

Industrial Hemp – Legal Issues

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Introduction

Industrial hemp (*Cannabis sativa* L.) is a fiber and oil seed crop with a wide variety of uses. Hemp fibers have been used to manufacture hundreds of products that include fiber for injected/molded composite materials, twine, paper, construction materials, carpeting, and clothing. Seeds have been used in making industrial oils, cosmetics, medicines, and food. This fiber crop also has potential as a cellulosic ethanol biofuel. In addition, hemp contains compounds known as cannabinoids that show promise in treating certain health problems. Currently all hemp products sold in the U.S. are imported or manufactured from imported hemp.

Industrial hemp was widely grown in the United States from the Colonial Period until the mid-1800s. During that time, Kentucky established itself as the leading hemp producer in the U.S. After the Civil War, hemp production declined in Kentucky, as well as in other areas of the country. Production temporarily resumed as part of the war effort during World War II. However, once the war was over, acreages dwindled until U.S. production ended in 1958. However, the last couple of decades have brought a renewed interest in commercial hemp as an alternative or supplementary crop. As the pro-hemp movement has spread, a number of states, including Kentucky, have passed laws favoring its production, generally in connection with



Hemp grows in a University of Kentucky research plot in the summer of 2014.

scientific, economic, and environmental research studies.

Hemp vs. Marijuana

Industrial hemp's relationship to marijuana was one of several factors that led to the demise of commercial production in the U.S. Hemp and marijuana are genetically different cultivars of the same plant species, and are distinguished from one another based on their intended use and tetrahydrocannabinol (THC) levels. THC is the main chemical that gives marijuana users their "high." While marijuana cultivars typically contain 3% to 15% THC by weight, cultivars for hemp production contain only trace amounts (less than or equal to 0.3%), reportedly below psychoactive levels. In turn, varieties grown for narcotic use produce poor quality fiber. Production practices for

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marijuana and hemp differ, with each aimed at maximizing the specific plant characteristics needed for their respective end uses. However, the two crops are so similar in appearance that they can only be distinguished with certainty by chemical analysis.

Federal Laws

The first federal law restricting hemp production was the Marihuana Tax Act of 1937. This measure placed all *Cannabis sativa* under federal regulation, requiring growers, importers, and processors of this crop to be registered and taxed. Industrial hemp production was further restricted when the Controlled Substances Act of 1970 categorized any product containing THC as a Schedule I drug, regardless of narcotic content level or use. As a result, the cultivation of all *C. sativa*, including industrial hemp, is now strictly regulated by the federal government.

Since 2005, several federal bills (referred to as The Industrial Hemp Farming Act) have been brought before Congress, subsequently dying in committee. Each bill proposed to amend the Controlled Substances Act to exclude industrial hemp varieties of *C. sativa* from the definition of marijuana. In addition, the licensing of hemp production would be placed into the hands of state governments, and thereby removed from federal regulation. The proposed law did not seek to change the illegal status of marijuana.

On February 7, 2014, President Obama signed the Agricultural Act of 2014 (the federal farm bill) into law. It included Section 7606, Legitimacy of Industrial Hemp Research, which authorized institutions of higher education or state departments of agriculture in states that have legalized hemp to grow industrial hemp if it is grown “for purposes of research conducted under an agricultural pilot program or other agricultural or academic research.” Pilot programs are defined as programs to “study the growth, cultivation, or marketing of industrial hemp.” Sites used for growing industrial hemp must be certified by, and registered with, that state’s department of

agriculture. State departments of agriculture are authorized to implement regulations to carry out the pilot programs.

Kentucky Hemp Pilot Programs

The signing of the farm bill in 2014 opened the door for hemp production to return to Kentucky. Senate Bill 50, passed by the Kentucky General Assembly in 2013, made industrial hemp exempt from the state controlled substances act, but also required Kentucky to follow the federal hemp rules and regulations. The farm bill’s authorization of state departments of agriculture in states that have legalized the crop to administer hemp pilot programs paved the way for research to begin. The Kentucky Department of Agriculture has established an Industrial Hemp Program as a result of Senate Bill 50 and the farm bill.

The Kentucky Department of Agriculture has been working with universities, farmers and processors around the state since 2014 to implement pilot programs, and has promulgated regulations in compliance with the farm bill. Growers interested in participating in pilot programs should complete the application available on the KDA’s website; the URL is listed under Selected Resources at the end of this document.

Summary

While the passage of SB 50 paved the way for industrial hemp production at the state level, at this time, growers who are interested in growing hemp need to apply and be approved to participate in pilot programs established by the KDA and authorized by the farm bill.

Selected Resources

Laws

- Agricultural Act of 2014
http://agriculture.house.gov/sites/republicans.agriculture.house.gov/files/pdf/legislation/Final_AgAct2014.pdf
- Kentucky Legislature: SB50 (2013)
<http://www.lrc.ky.gov/record/13rs/sb50.htm>

Hemp Information on the Internet

- Kentucky Department of Agriculture Industrial Hemp Program <http://www.kyagr.com/marketing/hemp-pilot.html>
- UK Industrial Hemp Research (University of Kentucky, 2015) <http://hemp.ca.uky.edu>
- Industrial Hemp Production (University of Kentucky, 2015) <http://www.uky.edu/Ag/CCD/introsheets/hempproduction.pdf>
- Economic Considerations for Growing Industrial Hemp: Implications for Kentucky's Farmers and Agricultural Economy <http://www2.ca.uky.edu/cmssubclass/files/EconomicConsiderationsforGrowingIndustrialHemp.pdf>
- Hemp: A New Crop with New Uses for North America (Purdue University, 2002) <http://www.hort.purdue.edu/newcrop/ncnu02/v5-284.html>
- Hemp as an Agricultural Commodity (Congressional Research Service, 2015) <http://www.fas.org/sgp/crs/misc/RL32725.pdf>

- Industrial Hemp (Agricultural Marketing Resource Center, 2015) http://www.agmrc.org/commodities_products/fiber/industrial_hemp.cfm
- Industrial Hemp in the United States: Status and Market Potential (USDA, 2000, updated 2015) <http://www.ers.usda.gov/publications/ages/ages001e.aspx#.U1EsvsdGyTY>

Books in print

- *A History of the Hemp Industry in Kentucky*. James F. Hopkins. 1998. University Press of Kentucky: Lexington, KY. 244 pp.
- *Report to the Governor's Hemp and Related Fiber Crops Task Force*. Sara McNulty, ed. 1995. Commonwealth of Kentucky. 223 pp.

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