

North Carolina Industrial Hemp Commission

1005 Mail Service Center, Raleigh, NC 27699-1001
919-707-3236

BEFORE THE NORTH CAROLINA INDUSTRIAL HEMP COMMISSION

RESOLUTION

WHEREAS, North Carolina farmers, licensed growers, registered hemp processors, registered farm aggregators, and retail and wholesale businesses and other members of the public have expressed the need for information and guidance as industrial hemp cultivation, processing and commerce becomes established in our State, and

Thomas A. Melton, III, Ph. D.
Commission Chair
Governor appointed

Alexander M. "Sandy" Stewart, Ph.D.
Commission Vice-Chair
Commissioner's designee

Guy Carpenter
Ag appointed
Business professional

Chief Tony Godwin
Senate appointed

Billy McLawhorn
Ag appointed
Agricultural Consultant

Sheriff Sam Page
House appointed

Francis E. N. "Fen" Rascoe
Ag appointed
Farmer professional

Jay Patrick "Pat" Short
Ag appointed
Farmer professional

Dr. Guochen Yang
Governor appointed

WHEREAS, it is within the purview and among the lawful duties of the Commission to advise the public regarding compliance with the industrial hemp pilot program authorized and established by state and federal law, and

WHEREAS, it is beneficial to the public to increase awareness and information,

Be it therefore resolved by the Commission that the following information is adopted and promulgated:

The information contained in this Resolution is provided as guidance from and the policy of the North Carolina Industrial Hemp Commission to licensed growers, registered hemp processors, registered farm aggregators, and retail and wholesale outlets for industrial hemp products, including but not limited to physicians, pharmacists, therapists, wholesalers, and general trade retailers. This guidance and policy statement is not to be construed as legal advice from the Commission and all parties are advised to consult with their own legal counsel.

Guidance and Policy Statement

Industrial hemp is an agricultural commodity that is cultivated for use in a wide range of products, including foods and beverages, cosmetics and personal care products, nutritional supplements, fabrics and textiles, yarns and spun fibers, paper, construction and insulation materials, and other manufactured goods. Hemp can be grown as a fiber, seed, or other dual-purpose crop. For many decades, the U.S. market for industrial hemp has been largely dependent on imports, both as finished hemp-containing products and as ingredients for use in further processing, mostly from Canada and China. *See* Johnson, "Hemp as an Agricultural Commodity," Congressional Research Service, March 10, 2017 (hereinafter referred to as the "Johnson Analysis"). The North Carolina General Assembly has embraced the cultivation and study of this promising product for our State by establishing the Industrial Hemp Commission and providing for growth and marketing within the parameters of federal law.

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It is undisputed that processed industrial hemp products, specifically excluding viable seeds and/or plants, may be imported into the United States and may be freely bought and sold in commerce to the same extent as other like-kind goods. Federal litigation in 2004 resulted in a permanent injunction barring the enforcement of a Food and Drug Administration rule that would have banned non-hallucinogenic hemp products for human consumption. *See Hemp Industries Association v. DEA*, 357 F.3rd 1012 (9th Circuit 2004).

As noted in the Johnson Analysis, Congress made significant changes to federal policies regarding hemp in the 2014 "Farm Bill" (Agricultural Act of 2014 (P.L. 113-79, §7606). Section 7606 of the Agricultural Act provided that certain research institutions and state departments of agriculture may grow hemp under an agricultural pilot program.

The plain language of Section 7606 of the Agricultural Act reflects congressional intent to allow the marketing of industrial hemp. The statute defines an industrial hemp pilot program as follows:

The term "agricultural pilot program" means a pilot program to study the growth, cultivation, or *marketing* of industrial hemp—

- (A) in States that permit the growth or cultivation of industrial hemp under the laws of the State; and
- (B) in a manner that—
 - (i) ensures that only institutions of higher education and State departments of agriculture are used to grow or cultivate industrial hemp;
 - (ii) requires that sites used for growing or cultivating industrial hemp in a State be certified by, and registered with, the State department of agriculture; and
 - (iii) authorizes State departments of agriculture to promulgate regulations to carry out the pilot program in the States in accordance with the purposes of this section.

(Emphasis added)

The marketing of industrial hemp products is part and parcel of what Congress authorized in connection with state pilot programs. Importantly, the congressional enactment placed *no restriction* upon the marketing of hemp. This new federal law, read in connection with the 2004 ruling of the federal court in *Hemp Industries Association v. DEA*, leads to the inexorable conclusion that products flowing from lawfully established pilot programs are accorded the same badges of legitimacy and legality as are the imported hemp products specifically protected by the federal court's decision in *Hemp Industries Association*.

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On May 11, 2017, the North Carolina Department of Justice, Office of the Attorney General, issued an advisory letter to Dr. Tom Melton, Chair of the North Carolina Industrial Hemp Commission, which states, in part, as follows:

Congress specifically prohibited agencies from expending funds "to prohibit the transportation . . . of industrial hemp" grown or cultivated under the Agricultural Act. Consolidated Appropriations Act, 2017, § 733 of Division A (May 5, 2017). Further, this provision specifically cites transportation "within or outside the State in which the industrial hemp is grown or cultivated." *Id.* Another provision bars the Drug Enforcement Administration from using funds "in contravention" of section 7606 of the Agricultural Act. *Id.*, § 543 of Division B. . . . Ultimately, both appropriations act provisions are evidence that, when drafting section 7606 of the Agricultural Act, **Congress intended to allow industrial hemp grown for research purposes to be transported outside the State of origin.**

(Emphasis added)

The North Carolina Industrial Hemp Commission therefore supports the following resolutions:

1. Licensed farmers, registered farm aggregators, and processors operating under the North Carolina Industrial Hemp Pilot Program may purchase from or sell live industrial hemp plants or seeds or propagules to both international and United States - based suppliers. The purchaser must maintain documentation of program participation and varieties for United States purchases and must comply with DEA requirements for foreign importation or sale.
2. Licensed farmers may sell their industrial hemp crops, including seeds or propagules, live plants or harvested plants or plant parts to local, out of state, and international buyers and processors. This guidance does not obviate the need for sellers to comply with all domestic and foreign law pertaining to industrial hemp.
3. The intent of this Resolution is to place North Carolina growers, processors, wholesalers or retailers of industrial hemp and industrial hemp products on the same footing as international growers, processors, wholesalers and retailers.

Duly ADOPTED by the Commission in public session this the 28 day of July, 2017.

Dr. Tom Melton

Dr. Tom Melton, Chairman