

# Agriculture, Dept. of

## General Agency, Board or Commission Rules

### Chapter 61: Rules Pertaining to Hemp

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## Chapter 61

### Rules Pertaining to Hemp

**Section 1. Authority.** These rules are written in accordance with the authority provided in Wyoming Statute 11-51-105.

**Section 2. Definitions.** Any applicable term defined in W.S. 11-51-101 shall have the same meaning throughout these rules.

(a) “Acceptable Hemp THC Level” means that when a laboratory tests a sample, it must report the delta-9 tetrahydrocannabinol content concentration level on a Dry Weight Basis and the Measurement of Uncertainty. The Acceptable Hemp THC Level for the purposes of compliance with the requirements of this rule is when the application of the Measurement of Uncertainty to the reported delta-9 tetrahydrocannabinol content concentration level on a Dry Weight Basis produces a distribution or range that includes 0.3% or less. This definition of “Acceptable Hemp THC Level” affects neither the definition of “hemp” nor the definition of “marihuana” or “marijuana” in Wyoming Statutes.

(b) “Batch” means the hemp or hemp products processed during a period indicated by a specific code.

(c) “Cannabis” means a genus of flowering plants in the family Cannabaceae of which *Cannabis sativa* is a species, and *Cannabis indica* and *Cannabis ruderalis* are subspecies thereof. For the purposes of these rules, Cannabis refers to any form of the plant in which the delta-9 tetrahydrocannabinol concentration on a Dry Weight Basis has not yet been determined.

(d) “Certified Laboratory” means a DEA certified and ISO/IEC 17025 accredited laboratory accredited for the testing of potency of cannabinoids, including THC in Cannabis.

(e) “Controlled Substances Act” or “CSA” means the Controlled Substances Act as codified in 21 U.S.C. 801 *et seq.*

(f) “Criminal History Report” means the United States Federal Bureau of Investigation’s Identity History Summary.

(g) “Culpable Mental State Greater Than Negligence” means to act intentionally, knowingly, willfully, or recklessly.

(h) “Department” means the Wyoming Department of Agriculture.

(i) “Drug Enforcement Administration” or “DEA” means the United States Drug Enforcement Administration.

(j) “Dry Weight Basis” means the ratio of the amount of moisture in a sample to the amount of dry solid in a sample. A basis for expressing the percentage of a chemical in a

substance after removing the moisture from the substance. Percentage of THC on a Dry Weight Basis means the percentage of THC, by weight, in a Cannabis item (plant, extract, or other derivative), after excluding moisture from the item.

(k) “Geospatial Location” means a location designated through a global system of navigational satellites used to determine the precise ground position of a place or object.

(l) “Handle” means to Harvest or store hemp plants or hemp plant parts prior to the delivery of such plants or plant parts for further processing.

(m) “Harvest” means the collection of any portion of a Cannabis plant from a Licensed Area at any time.

(n) “Hemp Statute” means W.S. 11-51-101 through -107.

(o) “Key Participant” means a sole proprietor, a partner in a partnership, a member of a limited liability company, a director of a corporation, or a person with executive managerial control in a corporation. A person with executive managerial control includes persons such as a chief executive officer, chief operating officer, chief financial officer, principal, officer, member, manager, and director. This definition does not include non-executive managers such as farm, field, or shift managers.

(p) “Licensed Area” means a field, greenhouse, hoop house, high tunnel, building, or other structure on or in which a licensee plans to produce or process hemp that is licensed by the Department. A Licensed Area may include land, buildings, or other structures that are not used for producing or processing hemp.

(q) “Lot” means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of Cannabis throughout the area.

(r) “Measurement of Uncertainty” means the parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.

(s) “Negligence” or “Negligent” means failure to exercise the level of care that a reasonably prudent person would exercise in complying with the provisions of the Hemp Statute or these rules.

(t) “Official Test Result” means an official result prepared by a Certified Laboratory about the analytical testing it performed and the results of the testing, including the Department's Official Test Results.

### Section 3. Licensing.

(a) Each applicant for a license shall submit a signed, complete, accurate, and legible application. In addition to submitting the Department's application form, an applicant must submit the following:

(i) A copy of the applicant's government issued photo identification or, if a business entity, a Wyoming Secretary of State certificate of good standing.

(ii) An aerial map or photograph (e.g., from Farm Service Agency, Google, or Bing) of all the Licensed Areas on which the applicant plans to **grow** hemp, showing the boundaries and dimensions of each Lot in acres or square feet.

(iii) An aerial map or photograph (e.g., from Farm Service Agency, Google, or Bing) of all the Licensed Areas on which the applicant plans to **process** hemp, showing the boundaries and dimensions of each licensed facility in acres or square feet.

(iv) An official Criminal History Report for all Key Participants of the applicant dated within 60 days prior to the application submission date.

(v) If the applicant intends to process hemp, a description of all hemp products the applicant plans to make.

(vi) If the applicant intends to process hemp, a statement of the intended end use for all hemp material received for processing.

(b) In addition to the application, each applicant shall submit the license fee set by W.S. 11-51-103(c)(ii).

(c) The Department will not begin reviewing an application until it receives the fee specified in W.S. 11-51-103(c)(ii).

(d) Licenses cannot be assigned or transferred.

(e) To amend a license, including changing a Licensed Area or activity, a licensee must submit the Department's amendment request form and receive the Department's approval.

(f) A licensee must report any changes to contact information listed on the licensee's application form within 10 days of the change by completing the Department's amendment request form and submitting it to the Department by email.

(g) A license shall be valid for the remainder of the current calendar year in which the application was approved. All licenses will expire on December 31 of each year.

**Section 4. Hemp Producer Reporting and Record Keeping Requirements.**

(a) A licensee who plans to produce hemp shall report to the USDA Farm Service Agency:

- (i) Hemp crop acreage;
- (ii) Total acreage of hemp planted, Harvested, and destroyed;
- (iii) License number;
- (iv) Street address for each Licensed Area;
- (v) Geospatial location(s) of each Lot or greenhouse where hemp will be produced; and
- (vi) Acreage or indoor square footage of any greenhouse dedicated to the production of hemp.

(b) A licensee must keep all records specified in this section for at least three years.

(c) A licensee must make available for inspection by the Department during reasonable business hours the following records:

- (i) Records regarding acquisition of Cannabis plants;
- (ii) Records regarding production and handling of Cannabis plants;
- (iii) Records regarding storage of Cannabis plants; and
- (iv) Records regarding destruction of all Cannabis plants that do not meet the definition of hemp.

(d) Harvest Reports

(i) Fifteen days prior to anticipated Harvest, each licensee shall file a Harvest report on the Department's form, via email, which must include the estimated Harvest date(s) and location of each Lot to be Harvested within a Licensed Area.

**Section 5. Hemp Producer Inspection and Sampling Protocol.**

(a) Within that 15 day time period, the Department will sample each Lot to be Harvested. The licensee may not Harvest prior to Department sampling.

(b) A licensee must notify the Department immediately of any changes in the reported Harvest date(s) in excess of five days. If any such changes are made, the Department may require additional sampling prior to Harvest.

(c) A licensee shall not Harvest any portion of a Lot before the Department takes samples of that Lot.

(d) All licensees are subject to inspection and sampling to verify that the THC concentration level of all Cannabis does not exceed the Acceptable Hemp THC Level.

(e) During an inspection, the licensee or a designated employee shall be present at the Licensed Area and shall provide the Department with complete and unrestricted access during reasonable business hours to all Licensed Areas and to all documents specified in Section 4 of these rules. When the Department collects samples during an inspection, the licensee or a designated employee must accompany the Department's representative throughout the sampling process.

(f) The Department shall only use samples collected and analyzed by the Department to determine compliance with these rules.

(g) Any Official Test Results showing that a sample's THC concentration level is greater than the Acceptable Hemp THC Level shall constitute evidence that all Cannabis in the sampled Lot has a THC concentration level greater than the Acceptable Hemp THC Level and that the licensee is therefore not in compliance with the Hemp Statute and these rules. Upon receipt of such an Official Test Result, the Department will notify federal, state, or local law enforcement and request destruction of each non-compliant Lot. The Department will also negotiate a corrective action plan with the licensee as provided in Section 12.

(h) If a licensee believes that an Official Test Result is in error, and pays for a retest of the originally submitted sample, the Department will retest the sample.

(i) If Cannabis in a Lot has a THC concentration level that does not exceed the Acceptable Hemp THC Level, it is considered hemp and may enter the stream of commerce.

(j) Cannabis with a THC concentration level exceeding the Acceptable Hemp THC Level constitutes marijuana, a schedule I controlled substance under the CSA, and must be destroyed in accordance with the CSA and 21 CFR part 1317.

#### **Section 6. General Hemp Processing Requirements.**

(a) A licensee must assign to each Batch a unique number or way to identify the product at the time of processing.

(b) A licensee that extracts THC from hemp must submit for approval by the Department a plan that ensures the THC is destroyed in accordance with 21 CFR part 1317 and that accounts by Batch number for all THC destroyed.

(c) The licensee may not accept hemp for processing from any source other than a person licensed by the Department, the United States Department of Agriculture (USDA), or a state or tribe with a plan approved by USDA.

(d) The Department will require destruction of Cannabis discovered at a Licensed Area for processing for which records are not available to prove that the Cannabis was received from a person licensed by the Department, USDA, or a state or tribe with a plan approved by USDA. Any Cannabis commingled with Cannabis for which those records are not available will also be subject to destruction.

(e) A licensee may not process or Handle any Cannabis that is not hemp.

(f) A licensee may process or Handle hemp only on Licensed Areas.

### **Section 7. Hemp Processor Record Requirements**

(a) A licensee who processes hemp must keep the following documentation available for inspection by the Department:

(i) Copies of all written agreements with licensed growers;

(ii) Official Test Results for all hemp products sampled and tested by the licensee or by a Certified Laboratory.

(b) A licensee must keep and update monthly records and make them available for inspection by the Department upon request. These records must include:

(i) Hemp intake records, which must include:

(A) The name, location, and license number (Wyoming license number or other specific hemp grower identification number) for each grower from whom the licensee accepts hemp for processing;

(B) The date(s) on which hemp is received;

(C) The amount of each variety received;

(D) The hemp products for which each variety of hemp received will be used; and

(E) The Official Test Results providing evidence that the THC concentration level of all hemp received does not exceed the Acceptable Hemp THC Level.

(ii) Destruction records for all non-compliant Cannabis or Cannabis products, which must include:

(A) The date a person authorized by 21 CFR part 1317 destroyed or took possession of the non-compliant Cannabis or Cannabis products;

(B) The method of destruction, if known;

(C) The location at which a person authorized by 21 CFR part 1317 destroyed or took possession of the non-compliant Cannabis or Cannabis products; and

(D) The name and title of the person authorized by 21 CFR part 1317 who destroyed or took possession of the non-compliant Cannabis or Cannabis products, and if possible, the person's signature.

(iii) Processing records, which must include:

(A) A list of hemp products made by the licensee; and

(B) A list of buyers or recipients of hemp products, including:

(I) The final destination of hemp products after leaving the licensee's facility;

(II) The description of each product sold or otherwise distributed;

(III) The quantity of each product sold or otherwise distributed; and

(IV) The date of distribution.

(c) A licensee must keep copies of all records, documents, and information required by these rules for at least three years and in a manner such that they can be readily provided to the Department upon request during reasonable business hours.

### **Section 8. Hemp Processor Inspection and Laboratory Testing.**

(a) Each licensee shall select a random sample from every Batch of hemp products made at each of the licensee's facilities that is of sufficient quantity to perform the required tests.

(b) Unless otherwise indicated by the Department, a licensee shall have a Certified Laboratory test every hemp product sample to determine whether the sample's THC concentration level exceeds the Acceptable Hemp THC Level. The licensee must obtain an Official Test Result from the Certified Laboratory for each sample tested.

(c) An Official Test Result showing that the THC concentration level of a sample of a Batch does not exceed the Acceptable Hemp THC Level is evidence that the whole Batch's THC concentration level does not exceed the Acceptable Hemp THC Level.



(d) A licensee shall not sell or otherwise distribute a hemp product unless the hemp product's THC concentration level does not exceed the Acceptable Hemp THC Level and meets all of the other processing requirements in these rules.

### **Section 9. Storage of Hemp.**

(a) Only licensees are authorized to store hemp.

(b) A licensee may store hemp obtained from a person licensed by the Department, USDA, or a state or tribe with a USDA approved plan if:

(i) The licensee identifies each storage facility on the license application;

(ii) The storage facility is owned or leased by the licensee; and

(iii) The licensee keeps complete and accurate records detailing the licensed growers from whom hemp at each storage facility was received, the varieties stored at each storage facility, and the amount of each hemp variety stored at each storage facility;

(c) A licensee may not warehouse or otherwise store hemp that are not owned by the licensee.

(d) A licensee must separate Harvested Lots in storage in such a manner that maintains the unique identity of each Harvested Lot. Hemp from one Lot may not be commingled with hemp from other Lots.

(e) If a licensee stores Cannabis or Cannabis products that have a THC concentration level that exceeds the acceptable hemp level and that Cannabis or Cannabis products have been commingled with hemp or hemp products, then the noncompliant Cannabis or Cannabis products and the hemp or hemp products must all be destroyed in accordance with the CSA and 21 CFR part 1317.

(f) The licensee must permit the Department to inspect all storage areas during reasonable business hours.

(g) The licensee must keep inventory records for hemp or hemp products stored, which must include:

(i) The date of inventory;

(ii) The location of stored hemp;

(iii) The total amount of each hemp product on hand;

(iv) The total amount of hemp and hemp seed of each variety on hand;

(v) The total amount of unusable hemp and hemp seed of each variety on hand; and

(vi) The name, signature, and title of the employee performing inventory.

#### **Section 10. Incorporation by Reference.**

(a) For all regulations incorporated by reference in these rules:

(i) The Department has determined that incorporation of the full text in these rules would be cumbersome or inefficient given the length or nature of the rules;

(ii) The incorporation by reference does not include any amendments or editions of the incorporated matter later than January 1, 2020;

(iii) The agency originally issuing the incorporated matter has copies of it readily available to the public; and

(iv) The Department maintains the incorporated regulations, which is available for public inspection and copying at cost at 2219 Carey Avenue, Cheyenne, WY 82002.

(b) The following regulations are incorporated by reference in these rules:

(i) 21 CFR part 1317 (2019), found electronically at: <https://www.ecfr.gov/cgi-bin/text-idx?SID=b533c23fd52fec42d48af83dc9f5a2c3&mc=true&node=pt21.9.1317&rgn=div5>

#### **Section 11. Violations.**

(a) The Department will initiate a corrective action plan or revoke the license of any licensee who violates the requirements of the Hemp Statute or these rules.

(b) Specific examples of violations that the Department could determine to be Negligent include:

(i) Failure to provide a legal description of land on which the licensee produces Cannabis.

(ii) Failure to obtain a license.

(iii) Producing Cannabis with a THC concentration level that exceeds the Acceptable Hemp THC Level.

(c) A licensee may not provide false, misleading, or incorrect information pertaining to production or processing of hemp to the Department, including information provided in any application, report, or record.

(d) A licensee may not continue producing or processing hemp if, after receiving a license, the licensee is convicted of or pleads nolo contendere to a state or federal controlled substance felony.

(e) Persons with a revoked license shall not sell, Handle, transport, or otherwise allow into the stream of commerce any Cannabis or Cannabis product.

(f) If the Department revokes a license, the Department will require that each Lot of Cannabis or Batch of Cannabis products currently being produced or processed under that license must be destroyed unless the ex-licensee has an Official Test Result showing that each Lot or Batch has a THC concentration level that does not exceed the Acceptable Hemp THC Level.

(g) Destruction of Non-Compliant Cannabis and Cannabis Products:

(i) All destruction of noncompliant Cannabis and Cannabis products must be in accordance with the CSA and 21 CFR part 1317.

(ii) If the Official Test Result of a Cannabis or Cannabis product sample shows that the sample's THC concentration level exceeds the Acceptable Hemp THC Level, all Cannabis or Cannabis products in the Lot, Batch, or other unit from which the sample was taken must be destroyed. The licensee is responsible for the cost of destruction. USDA will be notified and supplied test results of hemp samples above the Acceptable Hemp THC Levels. Hemp or hemp products that are in non-compliant Lots or Batches cannot be further Handled, processed, or enter the stream of commerce.

(iii) No person may move or transport Cannabis or Cannabis products subject to destruction except those persons authorized by 21 CFR part 1317.

## **Section 12. Corrective Action Plan.**

(a) A licensee that Negligently violates the requirements of the Hemp Statute or these rules must comply with a corrective action plan as prescribed by the Department.

(b) The corrective action plan for licensee violations that the Department determines to be Negligent shall include:

(i) A reasonable date by which the licensee will correct the Negligent violation.

(ii) A requirement that the licensee shall provide all requested compliance reports to the Department for a period of two years following the date of the Negligent violation.

(c) A licensee's Negligent violation will not be subject to criminal enforcement action by the federal, state, or local government.

(d) A licensee that violates the provisions of the Hemp Statute or these rules three times in a five year period shall be ineligible for a license to produce or process hemp for a period of five years beginning on the date of the third violation.

(e) The Department shall conduct inspections to determine if a corrective action plan has been implemented.

(f) If a subsequent violation occurs while a corrective action plan is in place, the Department will either:

(i) Institute a new corrective action plan, which may include quality control, training, or other quantifiable action requirements; or

(ii) Proceed to revoke the licensee's license.

(g) If the Department determines that a licensee has violated the Hemp Statute or these rules with a Culpable Mental State Greater Than Negligence the Department shall:

(i) Immediately report the licensee to the United States Attorney General and the State of Wyoming Attorney General; and

(ii) Either institute a corrective action plan or proceed to revoke the licensee's license.

### **Section 13. License Denial, Revocation, and Appeals.**

(a) The Department will deny a license application if:

(i) The applicant has made a materially false statement(s) on the application;

(ii) The applicant failed to submit the appropriate fee;

(iii) The applicant failed to submit a correct and complete application; or

(iv) Any applicant or Key Participant of the applicant has been convicted of or pled nolo contendere to a state or federal controlled substance felony within the past 10 years. An exception applies to a person who was lawfully growing hemp under the federal Agricultural Act of 2014 before December 20, 2018, and whose conviction or nolo contendere plea also occurred before that date.

(b) The Department may deny a license application if the applicant has failed to comply with the Hemp Statute or these rules.

(c) If the Department denies a license application, the Department shall provide the applicant with a notice that includes:

- (i) The specific reasons for the denial and citations to the applicable provisions of the Hemp Statute or these rules;
  - (ii) The actions, if any, that the applicant must take to qualify for a license;
  - (iii) Notice of the applicant's right to request a hearing; and
  - (iv) The legal authority under which the hearing is to be held.
- (d) If the applicant wants a hearing to contest the denial, the applicant must request a hearing within 20 days of receiving the notice.
- (e) If a hearing is requested, the Department shall schedule a time and place for the hearing, to be held not later than 30 days from the date of the request unless a later date is agreed to by the parties.
- (f) The Department shall notify the applicant of the time, date, and place of the hearing at least seven days before the hearing date.
- (g) If prior to the hearing the applicant supplies evidence of correction and all other license requirements have been met, the Department may issue a license and cancel the hearing.
- (h) If the Department decides to revoke a license, the Department will provide the licensee with a revocation notice, which shall state:
- (i) That the license shall be revoked 15 days after receipt of the revocation notice and that all operations shall cease at that time unless a contested case hearing is requested;
  - (ii) The reasons for revocation and citations to the applicable provisions of the Hemp Statute or these rules;
  - (iii) That the licensee may request a hearing by submitting a request to the Department within 15 days of the receipt of the notice of revocation;
  - (iv) The name and address of the Department representative to whom a request for a hearing may be made;
  - (v) That if a hearing is requested, the hearing shall be conducted by a hearing officer in accordance with the Wyoming Administrative Procedure Act, W.S. 16-3-107 through -115, and the Department's Rules of Practice and Procedures for Contested Case Hearings; and
  - (vi) That the licensee may appear in person or by counsel licensed to practice in the State in Wyoming.

(j) The Department shall send all notices in this section by certified mail, return receipt requested.

(k) If the licensee does not confirm attendance at the requested hearing within five days of the scheduled hearing, the Department will cancel the hearing.

(l) The director of the Department shall issue the final decision, accompanied by written findings of fact and conclusions of law.

(m) The Department shall deliver the final decision to the licensee by certified mail, return receipt requested.

(n) Hearings.

(i) All hearings provided for in these rules shall be conducted in accordance with the Department's Rules of Practice and Procedures for Contested Case Hearings. Appeal from any final order of the Department may be made as provided by the Wyoming Administrative Procedure Act.

#### **Section 14. Fees**

(a) The Department will assess the following fees:

(i) \$200 per sampling conducted by the Department.

(ii) \$200 per analysis conducted by the Department.

(iii) \$250 for verification of effective disposal of Cannabis or Cannabis products in accordance with Section 11.