scope and process by which the inspection will be conducted.
- c) Failure to comply with a properly noticed inspection shall result in the initiation of disciplinary proceedings pursuant to Section 1200.100.
- d) A representative of the licensee shall be present for the inspection and sampling and shall provide the inspector with unrestricted access to all industrial hemp plants, parts, seeds, and harvested material, including all buildings and other structures used for the cultivation and storage of industrial hemp and all documents pertaining to the licensee's industrial hemp cultivation and business.
- e) All industrial hemp plants are subject to sampling and testing to verify that the delta-9 THC concentration does not exceed 0.3% on a dry weight basis.
  - 1) Individual or composite samples of each variety of cannabis may be sampled from the licensee's land area, including indoor cultivation sites, at the Department's discretion.
  - 2) The sampled material shall be prepared for testing using protocols approved by the Director.
  - 3) Quantitative laboratory determination of the delta-9 THC concentration on a dry weight basis will be performed according to protocols approved by the Director.
  - 4) A sample test result with a delta-9 THC concentration on a dry weight basis that exceeds 0.3% but is less than 0.7% may be retested at the expense of the licensee. A request for a retest by the licensee must be received by the Department within 3 days after initial receipt of the original test results by the licensee.

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- 5) All harvested industrial hemp receiving a sample test result with a delta-9 THC concentration on a dry weight basis that exceeds 0.3% and is not retested at the request of the licensee shall be destroyed in a manner approved by the Director.
- 6) All harvested industrial hemp receiving both a sample test result and a sample retest result with delta-9 THC concentrations on a dry weight basis that exceeds 0.3% shall be destroyed in a manner approved by the Director.
- 7) All harvested industrial hemp receiving a sample test result with a delta-9 THC concentration on a dry weight basis that equals or exceeds 0.7% shall be destroyed in a manner approved by the Director.
- 8) All harvested industrial hemp awaiting test results shall be stored by the licensee or processor and shall not be processed or transported until test results are obtained and the industrial hemp is released by the Department.

**Section 1200.60 Fees**

- a) An applicant or licensee shall submit the following nonrefundable fees with each license application submitted, in the form of a certified check or money order payable to the "Illinois Department of Agriculture", or by such other means as approved by the Department.
  - 1) The application fee for an Industrial Hemp Cultivation License shall be \$100 for each noncontiguous land area and each indoor cultivation operation area.
  - 2) Upon approval of an application, the license fee for each noncontiguous land area and each indoor cultivation operation shall be \$1000.
  - 3) The fee to make an alteration to the original application shall be \$200 for each noncontiguous land area or indoor cultivation operation being altered.
  - 4) Actual costs of testing shall be paid by the licensee.

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- 5) The application fee for a processor registration shall be \$100 for each address operated by the processor.
- 6) Upon approval of an application for registration, the registration fee for each registered address operated by a processor shall be \$1000.

**Section 1200.70 Restrictions on Sale and Transfer**

- a) A licensed person shall not sell or transfer, or permit the sale or transfer, of living plants, viable seeds, 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.
- b) A licensed person shall not sell or transfer, or permit the sale or transfer, of living plants, viable seeds, leaf material, or floral material outside the State of Illinois that is not authorized by a state agency under the laws of that state.
- c) The Department shall permit the sale or transfer of stripped stalks, fiber, dried roots, nonviable seeds, seed oils, floral and plant extracts (excluding THC in excess of 0.3%) and other marketable hemp products to members of the general public, both within and outside the State of Illinois.

**Section 1200.80 Other Prohibited Activities**

- a) A licensed person shall not plant or grow hemp on any site not listed in the application.
- b) A licensed person shall not ship or transport, or allow to be shipped or transported, live hemp plants, cuttings for planting, or viable seeds from a variety that is currently designated by the Department as a prohibited variety or a variety of concern to any location outside the State of Illinois.
- c) A licensed person shall not ship or transport, or allow to be shipped or transported, any hemp product with a delta-9 THC concentration in excess of 0.3%.

**Section 1200.90 Transportation of Industrial Hemp**

- a) A nonlicensed or nonregistered person may not transport live or harvested industrial hemp.

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- b) Industrial hemp may be transferred by the licensee or registrant from the place of cultivation to the place of processing at any time.

**Section 1200.100 Administrative Penalties**

- a) Any hearing conducted by the Department pursuant to the Act shall be conducted in accordance with the Department's rules applicable to formal administrative proceedings (8 Ill. Adm. Code 1.Subparts A and B). All such hearings shall be held in Springfield IL or such other location as mutually agreed to by the Department and the other party.
- b) Notwithstanding any other criminal penalties related to the unlawful possession of cannabis, the Department may revoke, suspend, place on probation or supervision, reprimand, issue cease and desist orders, refuse to issue or renew a license or registration, or take any other disciplinary or nondisciplinary action as the Department may deem proper with regard to a licensed or registered entity or person.
- c) The Department may impose fines, not to exceed \$10,000 for each violation, for any violations of the Act or this Part.