Rule 5B-57.014 - State Hemp Program

(1) Pursuant to s. 581.217, F.S., and in accordance with 7 U.S.C. Section 1639p, the Department shall authorize and oversee the development of the State Hemp Program to regulate the cultivation of hemp in the state, which is a potentially invasive plant species and is a threat to the plant life of this state if not properly controlled. Hemp cultivated pursuant to this rule is considered an agricultural commodity.

(2) Definitions. The definitions provided in ss. 581.011, 581.217, F.S., and the following shall apply to this rule:

(a) "Acceptable THC level" means that the representative sample has a Total delta-9 tetrahydrocannabinol concentration that does not exceed 0.3% on a dry-weight basis.

(b) "Control person" means an individual, partnership, corporation, trust, or other organization that possesses the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. The term includes:

1. A company's executive officers, including the president, chief executive officer, chief financial officer, chief operations officer, chief legal officer, chief compliance officer, director, and other individuals having similar status or functions.

2. For a corporation, a shareholder who, directly or indirectly, owns 10 percent or more or that has the power to vote 10 percent or more, of a class of voting securities unless the applicant is a publicly traded company.

3. For a partnership, all general partners and limited or special partners who have contributed 10 percent or more or that have the right to receive, upon dissolution, 10 percent or more of the partnership's capital.

4. For a trust, each trustee.

5. For a limited liability company, all elected managers and those members who have contributed 10 percent or more or that have the right to receive, upon dissolution, 10 percent or more of the partnership's capital.

(c) "Designated laboratory" means a laboratory that:

1. Holds an ISO 17025 accreditation; and

2. Is registered with Drug Enforcement Administration (DEA) in accordance with 21 CFR 1301.13; and

3. Has entered into a compliance agreement with the Department to conduct Tetrahydrocannabinol concentration sampling and testing. The Designated Laboratory Compliance Agreement, FDACS – 08121, 12/19, is incorporated herein by reference and available online at https://www.flrules.org/Gateway/reference.asp?No=Ref-11882. The Pre-Harvest Sampling Manual, FDACS – 08127, 02/20, is incorporated herein by reference and available online at

https://www.flrules.org/Gateway/reference.asp?No=Ref-11886. The Cannabis Sample Submission Form, FDACS-08114, 02/20, is incorporated herein by reference and available online at https://www.flrules.org/Gateway/reference.asp?No=Ref-11881. JCGM 100:2008, Evaluation of Measurement Data - Guide to the expression of uncertainty in measurement (September 2008) is incorporated herein by reference. Copies may be obtained from http://www.bipm.org and are also available for public inspection during regular business hours at the Florida Administrative Code and Register, R.A. Gray Building, 500 South Bronough Street, Tallahassee, FL 32399-0250 and at the Florida Department of Agriculture and Consumer Services, Division of Plant Industry, 1911 SW 34th Street, Gainesville, FL 32608-1201. Posting of the aforementioned document on the internet for purposes of public examination would violate federal copyright law.

(d) "Person" means individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

(e) "Lot" means a contiguous area in a field, greenhouse, or indoor growing structure used for cultivation of the same variety or strain of hemp.

(f) "Processed hemp plant material" means plant matter, including stalks, seed hulls, woody biomass, hemp flowers, or other foliar material that has been processed in such a manner that makes it an ineffective host of plant pests or disease.

(g) "Responsible person" means a natural person who controls or manages the day to day operations of the hemp cultivation.

(h) "Total delta-9 tetrahydrocannabinol concentration" means [delta-9 tetrahydrocannabinol] + (0.877 x [tetrahydrocannabinolic acid]).

(i) "Unprocessed hemp plant material" means plant matter, including stalks, seed hulls, woody biomass, hemp flowers, or other foliar material that has been harvested but has not been processed in such a manner that makes it an ineffective host of plant pests or disease.

(3) It is unlawful for any Person to introduce into this state or move through this state the propagative parts of hemp, live hemp plants, Processed hemp plant material, or Unprocessed hemp plant material unless introduced or moved in compliance with this rule. This prohibition does not apply to products containing Hemp extract purchased, sold, and transported in retail packaging.

(4) Application. It is unlawful for a Person to cultivate hemp in this state without a License to Cultivate Hemp issued by the Department. A Person seeking a license to cultivate hemp shall submit the following to the Department:

(a) A completed Application for License to Cultivate Hemp, FDACS-08112, 12/19, incorporated herein by reference and available online at https://www.flrules.org/Gateway/reference.asp?No=Ref-11887.

(b) A detailed description of each location intended for the cultivation of hemp, including address, legal land description, tax parcel number, and GPS coordinates.

(c) A full set of fingerprints for each Control person and the Responsible person submitted through a Livescan service provider evaluated by the Florida Department of Law Enforcement for state and national processing to Department ORI number FL925080Z. The Livescan service provider receipt for payment and process reference number must be provided with the Application For License to Cultivate Hemp, FDACS-08112, 12/19. If the fingerprint processing identifies criminal charges or convictions related to a controlled substance violation under state or federal law, the Department will notify the applicant that additional information is needed to complete the application. The applicant must provide to the Department a certified copy of the final disposition concerning the matter which the Department requested additional information pursuant to this section within ninety (90) days of receipt of the notification.

(d) An environmental containment plan for each Lot. An environmental containment plan must include the following:

1. A containment system of silt fences, berms, or fallow areas consisting of bare earth or ground cover to prevent the hemp from spreading beyond the Lot.

2. A plan to clean any equipment used on the Lot of all debris before it is moved from the property.

3. A transportation and movement plan that ensures that the propagative parts of hemp, live hemp plants, Processed hemp plant material, and Unprocessed hemp plant material is covered and moved in full containment during transport from noncontiguous locations.

(5) License.

(a) A License to Cultivate Hemp expires twelve months after the date of issuance.

(b) A License must be renewed by following the application procedures outlined in Rule 5B-57.014(4), F.A.C. The License must be renewed on or before the expiration date of the current license.

(c) A License to Cultivate Hemp is not transferable.

(d) A licensee must notify the Department before changing the cultivation location(s) approved on the licensee's application. This notification must be made to DPIHemp@FDACS.gov sixty (60) days before any changes.

(6) Cultivation requirements. The licensee must:

(a) Comply with the licensee's environmental containment plan.

(b) Comply with the Hemp Waste Disposal Manual. The Hemp Waste Disposal Manual, FDACS-08115, 12/19, is incorporated herein by reference and available online at https://www.flrules.org/Gateway/reference.asp?No=Ref-11883. Code of Federal Regulations Title 40 – Protection of Environment, Parts 261.3 and 273, Subpart A, revised as of July 1, 2019, is incorporated herein by reference and available online at http://www.flrules.org/Gateway/reference.asp?No=Ref-11888 and http://www.flrules.org/Gateway/reference.asp?No=Ref-11889.

(c) Maintain documentation describing the varieties of hemp cultivated for three (3) years from the date of harvest. These documents must be provided to the Department upon request.

(d) Maintain the label and receipts for all Certified hemp seed, Pilot project hemp cultivars, or Pilot project hemp seed used in the cultivation of hemp for three (3) years from the date of harvest. These documents must be provided to the Department upon request.

(e) Use only Certified hemp seed, Pilot project hemp cultivars, or Pilot project hemp seed as defined in Rule 5E-4.016, F.A.C., or nursery stock that was grown from Certified hemp seed, Pilot project hemp cultivars, or Pilot project hemp seed.

(f) Only cultivate hemp on lands that are used primarily for bona fide agricultural purposes pursuant to s. 193.461, F.S., lands located within an area zoned for agricultural or industrial use, or at a nursery as defined in s. 581.011, F.S.

(g) Post signage at every cultivation location access point which contains the following information: the Department issued license number, the address of the cultivation location, and the following statement, "Hemp is being cultivated under a license issued by the Florida Department of Agriculture and Consumer Services."

(h) Each Lot must be identified separately using a numeric designation.

(i) Report the hemp crop acreage to the USDA Farm Service Agency in accordance with 7 CFR 990.23.

(j) Only use Designated laboratories that qualify as Independent testing laboratories pursuant to section 581.217(3)(f), Florida Statutes.

(7) Nurseries. Nurseries propagating hemp plants for distribution shall:

(a) Register with the Department pursuant to s. 581.031(21), F.S.

(b) Hold a License to Cultivate Hemp issued by the Department.

(c) Only distribute hemp plants for cultivation to Persons who are authorized to cultivate Hemp.

(d) Maintain copies of hemp plant movement records or sales invoices including Department-issued license numbers for three (3) years from the date of sale or the date of movement and provide copies to the Department upon request.

(8) Tetrahydrocannabinol concentration sampling.

(a) Within fifteen (15) days prior to the harvest date, the Department or its agent shall collect a representative sample from each Lot to be tested for Total delta-9 tetrahydrocannabinol concentration. Any sampling by the Department or its agent shall be done in accordance with the Pre-Harvest Sampling Manual, FDACS – 08127, 02/20. The licensee shall be responsible for any fees or costs to conduct sampling or laboratory testing. The licensee or its agent must be present during any sample collection.

(b) The Department or its agent will place the sealed representative sample in the mail or deliver to the Designated laboratory of the licensee's choosing within one business day of collection. A Cannabis Sample Submission Form, FDACS-08114, 02/20, must be submitted with each representative sample.

(c) The Designated laboratory's initial report must be issued to DPIHemp@FDACS.gov within one business day after completion of the analysis. Within one business day of receipt, the Department will notify the licensee if the representative sample has an Acceptable THC level. If the representative sample has an Acceptable THC level, the Lot may be harvested.

(d) If the Department notifies the licensee that the representative sample has an unacceptable THC level, the licensee must:

1. Request that the Designated laboratory retest the retained sample held pursuant to the Designated Laboratory Compliance Agreement, FDACS – 08121, 12/19. A request to retest the retained sample must be made to the Designated laboratory within one business day of receipt of the notification provided in paragraph (d) of this subsection. The licensee shall be responsible for any fees or costs to conduct laboratory testing; or

2. Arrange for the collection or destruction of the non-compliant Lot by a DEA-registered reverse distributor, or a duly authorized Federal, State, or local law enforcement officer; or

3. Dispose of the Lot in accordance with the Hemp Waste Disposal Manual, FDACS-08115, 12/19.

(e) If a retest report is issued and the Department again notifies the licensee that the representative sample has an unacceptable THC level, the licensee must:

1. Arrange for the collection or destruction of the non-compliant Lot by a DEA-registered reverse distributor, or a duly authorized Federal, State, or local law enforcement officer; or

2. Dispose of the Lot in accordance with the Hemp Waste Disposal Manual, FDACS-08115, 12/19; or

3. Request that the Department collect a confirmatory sample and perform a confirmatory test of the Lot. This request must be made to DPIHemp@FDACS.gov within one business day of receipt of the notification provided in paragraph (e) of this subsection.

(f) Any confirmatory sampling by the Department of unharvested hemp shall be done in accordance with the Pre-Harvest Sampling Manual, FDACS – 08127, 02/20. Any confirmatory sampling by the Department of harvested hemp shall be done in accordance with the Post-Harvest Sampling Manual, FDACS – 08129, 02/20, which is incorporated herein by reference and available online at https://www.flrules.org/Gateway/reference.asp?No=Ref-11885. Any confirmatory testing by the Department shall be done in accordance with the procedures outlined in the Designated laboratory Compliance Agreement, FDACS – 08121, 12/19. The expense of the confirmatory sampling and the confirmatory testing shall be assessed, collected, and enforced against the licensee by the Department. The licensee or its agent must be present during any sample collection.

(g) If the Department's confirmatory report indicates that the Lot has an Acceptable THC level, the Lot may be harvested. If the Department's confirmatory test indicates that the Lot has an unacceptable THC level, the director of Plant Industry or her or his designee shall notify the licensee and the licensee shall within 10 days after the notice:

1. Arrange for the collection or destruction of the non-compliant Lot by a DEA-registered reverse distributor, a duly authorized Federal, State, or local law enforcement officer; or

2. Dispose of the Lot in accordance with the Hemp Waste Disposal Manual, FDACS-08115, 12/19.

(h) If the licensee refuses or neglects to comply with the terms of the notice in paragraph (g) of this subsection, the director or her or his authorized representative may, under authority of the Department, proceed to destroy the plants. The expense of the treatment or destruction shall be assessed, collected, and enforced against the licensee by the Department. No damages shall be awarded to the licensee for the destruction of the plants under the provisions of this rule.

(i) The licensee shall notify the Department within one business day of the collection or destruction of a non-compliant Lot. This notification must be made via Notice of Disposal, FDACS-08116, 12/19, which is incorporated herein by reference and available online at https://www.flrules.org/Gateway/reference.asp?No=Ref-11884.

(9) Harvest.

(a) The licensee must notify the Department no fewer than thirty (30) days prior to each intended harvest date by email at DPIHemp@FDACS.gov or by phone at 1-888-397-1517. The licensee shall not harvest the Lot until the Department notifies the licensee that the representative sample has an Acceptable THC level unless authorized under paragraph (b) of this subsection.

(b) If a representative sample has been collected, the licensee may harvest the Lot before the Designated laboratory results are available if the licensee complies with the following:

1. At least 48 hours prior to harvest, the licensee must report to the Department its revised harvest date and the anticipated harvest tonnage.

2. Within 24 hours of harvest, the licensee must report to the Department the harvested tonnage.

3. The harvested material must remain unprocessed in a securely locked building or fixed container on the licensed address or the storage location identified on the licensee's application. For the purposes of this subparagraph, drying or freezing to prevent spoilage is not considered processing.

4. The harvested material must remain segregated from other harvested hemp until the Designated laboratory results are available.

(10) Inspections. The Department shall conduct random annual inspections of each licensee to ensure compliance with the following:

(a) The Licensee's environmental containment plan.

(b) Maintenance of Certified hemp seed, Pilot project hemp cultivars, or Pilot project hemp seed documentation required under paragraphs 5B-57.014(6)(c)-(d), F.A.C.

(c) Hemp plants have a Total delta-9 tetrahydrocannabinol concentration that does not exceed 0.3% on a dry weight basis.

(d) Hemp plants are found to be free from plant pests or disease not known to be established in this state.

(e) Compliance with s. 581.217, F.S., and rules promulgated therefrom.

(11) Transportation Requirements.

(a) Intrastate movement. Any Person transporting propagative parts of hemp, live hemp plants, Processed hemp plant material, and Unprocessed hemp plant material within the state of Florida shall:

1. Transport in a fully enclosed vehicle or container when being moved between noncontiguous locations.

2. Have in their possession a bill of lading or proof of ownership, documentation showing the name, physical address, Lot designation number, and license number of the originating licensed cultivator, and the name and physical address of the recipient of the delivery when transporting between non-contiguous locations.

3. Stop and submit for inspection while passing any official agricultural inspection station pursuant to s. 570.15, F.S.

(b) Interstate movement. Any Person outside the State of Florida who desires to ship into this state propagative parts of hemp, live hemp plants, Processed hemp plant material, and Unprocessed hemp plant material from any state, U.S. possession, territory, or district of the United States, or foreign jurisdiction, shall comply with the following regulations:

1. The movement of propagative parts of hemp or live hemp plants into the State of Florida is prohibited unless:

a. Maintained and shipped in a soilless growing media, sterile growing media, or sterile environment; and

b. Accompanied by proof of origin with hemp cultivation license number, or equivalent, from the jurisdiction of origin and an original phytosanitary certificate of inspection issued by a state or country plant protection governmental agency.

2. The movement of any Unprocessed hemp plant material into the State of Florida is prohibited unless:

a. Accompanied by proof of origin with a hemp cultivation license number, or equivalent, from the jurisdiction of origin; and

b. Accompanied by a certificate of analysis showing that the Unprocessed hemp plant material has an Acceptable THC level; and

c. Transported frozen or dried.

3. The movement of any Processed hemp plant material into the state of Florida is prohibited unless:

a. The Processed hemp plant material has been rendered non-viable through processing; and

b. Accompanied by proof of origin with a hemp cultivation license number, or equivalent, from the jurisdiction of origin; and

c. Accompanied by a certificate of analysis showing that the Processed hemp plant material has an Acceptable

THC level.

4. Upon entry in the state, all persons transporting propagative parts of hemp, live hemp plants, Processed hemp plant material, and Unprocessed hemp plant material must comply with the intrastate movement requirements outlined in this rule.

(12) Abandoned operations. It is the responsibility of the licensee to completely destroy all hemp plant material, rendering the plants non-viable in accordance with the Hemp Waste Disposal Manual FDACS-08115, 12/19, prior to vacating the property or stopping hemp cultivation.

(13) Violations. A licensee must complete a corrective action plan if the Department determines that the licensee has negligently violated s. 581.217, F.S. or this rule. A licensee who negligently violates the corrective action plan under this rule three times within five (5) years is ineligible to cultivate hemp for five (5) years following the date of the third violation. If the Department determines that a licensee has violated s. 581.217, F.S., or Department rules with a culpable mental state greater than negligence, the Department shall immediately report the licensee to the Attorney General and the United States Attorney General. A determination that a licensee has negligently violated s. 581.217, F.S. or this rule shall be subject to the process outlined in ss. 120.569 and 120.57-120.595, F.S. A determination that a licensee has violated s. 581.217, F.S., or Department rule with a culpable mental state greater than negligence shall be reported to the Attorney General, the state attorney for the judicial circuit where the violation occurred, and the United States Attorney General notwithstanding ss. 120.569 and 120.57-120.595, F.S.

(14) Final Order. The Department may issue an order directing the licensee to destroy any hemp cultivated in violation of s. 581.217, F.S., or Department rule.

Rulemaking Authority 570.07(23), 581.031(4), (5), 581.217(5), FS. Law Implemented 581.031, 581.083, 581.217, FS. History–New _____.