

REVISED EXPRESS TERMS

Chapter III of 1 NYCRR is amended by adding thereto a new Subchapter F, to read as follows:

Subchapter F Industrial Hemp

Part 159 Industrial Hemp Agricultural Pilot Programs

PART 159

INDUSTRIAL HEMP AGRICULTURAL PILOT PROGRAMS

(Statutory Authority: Agriculture and Markets Law sections 16 and 18 and article 29)

Sec.

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§ 159.1 Definitions

For the purpose of this Part, the following terms shall have the following meanings:

- (a) “Authorization holder” means an institution of higher education that has been granted authority by the Commissioner to acquire and possess industrial hemp to study its growth and cultivation.
- (b) “Commissioner” means the Commissioner of Agriculture and Markets of the State of New York.
- (c) “Department” means the Department of Agriculture and Markets of the State of New York.

- (d) "Dispose", and any variant thereof, means to render unusable for any purpose.
- (e) "Industrial hemp" means the same as that term is defined in subdivision (1) of Agriculture and Markets Law section 505.
- (f) "Institution of higher education" means the same as that term is defined in subdivision (2) of Agriculture and Markets Law section 505.
- (g) "Person" means an individual, partnership, corporation, limited liability company, association, or any business entity by whatever name designated and whether or not incorporated, unless the context clearly indicates otherwise.
- (h) "Registered premises" means any facility, location, or property owned, leased, or licensed, which is under the control of the authorization holder and certified by the Commissioner as a site where industrial hemp may be grown or cultivated, harvested, stored, studied, or disposed of.
- (i) "Secured facility" means a building or structure where access is restricted only to authorized persons.
- (j) "State" means the State of New York.

§ 159.2 Authorization to grow and cultivate industrial hemp

- (a) Industrial hemp and industrial hemp seeds may not be possessed, grown, or cultivated unless an application therefor has been submitted to and authority has been granted by the Commissioner.
- (b) Only an institution of higher education may submit an application to the Commissioner for authorization to grow or cultivate industrial hemp.
- (c) Industrial hemp may only be grown, cultivated, or processed upon registered premises.

(d) An application to grow and cultivate industrial hemp shall be made upon a form prescribed by the Commissioner and shall include an application fee of \$500.00. Each application and renewal application shall provide the information deemed necessary by the Commissioner for the administration of this Part, including but not limited to:

- (1) a description of each premises where industrial hemp will be grown or cultivated, harvested, stored, studied or disposed of, by physical address and by GPS co-ordinates;
- (2) a diagram for each premises that visually depicts the buildings, structures and improvements on the premises and identifies their use, and that sets forth the relevant activities conducted at the premises; and
- (3) a detailed summary of the issues and matters that the applicant intends to study in conjunction with growing, cultivating, or processing industrial hemp which may include:
 - i. the soils, growing conditions, and harvest methods suitable for the growth or cultivation of various types of industrial hemp in the State;
 - ii. the cultivars suitable for the growth or cultivation of various types of industrial hemp, including the cost of each cultivar; the yield of industrial hemp attributable to each such cultivar; and the inputs required to assure that each such cultivar, when planted, results in a satisfactory yield of industrial hemp;
 - iii. the markets that the applicant has identified, in consultation with appropriate commercial interests, that exist or that could feasibly be developed for various types of industrial hemp,

including but not limited to markets for apparel, energy, food, paper, and tools;

- iv. the means and methods that could feasibly be used to process, market, advertise, expose, or publicize products that contain, in whole or in predominate part, industrial hemp, to facilitate the wholesale and/or retail sale thereof.

(4) a transportation plan, if industrial hemp will be moved from one location on the registered premises to another or from one registered premises to another registered premises, that sets forth information relevant to the security requirements set forth in section 159.6 of this Part.

(5) a security plan that sets forth the measures that the applicant intends to take to ensure that the security requirements set forth in section 159.6 of this Part are complied with.

(e) Applications to grow, cultivate, process, and market industrial hemp shall be evaluated in the order in which they are received. In the event that two or more applications are received at the same time, the Department will determine the order of receipt at random.

(f) The Commissioner may decline to grant authority to grow, cultivate, process, and market industrial hemp, and may revoke or decline to renew an authorization to grow and cultivate industrial hemp, if he or she finds, after investigation and opportunity to be heard, that:

(1) the application does not set forth the information required pursuant to subdivision (d) of this section and fails to set forth such information

- within twenty days after the applicant has received notice that the required information was not set forth on the application; or
- (2) ten authorizations to grow and cultivate industrial hemp have been issued and are in effect; or
 - (3) the applicant or authorization holder is not capable for whatever reason of complying, or has failed to comply, with the provisions of this Part or with state or federal law relating to the possession, sale, or cultivation of industrial hemp; or
 - (4) the Department determines, in its sole discretion, that it is or will be impracticable to regulate the applicant's or authorization holder's adherence to the requirements set forth in this Part; or
 - (5) the authorization holder has not complied with the requirements set forth in subdivision (e) of section 159.3 of this Part.
- (g) Authorization to grow and cultivate industrial hemp shall be for a period of three years from the date application therefor was approved by the Commissioner. Notwithstanding the preceding, the Commissioner may grant or renew an authorization to grow and cultivate industrial hemp for a period of more than three years if he or she determines that the issues and matters that the applicant or authorization holder intends to study or is studying cannot be adequately and fully studied within three years from the date that authorization is granted or renewed.
- An application for renewal shall be submitted to the Commissioner no later than thirty days prior to the date that the authorization expires and shall include an application fee of \$500.00.

- (h) The Commissioner may grant or renew an authorization to grow and cultivate industrial hemp with conditions, including but not limited to one or more of the following:
- (1) industrial hemp is grown and cultivated on a limited number of acres;
 - or
 - (2) industrial hemp is grown and cultivated in a limited volume.
- (i) An authorization holder may surrender its authorization at any time; however, the requirements set forth in section 159.6 of this Part shall remain applicable and binding upon such authorization holder until its authorization period would otherwise have expired.

§ 159.3 Requirements

(a) Studies and reports.

- (1) An authorization holder shall, no later than three months after the date of application to grow or cultivate industrial hemp was approved by the Commissioner, furnish to the Commissioner a report that provides, in detail, its findings and conclusions regarding the issues and matters set forth in its application to grow or cultivate industrial hemp.
- (2) An authorization holder shall every three months after furnishing a report of the type referred to in paragraph (1) of this subdivision, furnish a report that supplements, in detail, the findings and conclusions set forth in earlier report(s).
- (3) An authorization holder may study issues and matters different from those set forth in its application to grow or cultivate industrial hemp, with the prior written approval of the Commissioner, and all reports required pursuant to this section, furnished after the date of the Commissioner's approval, shall set forth findings and conclusions regarding such different issues and matters.

- (b) Except as provided in subdivision (a) of section 159.6 of this Part and in this subdivision, industrial hemp may be grown or cultivated, harvested, stored, and disposed of only on the registered premises. Industrial hemp that has been harvested shall be stored in a secured facility except when it is being transported within the registered premises, to a laboratory for testing, or to another registered premises or facility approved by the Commissioner.
- (c) Industrial hemp may be transported off registered premises only if it is being transported to a laboratory for testing or to another registered premises or facility approved by the Commissioner. Industrial hemp may be transported only in an enclosed, locked compartment of a truck or van where it cannot be seen from the outside of the vehicle, the contents of the vehicle are not disclosed, and the operator of the vehicle has been approved by the authorization holder to transport industrial hemp, as indicated in the record required to be maintained pursuant to paragraph (1) of subdivision (a) of section 159.4 of this Part.
- (d) Testing and disposition.
- (1) An authorization holder shall prepare, maintain, and make available to the Commissioner, upon request, a record that sets forth an accurate inventory of industrial hemp plants and seeds and shall reasonably ensure that no plant is possessed or grown or cultivated that would not meet the definition of industrial hemp because it contains a concentration of more than 0.3 percent of delta-9 tetrahydrocannabinol, on a dry basis.
 - (2) An authorization holder shall ensure that a representative sample of plants grown or cultivated from each variety of seed used for the purpose of growing or cultivating industrial hemp is analyzed at a laboratory approved by the Commissioner, to determine the concentration of delta-9 tetrahydrocannabinol therein. The authorization holder shall furnish a report

that sets forth the results of analysis(es) to the Commissioner promptly after such analysis(es) is made, in a form approved by the Commissioner.

- (3) An authorization holder shall dispose of all plants determined, after laboratory analysis, to have a concentration of more than 0.3 percent of delta-9 tetrahydrocannabinol on a dry basis, and shall prepare and maintain on the registered premises for a period of two years, a record that sets forth the information required in section 159.4(a)(4)(iii) of this Part. The authorization holder shall make available to the Department such records upon request, in a form and at a location satisfactory to the Commissioner.
- (e) An authorization holder shall, no later than fifteen days after having been granted authorization, notify, in writing, the applicable unit or units of law enforcement, including the unit or units of law enforcement in the political subdivision in which the registered premises is located, that it has received such authorization and shall provide such unit or units of law enforcement a copy of the security plan referred to in section 159.2(d)(5) of this Part. The authorization holder shall, no later than fifteen days after having notified such unit or units of law enforcement, provide the Department with a copy of such notification. An authorization holder shall adequately monitor registered premises under its control and shall notify the appropriate unit or units of law enforcement and the Department regarding facts and circumstances that indicate that industrial hemp has been or may be held or possessed in violation of the provisions of this Part.
- (f) (1) Notwithstanding any provision of this Part to the contrary, an authorization holder may enter into a contract with a person for that person to be involved in growing or cultivating, harvesting, storing, studying, transporting, and/or disposing of industrial hemp, if:

- i. the contract has, prior to execution, been approved by the Commissioner;
and
- ii. the contract requires such subcontractor to comply with all relevant provisions of this Part.

(2) The Commissioner may decline to renew or may revoke an authorization to grow and cultivate industrial hemp if he or she finds, after investigation, that such subcontractor has failed to comply with all relevant provisions of this Part.

§ 159.4 Recordkeeping

(a) An authorization holder shall create, maintain, and make available accurate records, in a form and at a location satisfactory to the Commissioner, that set forth the following information:

- (1) a description of the registered premises at which industrial hemp is grown or cultivated that is in substantially the same form as the description required to be provided pursuant to paragraph (1) of subdivision (d) of section 159.2 of this Part;
- (2) the name of the cultivar(s) grown and the volume of each cultivar purchased, acquired and/or used, for the appropriate growing season;
and
- (3) the volume of industrial hemp grown or cultivated, for the appropriate growing season, and
 - i. the volume of industrial hemp harvested; and
 - ii. the volume of industrial hemp studied and the name and address of each person who or that has conducted or been involved in such study; and

iii. the volume of industrial hemp disposed of, the date and location of each disposal, and the method of each disposal.

(b) The records and materials referred to in subdivision (a) of this section shall be maintained on the registered premises and made available to the Commissioner for two years from the date they were made or prepared.

§ 159.5 Inspections

(a) The authorization holder shall inspect the registered premises as often as necessary to ensure compliance with the requirements set forth in this Part.

(b) The registered premises of an authorization holder are subject to inspection by the Commissioner and by his or her authorized agents, employees, or officers, pursuant to Agriculture and Markets Law section 20, as often and to the extent necessary to ensure compliance with the provisions of this Part and state and federal law relating to the possession, sale, or cultivation of industrial hemp. The Commissioner may authorize agents, employees, or officers of the New York State Department of Health and/or local law enforcement to accompany him or her during an inspection of the registered premises of an authorization holder.

§ 159.6 Security measures

(a) An authorization holder shall take all actions necessary to ensure that:

(1) industrial hemp is not removed from registered premises except for transportation to a laboratory for testing pursuant to the provisions of section 159.3(d)(2) of this Part or except as allowed by the Commissioner pursuant to his/her written authorization.

(2) industrial hemp is not acquired, possessed, grown or cultivated, harvested, stored, transported, or disposed of except under conditions that ensure that it will not be removed from registered premises or used in violation of state or federal law.

(b) The authorization holder shall take measures, satisfactory to the Commissioner, to ensure compliance with the requirements set forth in subdivision (a) of this section, including but not limited to:

(1) restricting access to areas of the registered premises where industrial hemp is grown or cultivated; and

(2) posting signs, each of which set forth, in readily observable block letters, the words "NO TRESPASSING. FACILITY CONTAINS INDUSTRIAL HEMP. UNAUTHORIZED POSSESSION OF INDUSTRIAL HEMP IS SUBJECT TO PROSECUTION PURSUANT TO ARTICLE 220 OF THE PENAL LAW". A sufficient number of signs shall be posted so that a sign and the information required to be set forth on a sign can be read, from a distance of not less than 100 feet, from any location around the perimeter of the registered premises where industrial hemp is grown or cultivated, or held; and

(3) providing for equipment and/or other fixtures such as fences that are reasonably designed to prevent unauthorized persons from entering the registered premises and/or having their presence therein undetected.

(c) Nothing in this section is intended to apply to any finished or marketable product which contains industrial hemp but from which the hemp may not practically be extricated in the form of industrial hemp.