

02.01.07 RULES GOVERNING HEMP

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 22-1702, 22-1703, 22-1704, and 22-1705 Idaho Code.

001. SCOPE.

01. **Scope.** These rules govern the licensing, production, handling and research of hemp.

002. INCORPORATION BY REFERENCE.

01. **Domestic Hemp Production Program.** 7 CFR Part 990.

02. **USDA Final Hemp Rule.** 86 FR 5596. <https://www.govinfo.gov/content/pkg/FR-2021-01-19/pdf/2021-00967.pdf>

003. -- 009. (RESERVED)

010. DEFINITIONS.

In addition to the definitions in the 7 CFR Part 990, the USDA Final Hemp Rule, and Section 22-1703, Idaho Code, the following definitions apply to the interpretation and enforcement of these rules:

01. **Accepted Laboratory.** A laboratory capable of testing pursuant to the requirements of this rule and which is a state laboratory, a laboratory of an institution of higher education, or a private laboratory which is accredited by an independent accreditation body in accordance with International Organization for Standardization ISO/IEC 17025. After December 31, 2022, accepted laboratories also must be registered with the U.S. Drug Enforcement Agency under the Controlled Substances Act (CSA), 21 CFR part 1301.13.

02. **Acceptable hemp THC level.** The total delta-9 tetrahydrocannabinol content level on a dry weight basis, that, when reported with the measurement of uncertainty, produces a range that includes a result of 0.3% total tetrahydrocannabinol or less.

03. **Department.** The Idaho State Department of Agriculture.

04. **Entity.** A corporation, general partnership, joint stock company, association, limited partnership, limited liability partnership, limited liability company, series limited liability company, irrevocable trust, estate, charitable organization, other similar organization, or institution of higher education.

07. Harvest. To cut, gather, take, or remove all or part of the hemp plants growing in a lot or lots, for the purpose of disposal, cloning, distribution, handling, storage, sale, or any other use.

08. License. A hemp producer or handler license issued by the Department.

09. Lot. A contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of hemp throughout.

10. Measurement of uncertainty. 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.

12. Producer. A producer includes an owner, operator, landlord, tenant, or sharecropper, who shares in the risk of producing a crop and who is entitled to share in the crop available for marketing from the farm or facility, or would have shared had the crop been produced. A producer includes a grower of seed. A producer also means a person who stores hemp plants.

13. Total THC. The sum of tetrahydrocannabinolic acid and delta-9 tetrahydrocannabinol.

011. Abbreviations.

01. USDA. The U.S. Department of Agriculture.

02. THC. Tetrahydrocannabinol.

03. FSA. The U.S. Department of Agriculture Farm Service Agency.

012. -- 199. (RESERVED)

200. DEPARTMENT INFORMATION.

01. Department Reporting. The Department will provide to USDA all hemp information required by federal regulation including a hemp producer report, a hemp disposal report, and a State annual report pursuant to deadlines established by USDA.

02. Information Publication. The Department will publish on its website all forms, guidelines, protocols and procedures related to this rule.

201. -- 299. (RESERVED)

300. LICENSES.

01. Requirement. Any person or entity in Idaho shall have an active hemp license from the Department for planting, storing, propagating, producing, handling or processing hemp.

02. Application. An applicant for a producer or handler license must apply on a form prescribed by the Department.

b. An applicant and any key participants must include a criminal history report conducted as a fingerprint background check by the Idaho State Police or Federal Bureau of Investigation completed no more than 60 days before the application submission.

03. Annual Application Submission Period and Fees. Applications will be accepted from October 1 through December 30 of each year. Applications must be complete and include a nonrefundable application fee according to section 301.01 of this rule.

04. Application Approval. An applicant will be notified when the application has been approved or denied. Upon notification of approval of a license application, the applicant must remit to the department the appropriate license fees according to section 301.01 of this rule. Upon receipt of payment of the license fee, the license will be issued.

05. License not transferable. All licenses are non-transferable.

06. Producer License. A producer license authorizes a person or entity to obtain and possess hemp seed for planting; cultivate a hemp crop; harvest hemp plant parts, as well as possess, store, handle, transport, and market plant parts.

07. Handler License. A handler license authorizes a person or entity to obtain and possess hemp, including seed, not intended for the license holder's own cultivation.

08. Ineligibility. No license will be issued to an ineligible person or entity.

a. A person who has had a hemp license revoked by the Department, USDA, another state, Indian nation, or U.S. territory is ineligible to apply for participation in the Department hemp program for a period of five (5) years from the date of revocation.

b. A person who has been convicted of a felony relating to a controlled substance under federal law or the law of any state may not, before the 10th anniversary of the date of the conviction, hold a license, or be a key participant of a license holder, or be a governing person of a business entity that holds a license unless the person was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before December 20, 2018.

c. A person who materially falsifies any information contained in a license application to the Department, or submitted an application to the Department, USDA, another state, Indian nation, or U.S. territory with any materially false statements or misrepresentations is ineligible for a license.

d. A person under the age of eighteen (18) years of age at the time the application is submitted to the Department is ineligible for a license.

e. A person or entity with three negligent violations in a five-year period is ineligible to produce hemp for a period of five years from the date of the last violation.

09. License Expiration. A license is valid from January 1 until December 31 of each year.

10. License Amendment. Any change to the required information on an approved license requires a licensee to submit a license amendment on a form prescribed by the Department within ten business days of the change.

11. Additional Responsibilities. A license holder must notify the Department of any theft of hemp materials, whether growing or not, within 48 hours of discovery.

12. Suspension. A hemp license may be suspended when a licensee has engaged in conduct violating hemp law or rule, or when a licensee failed to comply with a written order related to a negligent violation.

a. A suspended license may be restored after a waiting period of one year.

b. Any person or entity whose license has been suspended may be required to comply with a corrective action plan to fully restore the license.

09. Revocation. A hemp license will be revoked immediately if the licensee:

a. Pleads guilty to, or is convicted of, any felony related to a controlled substance; or

b. Made any materially false statement with regard to this rule to ISDA with a culpable mental state greater than negligence; or

c. Was found to be growing cannabis exceeding the acceptable hemp THC level with a culpable mental state greater than negligence; or

d. Negligently violated law or rule three times in five years.

10. No license for official duties. Department employees and law enforcement do not require a license for handling hemp in performance of official duties.

301. FEES

01. Licensing and inspection fees. Hemp program fees are as follows:

Fee Type	Grower	Handler
Annual Application	\$100	\$100

Annual License	\$500	\$1,000
Facility or site modification	\$250/site	\$500/facility
Grower Pre-Harvest Inspection and other requested inspections	\$250/lot + \$35/hour for travel to site	
Handler Annual Site Inspection and other requested inspections		\$500/site + \$35/hour for travel to site

02. Other costs. Licensees pay the costs of background checks and required testing directly to the entity providing the service.

302. -- 399. (RESERVED)

400. PRODUCER RECORDS

01. Producer records. Producers shall maintain the following records for three years and make them available during normal business hours for the Department to review at the location where hemp is being grown:

- a. All documents related to the information required in the license application;
- b. Acquisition of hemp;
- c. Total acreage of industrial hemp planted, harvested, and disposed;
- d. Record of all handlers sold to and quantities sold to each entity;
- e. Variety and strain for each lot;
- f. All records, documents, and forms regarding the disposal or remediation of hemp;
- g. Copies of all records submitted to the Department, USDA or law enforcement related to hemp, as well as any supporting documentation.

02. Submission of information to USDA. All license holders shall report to their local USDA FSA office consistent with USDA requirements.

500. INSPECTION OF PRODUCERS.

01. Post-Plant Reporting. Within thirty days of planting hemp, each producer licensee must file with the department a Post-Plant Report. A planting verification inspection may be scheduled by the department to verify information provided by the licensee. The producer licensee or a key participant, must be present at the inspection. Any growing sites that do not conform to the license must be destroyed, or the license must be amended.

02. Access. The department shall have access to hemp sites and may enter on land or other property where hemp is planted, stored, propagated, produced, or handled for the purpose of inspections, sample collections, testing, or investigation pursuant to Idaho Code and this rule.

03. Harvest Notification. A producer license holder must submit a sample request form to the Department at least 35 days prior to the expected harvest date.

04. Procedure. The material and sampling protocol are determined by the Department's Sampling and Collection Procedure and consistent with federal regulation. Inspections and sampling will be assessed fees according to the table in section 301.01 of this rule.

05. Inspection and Sampling. ISDA will conduct inspections and collect samples of each lot not more than 30 days before the hemp is harvested. The industrial hemp may only be harvested after the sample is collected. The producer licensee or a key participant must be present at the inspection.

06. Harvest. The license holder will harvest the crop no more than 30 days following the date of sample collection by the Department.

a. If the licensee fails to complete harvest within 30 days of sample collection, secondary samples of each lot to be harvested must be collected by the Department and submitted for testing.

i. The license holder must notify the Department of a delay in harvesting by submitting a request form for subsequent sample collection from each lot to be harvested. Additional sampling will be assessed fees according to section 301.01 of this rule.

07. Lots Not Commingled. Harvested hemp lots shall not be commingled with hemp from other harvested lots or other material.

08. Test Results. No hemp may leave the control of the producer licensee until the licensee receives notification from the department that the lot complies with this chapter.

501. TRANSPLANTING

01. Transplanting. To legally transplant hemp, a producer licensee must complete and submit a lot change request on a form provided by the agency. For licensees transplanting within the parameters of their own existing license, the area of initial cultivation and the final transplantation area will constitute one lot with two registered geospatial locations.

02. Lots Not Divided. No licensee will divide a lot from the initial area of cultivation for transplant into more than one transplantation area.

03. Transplant sales. Buying or selling hemp transplants requires a grower license. A transfer or sale of hemp plants to another licensee is considered a harvest.

502. -- 599. (RESERVED)

600. INSPECTION OF HANDLERS.

01. Handler inspection. The Department will inspect every handler location annually. The licensee or a key participant must be present at the scheduled inspection. The Department may perform random inspections during normal business hours. Scheduled handler inspections are subject to fees in section 301.01 of this rule.

02. Handler duties.

a. The licensee may not acquire or accept hemp from any source other than a person licensed by the Department, the USDA, or a state or tribe with a plan approved by USDA.

b. Licensees shall not offer for sale hemp products in excess of acceptable hemp THC levels.

03. Handler records. Handlers shall maintain the following records for three years and make them available during normal business hours for the Department to review at the facility where hemp is being handled:

a. Records of all hemp crop acquisitions with the corresponding grower name, grower address, copy of grower license number, quantity purchased, and transaction date;

b. Records of all unprocessed hemp sold including name, address, and license number of the person or entity to whom the product was sold in addition to the quantity sold and transaction date;

c. Records of hemp products made by licensee including description of each type of product, quantity sold, and date of distribution;

d. All records, documents, and forms regarding the disposal of products exceeding the acceptable hemp THC level; and

700. SAMPLES AND TESTING.

01. Sampling procedure. Sampling will be conducted according to the Department's Sampling and Collection Procedure. The Department will send samples to an accepted laboratory selected by the license holder at the time of sampling. The license holder bears the full cost of laboratory testing.

02. Laboratory testing. An accepted laboratory must use appropriate, validated methods and procedures for all testing activities and evaluate the measurement of uncertainty. At a minimum, samples must be tested using post-decarboxylation or other similarly reliable analytical methods by which the total THC concentration level reported accounts for the conversion of THCA into THC. An accepted laboratory will analyze regulatory samples according to the Department's Testing Procedures and the following steps:

a. Maintain the chain of custody of each sample;

- b. Retain the sample for a minimum of thirty (30) business days from the sample collection date;
- c. Not commingle hemp from one lot with hemp from any other lot;
- d. Send the test results to the Department, license holder and USDA no later than the tenth business day from the sample submission date; and
- e. Determine and report total delta-9 THC concentration level on a dry weight basis, and the measurement of uncertainty must be estimated and reported with the test results.

03. Test Results. Any test result of a sample showing, with at least 95% confidence, that the total THC content of the sample exceeds the acceptable hemp THC level shall be conclusive evidence that one or more hemp plants or plant products from the lot represented by the sample contain a THC concentration in excess of that allowed.

- a. If the results of a test conclude that the THC levels of a sample conclusively exceeds the acceptable hemp THC level, the laboratory will promptly notify the producer and the Department.

04. Holding for test results. No hemp may be transferred or enter the stream of commerce until the license holder is notified that the hemp lot sampled and tested is compliant with an acceptable THC level when the application of the measurement of uncertainty is applied.

05. Retesting. A license holder may request a retest of the original sample within five days from the date the license holder receives the results of the first test.

- a. A license holder requesting a retest must use the laboratory that conducted the initial test.
- b. The laboratory must use the original sample, used in the first test, for the retest.
- c. The results of the retest are final.

800. DISPOSAL

01. Hemp above acceptable THC level. No more than five days after notification that material from a hemp lot has tested above the acceptable THC level, the licensee must notify the Department of the licensee's decision to either destroy or remediate the non-compliant hemp lot and by which method according to the Department's Disposal and Remediation Procedure.

02. Disposal. The licensee must dispose of non-compliant hemp with chemical or mechanical destruction to render the material non-retrievable, non-ingestible, and unfit to enter the stream of commerce.

03. Remediation. Lots may be remediated according to the Department's Disposal and Remediation Procedure.

a. Remediated hemp will be resampled and retested according to section 500.04 and 700 of this rule. Remediated hemp that fails the re-test must be destroyed and is not eligible for additional remediation efforts.

04. Verification. The Department must inspect and document disposal or remediation of non-compliant hemp.

05. Other hemp disposal: Disposal is required for the any of the following:

a. Hemp plants located in an area that is not licensed,

b. Hemp plants not accounted for in required reporting, or

c. Hemp lots that have been destroyed due to pests, weeds, disease, poor stand, natural disaster or weather event such as a flood or hail.

06. Costs. All costs for disposal, remediation, and related activities will be paid by the license holder or land owner.

07. USDA Notification. The Department will provide to USDA information about non-compliant plants, sites and related test results.

900. VIOLATIONS.

01. Negligent violation. License holders shall not receive more than one negligent violation per growing season. Negligent violations include:

a. Failure to provide accurate legal description of land where industrial hemp is produced;

b. Failure to obtain a license;

c. Production of hemp exceeding the acceptable THC level;

d. Growth of hemp outside of a planting site.

02. Corrective actions. Upon any determination that a negligent violation related to the growth or handling of hemp has occurred, the Department will institute a corrective action plan which must include:

a. A reasonable date to correct the negligent violation; and

b. A requirement to periodically report to the department regarding compliance with the corrective action plan for a period of not less than two consecutive calendar years.

03. Agency inspection. The Department will conduct inspections to determine if the corrective action plan has been implemented.

04. Not subject to criminal enforcement. As a result of a negligent violation, a licensee is not be subject to criminal enforcement action.

05. Non-negligent violations. Violations with a culpable mental state greater than negligence, including knowingly growing hemp containing a delta-9-THC concentration that exceeds three-tenths percent (0.3%) on a dry weight basis will be reported by the Department to the Idaho State Police and the U.S. Attorney General.