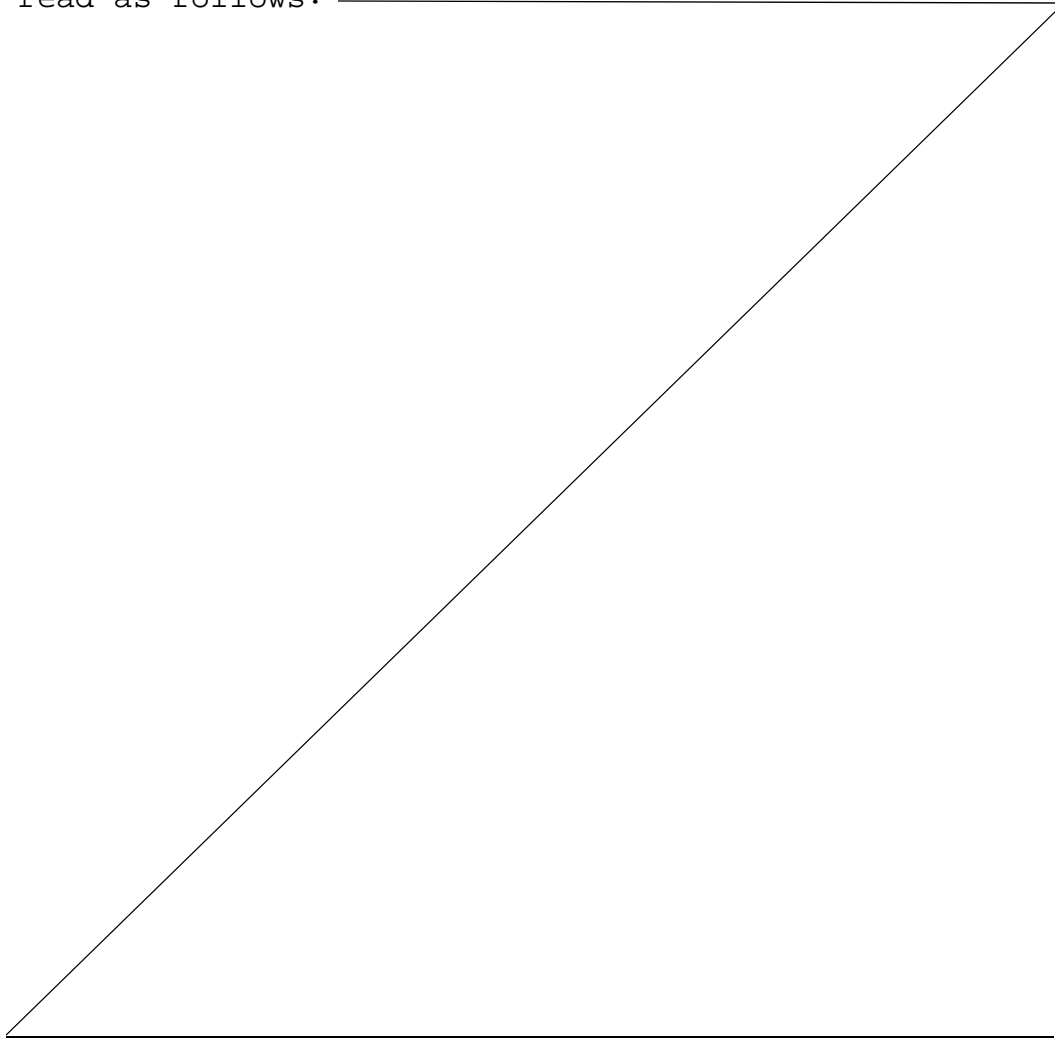


DEPARTMENT OF AGRICULTURE

Adoption of Chapter 4-161
Hawaii Administrative Rules

<Date of Adoption>

1. Chapter 4-161, Hawaii Administrative Rules,
entitled "HAWAII-GROWN INDUSTRIAL HEMP," is adopted to
read as follows: _____



DEPARTMENT OF AGRICULTURE

SUBTITLE 7

QUALITY ASSURANCE DIVISION

CHAPTER 161

HAWAII-GROWN INDUSTRIAL HEMP

§4-161-1	Definitions
§4-161-2	Licensing
§4-161-3	Reports
§4-161-4	Duties
§4-161-5	Testing and Sampling
§4-161-6	Violations
§4-161-7	Profits
§4-161-8	Waiver

§4-161-1 Definitions. As used in this chapter:

"Program" means the industrial hemp pilot program.

"Applicant" means a person that is an individual residing in Hawaii or an institution of higher education, a sole proprietorship, partnership, association, corporation, limited liability corporation, limited liability partnership, or any other business entity having any:

- (1) Place of business permanently located within the State;
- (2) Employees permanently assigned to work stations or areas located within the State; or
- (3) Tangible assets permanently located within the State.

"Board" means the board of agriculture or the board's designee.

"Chairperson" means the chairperson of the board of agriculture or the chairperson's designee.

"Department" means the department of agriculture.

"Industrial hemp" means the plant *Cannabis sativa* L. and any part of that plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 per cent on a dry matter basis or a tetrahydrocannabinol concentration allowed by federal law, whichever is greater, that is cultivated.

"Law enforcement" means the federal, state, and local agencies responsible for maintaining public order and enforcing the law.

"Licensed land area" means a contiguous land area registered with the department on which a licensee plans to cultivate industrial hemp. A licensed land area may include land and buildings that are not used for cultivation.

"Licensure" means authorization by the department for any individual or legal entity to grow industrial hemp on a licensed land area.

"Movement" means the shifting of industrial hemp from a licensed land area to another location, or into a licensed land area from another location.

"Seed cultivar" means a variety of industrial hemp.

"Variety" means a group of individual plants that exhibit the same observable physical characteristics or have the same genetic composition.

[Eff] (Auth: HRS §141-40) (Imp: HRS §141-31)

§4-161-2 Licensing. (a) Each applicant for an industrial hemp license shall submit a signed, complete, accurate, and legible application, on a form provided by the department, as specified by statute, in which the applicant plans to grow industrial hemp, which shall include the following:

- (1) The applicant's name, mailing address, and phone number in Hawaii and, if applicable electronic mail address;
- (2) If the applicant is an individual or partnership, the date of birth of the individual or partners;

- (3) If the applicant is any business entity other than an individual, partnership, or institution of higher education documentation that the entity is authorized to do business in Hawaii;
- (4) The cultivated variety that will be sown;
- (5) The source and amount of seed, cuttings, or seedlings to be used;
 - (A) If seed importation assistance from the department is requested, the applicant shall be responsible for all costs associated with the seed purchase and importation.
 - (B) If cuttings or seedlings are the applicant's initial source and are approved in a pre-planting report, a movement report shall be submitted prior to any movement of the cuttings or seedlings and shall include the location from which the product will be moved, the mode of transportation, the location to which the product will be moved, and the seed cultivar of the product. The department may require inspection or sampling of the product prior to movement.
- (6) The number of acres to be cultivated for seed, viable grain, industrial products, or any combination thereof;
- (7) The global positioning system coordinates in decimal degrees from the central most point of the licensed land area and a map showing the location of the licensed area in terms of its legal address or legal description;
- (8) A statement that the applicant is the fee simple owner of the licensed land area to be used for the cultivation or a statement signed by the fee simple owner of the licensed land area indicating that the owner has consented to that use;
- (9) The address of the place in Hawaii where the applicant will keep the records, books,

electronic data, or other documents that are required by this chapter;

- (10) The name and address of each place where the industrial hemp is to be stored, sold, or provided, indicating for each place the form of the industrial hemp; and
- (11) The applicant's acknowledgement and agreement to the following terms and conditions:
 - (A) Any information obtained by the department may be publicly disclosed and provided to law enforcement without further notice to the applicant or licensee;
 - (B) The applicant has the legal authority to grant the department access to the proposed licensed land area for inspection and sampling and agrees to allow any inspection and sampling the department deems necessary;
 - (C) The applicant agrees to pay for any sampling and analysis cost the department deems necessary;
 - (D) The applicant agrees to submit all required reports by the applicable due dates specified by the department; and
 - (E) The applicant and any partners, directors, or members have not been convicted of any felony related to the possession, production, sale, or distribution of a controlled substance in any form in this or any other country.

(b) An application may be received, as specified by statute, and shall be signed by the applicant or, in the case of a business entity, one of its officers, directors, or partners, as the case may be, and indicate that all information and documents submitted in support of the application are correct and complete to the best of the applicant's knowledge.

(c) Any incomplete application for a license or an application received after April 1 of any year, shall be denied.

(d) In addition to the application form, each applicant for a license shall submit a non-refundable \$500 application fee by certified check or cashier's check delivered or mailed by certified mail, return receipt. If the fee does not accompany the application, the application for a license shall be deemed incomplete.

(e) The annual license fee for production of industrial hemp shall be \$250 plus \$2 per acre, unprorated. The initial license fee shall be due prior to the issuance of a license, by certified check or cashier's check delivered or mailed by certified mail, return receipt. The subsequent annual license fee shall be due prior to one year after the date of issuance of the license. Failure to pay any license fees may result in denial, suspension, or revocation of a license and other penalties set forth in section 4-161-6.

(f) Each license shall allow a licensee to cultivate up to a maximum of ten acres of industrial hemp on a single contiguous licensed land area. Additional or non-contiguous acreage shall require a separate license.

(g) Licenses shall be issued to successful applicants on a quarterly basis, in March, June, September, and December of the application year. Any changes to information in an application occurring prior to the issuance of a license shall be immediately reported to the department. Failure to report any changes may result in denial, suspension, or revocation of a license and other penalties set forth in section 4-161-6.

Upon successful application, return of a signed license agreement, and remittal of the license fee by certified check or cashier's check, the applicant shall receive a license with a date of issuance according to the quarterly issuance schedule.

(h) All licenses shall be valid for two years from the date of issuance, subject to renewal or

revocation by the department as set forth in this chapter.

- (i) To renew a license, applicants shall:
 - (1) Submit an application form at least sixty days prior to the expiration date of the license specifying that it is an application to renew a previous unrevoked license, along with a renewal application fee of \$350, by certified check or cashier's check delivered or mailed by certified mail, return receipt.
 - (2) Upon successful application, return of a new signed license agreement, and remittal of the license fee by certified check or cashier's check, the applicant for renewal shall receive a renewed license valid for two years from the date of issuance, subject to renewal or revocation by the department as set forth in this chapter.

(j) Any licensee who wishes to alter the licensed land area on which the licensee shall conduct industrial hemp cultivation shall, before altering the area, submit to the department an updated address, global positioning system location, and map specifying the proposed alteration. If the department approves the altered land area, the department shall notify the licensee in writing that the licensee may begin to cultivate industrial hemp on the altered land area.

(k) A licensee who wishes to change the cultivar grown shall submit to the department the name of the new, approved cultivar to be grown. If the department approves the change to the cultivar, the department shall notify the licensee in writing that the licensee may begin to cultivate the new, approved cultivar.

(l) Licenses shall not be sold, assigned, transferred, or encumbered.

(m) No land area shall be included in more than one license at the same time.

(n) Each non-contiguous land area on which industrial hemp is grown shall require a separate license.

(o) Incomplete applications shall not be processed, and application fees shall not be refunded.

(p) Any change to information provided in the application shall be submitted within ten days of when the change occurs. Failure to provide accurate information or to update any information in a timely manner may result in denial, suspension, or revocation of a license and other penalties set forth in section 4-161-6. [Eff _____] (Auth: HRS §141-40)
(Imp: HRS §141-33)

§4-161-3 Reports. (a) Pre-planting report. Prior to planting any industrial hemp, a licensee shall file for the department's approval, on a form provided by the department, a pre-planting report that includes a description of the industrial hemp varieties to be planted on the licensed land area, and a map showing where they will be planted.

(b) Planting Report. Within ten days after planting any industrial hemp in a licensed land area, each licensee shall file, on a form provided by the department, a planting report that includes:

- (1) A list or description of all varieties of industrial hemp planted, or of volunteer industrial hemp plants that have emerged from a previous planting and are not destroyed, within a licensed land area; and
- (2) The location and actual acreage or square feet of each variety of industrial hemp planted, or of volunteer industrial hemp plants that have emerged and are not destroyed, within a licensed land area;

A planting report shall be filed any time industrial hemp is planted in, moved within, or moved into a licensed land area, except when the industrial hemp is replanted into a larger container within the same indoor location in the licensed land area. Planting reports shall be filed for industrial hemp grown from

seed, industrial hemp grown from cuttings, and industrial hemp moved into the licensed land area whether as mature plants or as seedlings.

(c) Harvest Report. At least thirty days prior to harvest, a licensee shall file, on a form provided by the department, a harvest report that includes:

- (1) The harvest dates and location of each variety cultivated within a licensed land area.
 - (A) A licensee shall immediately notify the department of any changes in the reported harvest dates in excess of five days. If any changes to the harvest dates are made, the department may require additional inspection or sampling prior to the harvest.
- (2) Documentation that the licensee has entered into a purchase agreement with an industrial hemp processor. If the licensee has not entered into a purchase agreement, the licensee shall include a statement of intended disposition of its industrial hemp crop, and shall confirm in writing its intended disposition within seven days prior to harvest.
 - (A) Licensees shall immediately notify the department of any changes to the purchase agreement or disposition statement.

(d) Movement Report. At least two business days prior to the movement of industrial hemp grain or plant material from a licensed land area, the licensee shall file, on a form provided by the department, an application for movement permit and movement report. The report shall include the intended date of the move, the location from which the product will be moved, the mode of transportation, and the location to which the product will be moved. The department may require inspection or sampling of the product prior to movement.

[Eff _____] (Auth: HRS §141-40) (Imp:
HRS §§141-34, 141-36)

§4-161-4 Duties. (a) The licensee shall continually ensure that all information provided to the department is accurate and up to date, and shall notify the department within the time specified in this chapter, or if not specified, at least ten days prior to any changes, or immediately upon discovery of the change if ten days prior is not possible. Failure to provide and maintain accurate and up to date information on file with the department may result in the penalties set forth in section 4-161-6.

(b) The licensee shall conduct all agricultural operations in a lawful manner consistent with the standards befitting of an official of the State, provided that such standards are subject to the sole discretion and direction of the department.

(c) The licensee shall abide by all applicable laws and regulations incident to the growth, cultivation, or marketing of industrial hemp.

(d) The licensee shall indemnify, hold harmless and release forever the State and its departments, agencies, officers, employees, and agents of any kind from all liability claims arising out the licensee's actions involving the growth, cultivation, or marketing of industrial hemp.

(e) The licensee shall warrant that the licensee is not an employee of the State and shall assume total and sole responsibility for any of the licensee's acts or omissions involving the growth or production of industrial hemp or arising out the licensee's participation in the industrial hemp pilot program.

(f) The licensee shall allow any institution of higher education in the State to access the sites registered by the licensee with the department for production of industrial hemp for all purposes, as determined at the discretion of the department related to research, growth, cultivation, and marketing of industrial hemp.

(g) The licensee shall allow federal, state, or local authorities to inspect and sample the industrial hemp licensed land area, plants, plant materials,

seeds, equipment, or facilities incident to the growth or production of industrial hemp.

(h) The licensee shall remit to the department when due, all fees and other expenses required under this chapter.

(i) The licensee shall adhere narrowly to the research focus of the area in which the licensee is participating in the industrial hemp pilot program.

The areas include one or more of the following:

- (1) Planting and growing - tracking vital statistics and yield rates with respect to industrial hemp varieties and growing variables, including seed planting rate, soil composition, water usage, and planting and growing season;
- (2) Pest - tracking the occurrence of pests and effectiveness of various preventative measures in correlation with the industrial hemp varieties;
- (3) Cost centers and financing - tracking average cost estimates of producing industrial hemp varieties, taking into account costs of participation in the industrial hemp pilot program, product acquisition, water usage, equipment, labor, and security measures and reporting financial resources available for production of industrial hemp; or
- (4) Marketing and industrial development - reporting market demand for industrial hemp varieties, raw materials and end products, including identification of actual or potential hemp products, processors, product manufacturers, wholesalers, retailers, and targeted consumers.

(j) The licensee shall gather information and data generated by its industrial hemp research activities, and provide them to the department at the end of each license period in the form of a research report. A failure to submit the research report may result in the penalties set forth in section 4-161-6.

(k) The licensee shall complete and submit all reports and statements requested by the department relative to the licensee's production of industrial hemp. A failure to submit any required or requested report may result in revocation of the licensee's license and other penalties set forth in section 4-161-6.

(l) The licensee shall, at the discretion of and in a manner determined by the department, destroy or dispose of any industrial hemp crop, plant, plant material, or seed determined by the department or law enforcement to be non-compliant with applicable laws and regulations. The licensee shall be responsible for all costs associated with the destruction or disposal of non-compliant crops, plants, plant material, or seeds.

(m) The licensee shall use best management practices for growth and production of industrial hemp, as available, including the any best management practices specified in chapter 141, Part II, Hawaii Revised Statutes, and any county-specific best management practices. The licensee shall further take reasonable precaution to prevent unauthorized growth or distribution of industrial hemp, including but not limited to:

- (1) Taking the precautionary measures, as applicable, specified in chapter 141, part II, Hawaii Revised Statutes;
- (2) Reporting theft of industrial hemp plants, plant materials, or seeds to law enforcement and providing the department with a copy of the police report; and
- (3) Reducing the likelihood of cross pollination between varieties of industrial hemp and among the other plants by, when practicable, using feminized seed and eliminating male plants upon identification to prevent unnecessary pollen. [Eff _____]
(Auth: HRS §141-40) (Imp: HRS §141-36)

§4-161-5 Inspection and sampling. (a) All licensees are subject to inspection and sampling of their industrial hemp crop to verify that the delta-9-tetrahydrocannabinol concentration does not exceed 0.3 per cent on a dry weight basis or a tetrahydrocannabinol concentration allowed by federal law, whichever is greater.

(b) During the inspection, the licensee or the licensee's authorized representative shall be present at the licensed land area and shall provide the department with complete and unrestricted access to all industrial hemp plants, plant materials, and seeds within a licensed land area whether growing or harvesting, all land, buildings, and other structures, and all documents and records pertaining to the licensee's industrial hemp growing business.

(c) Sampling of industrial hemp shall occur in the following manner:

- (1) Individual and composite samples of each variety of industrial hemp may be sampled from the growing areas.
- (2) Quantitative laboratory determination of the delta-9-tetrahydrocannabinol concentration on a dry weight basis shall be performed.
- (3) A sample test result greater than 0.3 per cent of delta-9-tetrahydrocannabinol concentration or a tetrahydrocannabinol concentration allowed by federal law, whichever is greater, shall be considered conclusive evidence that at least one cannabis plant or part of a plant in the growing area contains a delta-9-tetrahydrocannabinol concentration over the limit allowed of for industrial hemp and that the licensee of that growing area is therefore not in compliance with this chapter. Upon receipt of such a test result, the department may summarily suspend or revoke the licensee's license. The department shall furnish the licensee a portion of the violative sample if the licensee requests it in writing within

thirty days of the date of the department's notification of non-compliance to the licensee.

(d) Test results from tests performed according to methods approved by the department from an institution of higher education may, at the department's discretion, be accepted in lieu of the department sampling.

(e) Licensees shall pay a charge of \$35 per hour per inspector for actual drive time, mileage, inspection, and sampling time. Payment shall be remitted within thirty days of the date of the invoice.

(f) Licensees shall reimburse the department for all laboratory analysis costs incurred. Payment shall be remitted within thirty days of the date of the invoice.

(g) All licensees are subject to routine inspection and sampling to verify that the delta-9-tetrahydrocannabinol concentration of the industrial hemp planted within a licensed land area does not exceed 0.3 per cent on a dry weight basis or a tetrahydrocannabinol concentration allowed by federal law, whichever is greater. All licensees are further subject to routine inspection and sampling to verify compliance with the reporting requirements of this chapter. The department may select up to one hundred per cent of licensees to be inspected. The department shall send notification to each licensee of their selection. The notification shall inform the licensee of the scope and process of the inspection and require the licensee to contact the department within ten days of the date of the notification to set a date and time for the inspection to occur. Failure to contact the department as required may result in the penalties set forth in section 4-161-6.

(h) In addition to routine inspection and sampling under subsection (g), the department may inspect and take samples from any licensed land area during normal business hours without advance notice if the department has reason to believe a violation of this chapter may be occurring. The department may

also conduct such additional inspection and sampling as necessary to verify compliance with the reporting requirements of this chapter. [Eff]
(Auth: HRS §141-40) (Imp: HRS §§141-36, 141-37)

§4-161-6 Violations. (a) In addition to any violations of any provisions of this chapter, the following acts and omissions by any licensee or authorized representative thereof constitute violations for which civil penalties up to \$500 and disciplinary sanctions, including suspension or revocation of a license and cease and desist orders, may be imposed by the department:

- (1) Refusal or failure by a licensee or authorized representative to fully cooperate and assist the department with the inspection process;
- (2) Failure to provide any information required or requested by the department for purposes pursuant to this chapter;
- (3) Providing false, misleading, or incorrect information pertaining to the licensee's cultivation of industrial hemp to the department by any means, including but not limited to information provided in any application form, report, record, or inspection required or maintained pursuant to this chapter;
- (4) Growing industrial hemp that when tested is shown to have a delta-9-tetrahydrocannabinol concentration greater than 0.3 per cent on a dry weigh basis or tetrahydrocannabinol concentration allowed by federal law, whichever is greater;
- (5) Failure to pay any fees or costs, when due, that are assessed by the department pursuant to this chapter; or
- (6) Possessing, outside of a field of lawful cultivation, resin, flowering tops, or leaves that have been removed from the hemp plant, provided that the presence of de

minimis amount, or insignificant number, of hemp leaves or flowering tops in hemp bales that result from the normal and appropriate processing of industrial hemp shall not apply to this paragraph.

[Eff _____] (Auth: HRS §141-40) (Imp: HRS §141-38)

§4-161-7 Profits. The department shall forego any income or profit that licensees lawfully obtained through the disposition of the licensees' industrial hemp crop, provided that the licensee reports to the department:

- (1) Any movement of the licensee's hemp plants, plant materials, or seeds outside the licensed area;
 - (2) Any sale of, or benefit received in exchange for, the licensee's industrial hemp plants, plant materials, or seeds; and
 - (3) Any commercial details of such movement, sale, or exchange for use by the department to research the marketability and logistical production of industrial hemp in the State.
- [Eff _____] (Auth: HRS §141-40) (Imp: HRS §141-39)

§4-161-8 Waiver. (a) If a sample of a licensee's industrial hemp tests higher than 0.3 per cent but not more than 1 per cent delta-9-tetrahydrocannabinol concentration the licensee may request a waiver to the revocation or suspension of its license if the crop is destroyed or utilized on the licensed land area in a manner approved and verified by the department.

(b) Licensees shall have ten days from the date of the notification of a test result higher than 0.3 per cent but not more than 1 per cent delta-9-tetrahydrocannabinol concentration to request a waiver. [Eff _____] (Auth: HRS §141-40) (Imp: HRS §141-36)

2. The adoption of chapter 4-161, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on Month xx, XXX, and filed with the Office of the Lieutenant Governor.

SCOTT E. ENRIGHT
Chairperson
Board of Agriculture

APPROVED AS TO FORM:

Deputy Attorney General