

Explanation of Draft Proposed Changes to Title 3, Chapter 4, Article 10.

There are three objectives why the Administrative rules in Article 10 are in need of change:

- 1) There is a need to change the program licensing fees in Table 1 so that the funding generated is aligned more with the expenditures out of the Industrial Hemp Trust Fund.
- 2) The State submitted the Arizona Industrial Hemp program plan to the USDA to receive approval under the 2018 Farm Bill. The 2019 USDA Interim Rules identified areas in Arizona's plan that would have to be administratively changed in order to receive USDA plan approval.
- 3) Other modifications will reduce the regulatory burden and clarify sections of the rules to be more clear and concise.

An exception from the Governor's Rulemaking Moratorium, Executive Order 2020-02 under criteria (1)(b), and (f), was granted on August 4, 2020. A *Rulemaking Docket Opening* was filed with the Secretary of State's Office on August 5, 2020.

FEES

Fees generated during the 2019 and 2020 growing seasons provided the Department with enough funds to cover the expenditures of the program for an estimated two additional growing seasons. If there is no change to the fee structure, the funds generated would continue to build on that surplus. The proposed reduction for the licensing fees is based on current industry activity; a reduction in area planted during the current planting season; and the market projections for the coming 2021 growing season. In Table 1, reducing the licensing fees by 33% would be sufficient to cover the costs of the program and potentially begin to reduce the surplus in the Industrial Hemp Trust Fund. The processor assessment fee for fiber is also removed since this revenue stream would not be significant to the program and would help reduce some costs associated with that process for the industry. There was a need to clarify that the inspection fee for outdoor acreage would be charged at a minimum of one acre so that the expense of inspection activities are better recovered.

USDA PLAN APPROVAL (Currently Under Review)

Below is a bulleted list of suggested rule changes that would need to occur to affect changes to the Arizona Industrial Hemp Plan submitted to USDA. USDA would be consulted prior to finalizing changes to ensure the proposed rule language would satisfy the requirements for an approved USDA plan.

- R3-4-1001: To meet USDA's requirement that all key participants have proof of a satisfactory background check and a fingerprint clearance card, the definition of "Applicant" will be added to clarify that the applicant means not only a sole proprietor but also all partners in a partnership, or all persons with executive managerial control in a corporation. This includes persons such as a chief executive officer, chief operating officer and

chief financial officer. This definition does not include non-executive managers such as farm, field, or shift managers.

- R3-4-1001: The definition Total Delta-9 THC concentration will be clarified to ensure compliance with Federal law.
- R3-4-1008: A requirement will be added that a producer shall not harvest any cannabis prior to compliance samples being taken.
- R3-4-1008: A requirement will be added that the producer or an authorized representative of the producer must be present at the growing site during sample collection for regulatory compliance.
- R3-4-1008: A requirement will be added that a crop shall be harvested within 15 days if determined to be compliant.
- R3-4-1008: A provision will be added that prohibits handling, processing, or entering the stream of commerce of any hemp grown in a lot where the acceptable hemp THC level is noncompliant.
- R3-4-1008: A provision will be added that prohibits commingling of hemp plant material from one lot with hemp plant material from other lots.
- R3-4-1013: The periodic reporting requirements will be changed from three years to two years.
- R3-4-1013: Procedures will be included to provide for effective disposal as recommended by USDA.
- R3-4-1013: The periodic reporting period for violations will be changed from three years to two years to align with USDA requirements.

OTHER CHANGES

Other changes have been proposed to facilitate commerce and to make the industrial hemp rules clearer and more concise, with the intent to reduce the regulatory burden where possible. These general changes are described below:

- Throughout Article 10.:
 - Will include a number in parenthesis after all written numbers. i.e. ...three (3) years...
 - Will clarify terms to be consistent throughout document. i.e. "applicant" instead of "responsible party applying".
 - Will change any requirement with a timeframe in hours or days to business days or calendar days as appropriate.
- R3-4-1001: Will add definitions for Lot, Harvest Lot, Biomass, and Third party certified sampler to align with industry terms and provide clarification.
- R3-4-1002: Will clarify the process to determine how compliance with the level I fingerprint clearance card would occur. Language will be changed to indicate that an applicant would provide the card number and the Department would validate.
- R3-4-1003: Will provide a clearer explanation for license renewals, by indicating a person can reinstate an expired license within three years.

- R3-4-1003: Will clarify that the site modification fee is not required if a licensee is removing a registered location, since less administrative work is needed to accomplish.
- R3-4-1003: Will add clarification that requests to transfer a license would need to be notarized.
- R3-4-1006: Will require a licensee to keep and maintain documentation for seed and propagative material instead of submitting the information to the Department. This information is checked during program audits, and the removal of the need to send documentation to the Department will reduce a regulatory burden on licensees
- R3-4-1006: To reduce a regulatory burden, the requirement to submit a pre-planting report will be removed. It was determined that this information was not critical to ensuring compliance with the Program.
- R3-4-1006: To reduce a regulatory burden, the requirement for labelers of hemp seed and propagative materials to provide breeder descriptions and variety release information will be removed since this requirement currently does not conform to industry practice.
- R3-4-1006: Provisions will be added to facilitate the movement of hemp plants for planting purposes from licensed hemp nurseries.
- R3-4-1007: Use of the Department logo or its likeness will be clearly prohibited on signage for hemp locations.
- R3-4-1008: Will include a provision to allow for third party samplers who are certified by the State Ag Lab.
- R3-4-1008: Subsections will be added to more clearly explain crop compliance and non-compliance in R3-4-1008.
- R3-4-1011: Notification processes will be conformed with agency practices.
- R3-4-1012: Redundant language relating to transport notification will be removed.
- R3-4-1013: A provision will be added to permit a grower to move a hemp crop off-site for corrective actions or disposal.

PUBLIC COMMENTS

At any time, written comments on this rulemaking can be submitted to the Department by mailing to:

Arizona Department of Agriculture
Plant Services Division
1688 W. Adams St.
Phoenix, AZ 85007

or by emailing to bmcgrew@azda.gov.

Formal written comments for the rulemaking record will be accepted after the publication of the Notice of Proposed Rulemaking in the Arizona Administrative Register and prior to the close of public record date, which has not been determined. Information regarding an oral proceeding will be included in the Notice of Proposed Rulemaking.