

# KANSAS LEGISLATIVE RESEARCH DEPARTMENT

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**To:** Senator Lynn Rogers; Senator Marci Francisco

**From:** Jessa Farmer, Legislative Fellow

**Re:** Industrial Hemp Regulation in Kentucky

This memorandum provides information regarding the Kentucky law governing industrial hemp and the oversight of a pilot program by that state's Department of Agriculture.

## **Kentucky's Industrial Hemp Law**

Kentucky Revised Statutes (KRS) 260.852 declares that industrial hemp is a viable agricultural crop in Kentucky and outlines Kentucky's goals of promoting research and marketing of industrial hemp, expanding the industrial hemp industry to the maximum extent permitted by federal law, and moving Kentucky to the forefront of the industrial hemp industry. KRS 260.858 outlines the Industrial Hemp Research Pilot Program's goals of studying methods of cultivating, processing, and marketing industrial hemp. KRS 260.862 lists the powers of the Kentucky Department of Agriculture (Department) under the Industrial Hemp Research Pilot Program, as well as the requirements for program participants.

## **Kentucky Department of Agriculture Oversight**

The Department has given presentations regarding industrial hemp. Doris Hamilton, Program Manager for the Industrial Hemp Pilot Program, gave a presentation in 2016 and discussed the process of creating and managing the research program. The 2014 U.S. Farm Bill §7606 (part of the larger Agricultural Act of 2014) allows states' agricultural pilot programs for the purposes of research growth, cultivation, or marketing of industrial hemp. The Department states the word 'marketing' is key to how Kentucky developed the program and why the Department feels the State is able to have private farmers and processors involved in research.

The Department developed Memoranda of Understanding (MOU) which allow private citizens to grow and process hemp as an extension of the Department so that any person in the program is (emphasis added) the Department for all intents and purposes when handling industrial hemp. Therefore, the Department has substantial oversight over the program. The process for the creating the MOU is outlined below:

- The private citizen completes and submits an application to be part of the program;

- The private citizen provides a background check from the state police and must have no felonies in the past ten years;
- The private citizen is selected for participation based on farming or processing experience, knowledge, available resources, previous compliance, and overall quality of the research plan;
- The private citizen must complete and submit necessary forms in a timely manner;
- The private citizen must comply with all federal and state laws as they pertain to growing and processing crops and making harvested materials into products; and
- The private citizen must allow the Department onsite to inspect, collect GPS coordinates (the Department collects GPS information for every single hemp field in Kentucky), and test samples for tetrahydrocannabinol (THC) content and presence of pesticides.

Brent Burchett, the Department's Director of the Plant Division, gave a presentation in March 2017, and further discussed state and federal relations. In 2015, the State of Kentucky took the U.S. Drug Enforcement Agency (DEA) to court because the DEA did not approve of private growers growing industrial hemp under the Department's research program. In August 2016, the DEA, Food and Drug Administration, and U.S. Department of Agriculture released the Statement of Principles on Industrial Hemp. The Statement of Principles acknowledge the legitimacy of private individuals and businesses participating in the research program as agents of the Department or agents of universities. The Statement of Principles also stated anything except for industrial hemp grain and fiber is illegal. The Statement of Principles also limits the movement of hemp seeds and plants across state lines. Officials with the Department believe this limitation ignores 2015 Congressional action expressly prohibiting the use of funds to prevent interstate movements and expressed this concern to the DEA. The DEA responded that it has "a lot of funds not restricted by federal government" and that industrial hemp is still a controlled substance at the federal level. The DEA released a statement in August 2016, stating that industrial hemp is a low-concentration THC variety of the cannabis plant intended to be used for industrial purposes. The DEA also stated the 2014 Farm Bill did not remove industrial hemp from the list of controlled substances and that the requirements of the Federal Food, Drug, and Cosmetic Act and the Controlled Substances Act continue to apply to industrial hemp-related activities.

The Department's Commissioner, Ryan Quarles, has stated that he is committed to pushing back against federal restrictions and advocates for industrial hemp research, including cannabidiols research. Officials with the Department acknowledge that commercial activity in the private sector is hard to predict and harder to control but will continue to advocate for industrial hemp.

The Department's Policies and Procedures for Growers allows the sale or transfer of stripped stalks, fiber, dried roots, nonviable seeds, seed oils, floral and plant extracts, and other marketable hemp products to members of the general public both within and outside Kentucky so long as the product's THC level is not above 0.3 percent.

## Information Sources

KRS 260.850 - KRS 260.869: <http://www.lrc.ky.gov/Statutes/chapter.aspx?id=38484>

2014 Farm Bill § 7606: <https://www.gpo.gov/fdsys/pkg/USCODE-2015-title7/html/USCODE-2015-title7-chap88-subchapVII-sec5940.htm>

302 KAR 50:020 - Kentucky Department of Agriculture Policies and Procedures for Industrial Hemp Growers: <http://www.lrc.ky.gov/kar/302/050/020reg.htm>

Doris Hamilton Industrial Hemp Presentation, March 2016, YouTube (18:40): <https://www.youtube.com/watch?v=WuRjUFCgJsQ>

Brent Burchett Industrial Hemp Presentation, March 2017, YouTube (29:58): <https://www.youtube.com/watch?v=f1Hoz0tuJVU>

Kentucky Department of Agriculture Industrial Hemp Pilot Program Policy Guide 2017: [https://www.kyagr.com/marketing/documents/HEMP\\_Policy-Guide\\_2017.pdf](https://www.kyagr.com/marketing/documents/HEMP_Policy-Guide_2017.pdf)

Statement of Principles on Industrial Hemp: [https://www.deaiversion.usdoj.gov/fed\\_regs/rules/2016/fr0812\\_4.htm](https://www.deaiversion.usdoj.gov/fed_regs/rules/2016/fr0812_4.htm)

DEA Announces Actions Related to Marijuana and Industrial Hemp: <https://www.dea.gov/divisions/hq/2016/hq081116.shtml>

JF/dmb