

Seeing Through the Fog: Obtaining a Grower's License in Uncertain Times

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If all of the recent upheavals in the law and regulations for hemp have left you confused about how to get a hemp grower's license, you are not alone.

Law and regulation have been moving at a rapid pace in this area. Making matters worse, the interplay of state and federal law and regulation has befuddled even the most seasoned of lawyers. But there is some order amidst the chaos, and here's what you need to know.

Grower's Licenses in North Carolina Today

For those in North Carolina looking to obtain a grower's license *today*, the North Carolina Industrial Hemp Pilot Program remains in effect as of the date of this article. The North Carolina Industrial Hemp Commission oversees that program and, at least for now, is (along with the North Carolina Department of Agriculture and Consumer Services' Plant Industry Division) in charge of grower's licenses here in the State.

The Commission's webpage has more information on how to apply for a license and the requirements for getting one. Briefly, those baseline requirements are (i) legitimate farming income (typically as evidenced through your tax returns), (ii) no history of any felonies in the last ten years, and (iii) no history of a drug-related felony ever. You'll need to give the location of the grow site, the varietal to be grown, and the acreage on which you'll grow that varietal, and you'll need to select a research purpose for your grow. You can apply for a license at any time of the year, and the applications are ruled upon at the next regularly scheduled Commission meeting, and there is no current cap on the number of licenses.

Do understand that obtaining a grower's license today does ***NOT*** "grandfather" you in as a licensee. The licenses now are only good for between one or three years, depending on the license obtained, and all of that is set to change in the future.

Grower's Licenses in North Carolina's Future

The 2018 Farm Bill, which decriminalized hemp and its derivatives, charged the United States Department of Agriculture ("USDA") with developing the baseline regulations for producing hemp in America and with approving State and Indian Tribal programs. State and tribal programs cannot be less restrictive than that baseline, although they can be more restrictive. The USDA published its Interim Final Rule on October 31,

2019, which set those baselines.

North Carolina's research pilot program is allowed to continue to operate until October 31, 2020, but after that, the State will either have to operate under a USDA approved state-level program or utilize the USDA's federal program. As of the date of this article, North Carolina has not submitted a proposed plan to the USDA. Unless North Carolina submits and receives approval for its own plan, the USDA will likely become the licensing agency in North Carolina on November 1, 2020.

The USDA's program is different than North Carolina's current program, and licensure is no exception. Some things, however, such as no felonies in the last ten years (the USDA program is slightly more lenient on past drug offenses), location of the acreage, and other things are similar. If you're looking at being licensed to grow long-term, it makes sense to familiarize yourself with the USDA requirements on the chance that ends up taking effect in North Carolina in the future.

Licensure Beyond North Carolina

States and tribes are not required to allow hemp *production* in their borders (although they cannot prevent interstate commerce), so check and see whether the State or tribal territory where you plan to grow allows it as a first step. Regardless of the licensing authority, all of the various programs share similar themes already addressed above.

For those states and tribes that do allow hemp production, many of them have submitted proposed plans to the USDA, and some have been approved. Here's a chart of the status nationwide as of March 19, 2020. In those states and tribal territories with USDA-approved plans, look to their approved programs for licensing information. In states that have not yet received approval but have operational state plans like North Carolina, take the same approach but be prepared for the USDA program to possibly come into play in the future. In states and tribes that allow production but that have not submitted a plan and don't intend to, look to the USDA requirements. And stay abreast of the ongoing changes to the laws on both state and federal levels. It is entirely possible that the laws and programs could change again before research pilot programs expire, and the USDA program officially kicks in nationwide.

From seed to sale, Ward and Smith's Hemp Law attorneys help growers, distributors, processors, and retailers navigate the evolving hemp laws and regulations. If you need help, we're here to offer insight, guidance, and legal services.

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