

**REPORT OF THE VIRGINIA DEPARTMENT OF
AGRICULTURE AND CONSUMER SERVICES**

**Report on Virginia's Industrial
Hemp Program Fees
(Chapter 654, 2019)**

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*VIRGINIA DEPARTMENT
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CONSUMER SERVICES*

**REPORT ON VIRGINIA'S
INDUSTRIAL HEMP PROGRAM FEES**

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Commissioner**

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Report on Virginia's Industrial Hemp Program Fees

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Legislative Mandate

Chapters 653 and 654 of the 2019 Acts of Assembly

Executive Summary

Chapters 653 and 654 of the 2019 Acts of Assembly direct the Virginia Department of Agriculture and Consumer Services (VDACS) to prepare a report on (i) the fiscal impact of the growth of the industrial hemp industry in Virginia upon the Department's registration program and (ii) any need to alter the registration fee charged by the Department. This report provides an overview of the growth of the industrial hemp industry in Virginia, as reflected in the number of industrial hemp registrations issued by VDACS and the acreage planted in industrial hemp in Virginia. This report also reviews the costs to VDACS related to the administration of the Virginia Industrial Hemp Law during the 2019 growing season.

THE GROWTH OF THE VIRGINIA INDUSTRIAL HEMP PROGRAM

The U.S. Congress, through Section 7606 of the Agricultural Act of 2014, allowed state departments of agriculture to grow industrial hemp for research purposes, under certain conditions. The 2015 Session of the Virginia General Assembly enacted the Industrial Hemp Law (Law), which authorized the Virginia Department of Agriculture and Consumer Services (VDACS) to (i) establish and oversee an industrial hemp research program that was directly managed by public institutions of higher education and (ii) issue Industrial Hemp Grower Licenses.

In August 2015, VDACS entered into a memorandum of understanding with James Madison University (JMU), Virginia State University (VSU), and Virginia Polytechnic Institute and State University (Virginia Tech) to conduct industrial hemp research. In 2016, these three research universities planted a total of approximately 37 acres in industrial hemp, and VDACS issued 29 Industrial Hemp Grower Licenses to individuals participating in these universities' industrial hemp research programs. In September 2016, VDACS entered into a memorandum of understanding with a fourth public institution of higher education, the University of Virginia (UVA), to conduct industrial hemp research. In 2017, the four research universities planted a total of approximately 78 acres in industrial hemp, and VDACS issued 34 Industrial Hemp Grower Licenses to individuals participating in these universities' industrial hemp research programs.

Chapters 689 and 690 of the 2018 Acts of Assembly amended the Law to establish a second industrial hemp research program that was directly managed by VDACS, to replace the Industrial Hemp Grower License with an Industrial Hemp Grower Registration, to create an Industrial Hemp Processor Registration, and to cap the registration application fee established in the Law at \$50. Additionally, the 2018 Appropriations Act provided \$145,853 and two full-time equivalent positions to VDACS for the administration of the industrial hemp program. Prior to receipt of this appropriation, VDACS absorbed the costs associated with overseeing Virginia's Industrial Hemp Research Program and Industrial Hemp Grower Licensing Program, and assigned the responsibility for administering these programs to existing staff.

During the 2018 industrial hemp growing season, 85 industrial hemp growers held the annual registration issued by VDACS in order to grow industrial hemp as a participant in either a university-led research program or the newly-established VDACS-led research program. During the 2018 growing season, Registered Industrial Hemp Growers planted approximately 135 acres of industrial hemp in Virginia.

Chapters 653 and 654 of the 2019 Acts of Assembly eliminated the industrial hemp research programs, allowed for commercial production of industrial hemp in Virginia, and created the Industrial Hemp Dealer Registration category. During the 2019 industrial hemp growing season, there were 955 Registered Industrial Hemp Growers, 191 Registered Industrial Hemp Processors, and 55 Registered Industrial Hemp Dealers. During this growing season, Registered Industrial Hemp Growers planted approximately 2,200 acres of industrial hemp in Virginia.

INDUSTRIAL HEMP REGISTRATION FEES COLLECTED – 2019 GROWING SEASON

From the industrial hemp registration applicants that VDACS registered for the 2019 growing season, VDACS collected a total of \$60,050 in registration application fees. The agency does not collect any additional fees from industrial hemp registrants. While the Industrial Hemp Law authorizes the Commissioner to test a grower’s industrial hemp for compliance with tetrahydrocannabinol (THC) concentration levels at the cost of the grower, the agency elected to absorb the cost of sampling and THC testing during the 2019 growing season, as the agency did not sample and test all growers and did not want to levy an additional fee on a select group of growers. The industrial hemp program is a general fund program. As such, the revenue the agency collects for this program is deposited into the Commonwealth’s general fund and not available for the agency’s use in administering the program.

2019 Growing Season	
Registered Industrial Hemp Growers	955
Registered Industrial Hemp Processors	191
Registered Industrial Hemp Dealers	55
Registration application fees collected (\$50 application fee)	\$60,050

AGENCY COSTS TO ADMINISTER THE VIRGINIA INDUSTRIAL HEMP PROGRAM

Program Component	2019 Growing Season Costs
Registration	\$115,174
Sampling	\$95,234
Finance Office	\$11,374
DCLS Testing	\$67,800
Total	\$289,582

INDUSTRIAL HEMP PROGRAM – REGISTRATION PROGRAM COSTS – 2019 GROWING SEASON

In February 2019, VDACS hired an Industrial Hemp Program Coordinator, who is responsible for providing oversight of the Virginia Industrial Hemp Program and whose responsibilities include reviewing applications for and issuing industrial hemp registrations, providing technical assistance regarding the industrial hemp program, coordinating the agency’s activities related to industrial hemp sampling and testing, and liaising with law enforcement. Additionally, two existing agency staff members devote a percentage of their time to assisting with the Industrial Hemp Program, and the agency’s Finance Office incurs costs to process industrial hemp registration application fees. The approximate agency staff and Finance Office costs related to the registration of industrial hemp growers, processors, and dealers for the 2019 growing season was \$126,548.

Industrial Hemp Registration Program Costs for the 2019 Growing Season	
Industrial Hemp Program Staff Cost (salary and fringe benefit costs)	
Coordinator	\$68,638
Manager	\$38,558
Director	\$7,978
Total Staff Cost	\$115,174
Finance Office Cost (\$9.47 per transaction (i.e., per registration application fee processed))	
Cost to process industrial hemp registration application fees	\$11,374
TOTAL INDUSTRIAL HEMP REGISTRATION PROGRAM COSTS FOR THE 2019 GROWING SEASON	\$126,548

INDUSTRIAL HEMP PROGRAM – SAMPLING AND TESTING COSTS – 2019 GROWING SEASON

As noted above, while the Industrial Hemp Law authorizes the Commissioner to test a grower’s industrial hemp for compliance with THC concentration levels at the cost of the grower, the agency elected to absorb the cost of sampling and THC testing during the 2019 growing season, as the agency did not sample and test all growers. During the 2019 growing season, VDACS collected 339 samples of industrial hemp from the 2,664 samples of industrial hemp that were potentially available, based on information received from growers via the planting reports they submitted to VDACS. The cost to the agency to collect these 339 samples was approximately \$281 per sample, for a total cost of \$95,234. The Department of General Services, Division of Consolidated Laboratory Services (DCLS) conducts the THC concentration testing on the industrial hemp samples that VDACS collects and charges VDACS \$200 per THC concentration test conducted. For the 2019 growing season, VDACS absorbed laboratory testing costs totaling \$67,800.

REVIEW OF HEMP PROGRAM FEE STRUCTURES IN OTHER STATES

For the purpose of this report, data regarding state hemp programs was collected by reviewing information on state department of agriculture hemp program webpages and state hemp laws. This report includes a comparison between the fees associated with participation in Virginia Industrial Hemp Program and hemp programs of the following Mid-Atlantic or Southern states: Georgia, Kentucky, Maryland, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, and West Virginia. Appendix A provides the details of the fee structures in these states.

In this report, fees associated with participation in the Virginia Industrial Hemp Program are compared to fees of other states in two categories: (i) administrative or application fees and (ii) sampling and laboratory testing fees.

Administrative or Application Fees

At this time, the administrative fees for the Virginia Industrial Hemp Program include a single registration application fee of \$50.00, with no additional fees associated with issuance of a registration or modification to an existing registration. Similarly, Georgia, Maryland, Pennsylvania, and Tennessee charge only either an application fee or a licensing fee, with no additional fees for modification of existing licenses, as a part of their respective programs. However, a comparison of these singular fees reveals that administrative fees for the Virginia Industrial Hemp Program are the lowest.

Additional components of hemp program administrative fee structures observed in other states include a license application fee that is distinct from a fee due upon issuance of a license, a tiered licensing fee that is determined by the type of hemp (i.e., grain, fiber, or floral) that the hemp processor intends to process, and a tiered licensing fee that is determined by the number of acres of hemp that the grower intends grow.

Sampling and Laboratory Testing Fees

At this time, the Virginia Industrial Hemp Program absorbs all costs associated with the sampling and laboratory testing of industrial hemp grown in Virginia for compliance with the Virginia Industrial Hemp Law. Many state hemp programs, including those in North Carolina, Ohio, Tennessee, and West Virginia collect a separate fee related to hemp sampling, generally ranging from \$150 to \$200 per sample.

ADJUSTING THE VIRGINIA INDUSTRIAL HEMP PROGRAM FEES

Virginia's industrial hemp industry enjoys the lowest administrative fees charged throughout the Mid-Atlantic and Southern States. Additionally, Virginia's industrial hemp industry did not bear any costs associated with regulatory sampling and testing in 2019. The agency believes the minimal fees collected by the Virginia Industrial Hemp Program has, in part, allowed many first-time farmers as well as many individuals interested in growing industrial hemp solely for personal consumption to join Virginia's growing industrial hemp industry.

The industrial hemp program is a general fund program, and, as such, the revenue the agency collects for this program is deposited into the Commonwealth's general fund and not available for the agency's use in administering the program. Unless a special non-reverting fund is established in the Law for the revenue the agency collects for this program, adjusting the Virginia Industrial Hemp Program fees will not aid in supporting the administration of the program, but may impact an individual's decision as to whether he or she wants to participate in Virginia's industrial hemp industry as a Registered Industrial Hemp Grower, Processor, or Dealer.

Governor Northam's introduced budget for the 2020-2022 biennium pursues an appropriation from Virginia's General Assembly to provide (i) \$100,000 annually in funding to contract for seasonal hemp sampling, (ii) \$550,000 for the development of an online industrial hemp registration database with a geographic information system component and an offline inspection and sample tracking module, and (iii) one additional full-time equivalent (FTE) and funding for program support functions. The provisions in Governor Northam's introduced budget that support the commercialization of industrial hemp in Virginia provide \$726,340 for fiscal year 2021 and \$176,340 for fiscal year 2022. These provisions were developed using projections based on the administration of Virginia's Industrial Hemp Law during the 2019 industrial hemp growing season.

Fiscal Impact of USDA's Domestic Hemp Production Program Regulation

The enactment of the new federal Farm Bill in December 2018 and the changes to the Virginia Industrial Hemp Law during the 2019 Session of the General Assembly greatly expanded the potential for interested hemp growers, dealers, and processors to enter this emerging market. Additionally, in October 2019, the U.S. Department of Agriculture (USDA) published an Interim Final Rule establishing its Domestic Hemp Production Program regulation ("Hemp Production Rule"), as required by the 2018 federal Farm Bill. This rule, in part, requires states desiring primary regulatory authority over the production of hemp to (i) collect, maintain, and make available to USDA certain information regarding hemp growers and the land on which hemp is produced in the state, (ii) review all grower registration applicants' criminal history reports, (iii) sample all hemp crops within the 15 days prior to the anticipated harvest date, (iv) prohibit growers from moving their crop into the stream of commerce before crop is deemed to have an acceptable level of THC, and (v) certify that the state has the resources and personnel needed to carry out the practices and procedures described in the state hemp production plan.

USDA's Hemp Production Rule creates budgetary and logistical challenges for states considering submission of a state plan to establish primary regulatory authority over hemp production. Provisions in USDA's Hemp Production Rule regarding mandatory THC testing for all hemp coupled with a lack of sufficient laboratory testing service capacity may result in significant fiscal and logistical burdens for states.

VDACS, following consultation with the Superintendent of the Virginia State Police and the Governor's Office, as required by the 2018 federal Farm Bill, intends to submit a hemp regulation plan to USDA in early 2020. Based on projections made using data from the 2019 growing season, VDACS estimates the cost to fully implement a hemp program that complies with USDA's Hemp Production Rule may be up to \$2,302,962 in the first year and \$1,157,962 each year thereafter. Some of these anticipated costs are addressed in the introduced budget bill. For example, the introduced budget provides \$550,000 for the development of an online industrial hemp registration database with a geographic information system component and an offline inspection and sample tracking module. However, to fully implement the federal requirements, additional support may be necessary to meet the sampling and testing

requirements. An additional \$266,400 annually is needed to contract for seasonal hemp plant sampling. A seasonal sampling contract will allow the department to collect hemp samples from all hemp production fields, as required by USDA. Based on a per-sample estimate of \$100 (assuming two to three hours at \$25 per hour and \$25 to \$50 for travel), the department expects that it will be able to collect approximately 2,664 samples annually with this contract funding. In fall 2019, if the department inspectors were to have sampled every variety growing at every production field, the department would have collected approximately 2,664 samples.

To ensure the department is able to test the THC concentration of all of the cannabis samples collected, a number of options are under consideration. If testing is provided through DCLS or the VDACS Regional Animal Health Laboratory System, the estimated needs are seven FTEs and funding for associated operating expenses for laboratory technicians as well as an additional \$595,000 for seven testing instruments. It is estimated that one dedicated testing instrument and one FTE is needed for every 400 samples collected to test the THC concentration of all samples in a timely fashion that does not unduly delay Virginia hemp growers from moving their hemp crop into commerce.

VDACS estimates needing two FTEs and funding with associated operating expenses for administrative support positions that may be necessary to process industrial hemp registration applications and to bill hemp growers for sample testing. The department also estimates needing an additional FTE and funding with associated operating expenses for a registration specialist in order to accomplish the USDA-required review of criminal history records of all industrial hemp grower registration applicants and to coordinate crop sampling.

If a dedicated special fund is established for Virginia's hemp production program and the department receives authority to adjust the industrial hemp registration application fee, the department may be able to recover a portion of the ongoing costs associated with this program through registration and testing fees.

USDA is accepting comments on the Interim Final Rule establishing its Domestic Hemp Production Program regulation through January 29, 2020. The cost estimates provided herein are based on this proposed rule, and revisions may be necessary to reflect the provisions of the final rule when published.

Appendix A

State	Application Fee?	Authority	If YES, how much?	Licensing Fee?	Authority	If YES, how much?	Amendment Fee?	Authority	If YES, how much?
Georgia (Proposed rules)	NO			YES	Statutory	License fee, per acre (up to a maximum \$ 50.00 license fee of \$5,000.00)	NO		
						Permit fee for Processors (renewal fee of \$ 25,000.00 \$10,000.00)			
Kentucky	YES	Regulatory	\$ 100.00	YES	Regulatory	Annual grower participation fee, for \$ 400.00 each growing address	YES	Regulatory	\$ 750.00 Per additional site
						Annual permit fee for \$ 500.00 grain processors			
						Annual permit fee for \$ 500.00 fiber processors			
						Annual permit fee for \$ 3,000.00 floral processors			
						Annual permit fee for \$ 500.00 handlers			
Maryland (Research only)	YES	Statutory	\$ 250.00	NO			UNK		
North Carolina	NO			YES	Statutory	\$ 250.00 Initial license fee	YES	Regulatory	\$ 2.00 Per acreage/square footage increase
						Base annual fee 0-49 acres (plus \$2.00/acre or \$ 250.00 \$2.00/1,000 sq ft)			
						Base annual fee 50+ acres (plus \$2.00/acre or \$ 500.00 \$2.00/1,000 sq ft)			
Ohio (proposed rules)	YES	Regulatory	\$ 100.00	YES	Regulatory	Per site, for growers and \$ 500.00 grain/fiber processors	YES	Regulatory	\$ 250.00 Per additional site
						Per site, for floral \$ 3,000.00 processors			

State	Application Fee?	Authority	If YES, how much?	Licensing Fee?	Authority	If YES, how much?	Amendment Fee?	Authority	If YES, how much?
Pennsylvania	YES	Regulatory	Base application fee, 1-5 grow sites (6-10 grow sites: \$100 x each additional location) (11-20 grow sites: \$150 x each additional location) (>20 grow sites: \$200 x each additional locations)	NO			NO		
South Carolina	YES	Regulatory	\$ 50.00 Grower application fee	YES	Regulatory	\$ 500.00 Grower licensing fee	UNK		
			\$ 100.00 Processor application fee			\$ 3,000.00 Processor licensing fee			
Tennessee	NO			YES	Regulatory	Base annual grower license fee \$ 250.00 1-5 acres	NO		
						Base annual grower license fee \$ 300.00 5-20 acres			
						Base annual grower license fee \$ 350.00 >20 acres			
Virginia	YES	Statutory	Base annual application fee for growers, processors, and dealers \$ 50.00	NO			NO		
West Virginia	YES	Regulatory	Times number of non-contiguous fields \$ 100.00	YES	Regulatory	Base annual grower license fee (plus \$5.00 per acre) \$ 100.00	YES	Regulatory	Base amendment fee (plus \$5.00 per acre) (additional \$100 if non-contiguous) \$ 50.00

