

## **IDAPA 02 – IDAHO DEPARTMENT OF AGRICULTURE**

### **Administration Division**

#### **02.01.07 – Rules Governing Hemp**

##### **Who does this rule apply to?**

*The rule applies to those wishing to produce, process, handle, transport, or research hemp in the state of Idaho.*

##### **What is the purpose of this rule?**

*This rule conforms with the intent and requirements of House Bill 126, the Industrial Hemp Research and Development Act. The rule meets legislative intent to:*

- *Assume primary regulatory authority of industrial hemp as allowed by federal law;*
- *Allow production, processing, transportation, and research of industrial hemp in Idaho, and;*
- *Provide a regulatory framework by which a state plan could be submitted to the secretary of agriculture for approval to allow the production of hemp.*

##### **What is the legal authority for the agency to promulgate this rule?**

*This rule implements the following statute(s) passed by the Idaho Legislature:*

- *[22-1705, Idaho Code](#) – Production, Processing, Transportation, and Research of Industrial Hemp Authorized*

##### **Who do I contact for more information on this rule?**

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## 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, 22-1705, and 22-1706, Idaho Code. (3-15-22)

### 001. SCOPE.

These rules govern the licensing, production, handling, and research of hemp. (3-15-22)

### 002. INCORPORATION BY REFERENCE.

01. **Domestic Hemp Production Program.** 7 CFR Part 990. (3-15-22)

02. **USDA Final Hemp Rule.** 86 FR 5596. <https://www.govinfo.gov/content/pkg/FR-2021-01-19/pdf/2021-00967.pdf>. (3-15-22)

### 003. – 009. (RESERVED)

### 010. DEFINITIONS.

In addition to the definitions in 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: (3-15-22)

01. **Accepted Laboratory.** A laboratory capable of testing pursuant to rule requirements and which is a state department of agriculture laboratory or a laboratory accredited in accordance with International Organization for Standardization ISO/IEC 17025:2017 and capable of THC quantitation by gas chromatography-mass spectrometry or high-pressure liquid chromatography. The Idaho State Police Forensic Laboratory is excluded from this definition. After December 31, 2022, accepted laboratories also must be registered with the U.S. Drug Enforcement Agency under the Controlled Substances Act, 21 CFR part 1301.13. (3-15-22)

02. **Acceptable Hemp THC Level.** The total delta-9 tetrahydrocannabinol content of hemp on a dry weight basis, that, when reported with the measurement of uncertainty, produces a range that includes a result of three-tenths percent (0.3%) total tetrahydrocannabinol or less, as defined in the 2018 Farm Bill. (3-15-22)

03. **Department.** The Idaho State Department of Agriculture. (3-15-22)

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 an institution of higher education. (3-15-22)

05. **Harvest.** To cut, gather, take, or remove all or part of hemp plants growing in a lot for the purpose of distribution, disposal, cloning, handling, sale, or any other use. (3-15-22)

06. **Key Participant.** A person who has direct or indirect financial interest in the entity producing hemp, such as an owner or partner in a partnership. A key participant also includes persons in a corporate entity at executive levels. (3-15-22)

07. **License.** A hemp producer or hemp handler license issued by the Department. (3-15-22)

08. **Lot.** A contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of hemp throughout. (3-15-22)

09. **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. (3-15-22)

10. **Producer.** A producer includes an owner, operator, landlord, or tenant 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. (3-15-22)

11. **Total THC.** The sum of tetrahydrocannabinolic acid and delta-9 tetrahydrocannabinol. (3-15-22)

### 011. ABBREVIATIONS.

- 01.**     **USDA.** The U.S. Department of Agriculture. (3-15-22)
- 02.**     **THC.** Tetrahydrocannabinol. (3-15-22)
- 03.**     **FSA.** The U.S. Department of Agriculture Farm Service Agency. (3-15-22)

**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 an annual state report pursuant to deadlines established by USDA. (3-15-22)

**201. – 299.     (RESERVED)**

**300.     LICENSES.**

**01.     Requirement.** Any person or entity shall have an active hemp license from the Department for planting, propagating, producing, handling, or processing hemp in Idaho. (3-15-22)

**02.     Application.** An applicant for a producer or handler license must apply on a form prescribed by the Department. (3-15-22)

**a.**     An applicant and any key participants must include in the application a criminal history report conducted as a fingerprint background check by the Idaho State Police or Federal Bureau of Investigation completed no more than sixty (60) days before the application submission. (3-15-22)

**03.     Annual Application Period and Fees.** The application period is September 1 through December 31 of each year for the next calendar year, or a late fee of two hundred fifty dollars (\$250) applies to each late application. Applications must be complete and include a nonrefundable application fee according to Subsection 301.01 of this rule. (3-15-22)

**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 Subsection 301.01 of this rule. Upon receipt of payment of the license fee, the license will be issued. (3-15-22)

**05.     License Not Transferable.** All licenses are non-transferable. (3-15-22)

**06.     Producer License.** A producer license authorizes a person or entity to obtain and possess hemp seed for planting; to cultivate and harvest hemp; to transport their own hemp crop; to dispose of or remediate their own hemp; as well as possess and market plant parts. (3-15-22)

**07.     Handler License.** A handler license authorizes a person or entity to obtain and possess hemp, including seed, for processing but not intended for the license holder's own cultivation. (3-15-22)

**08.     Ineligibility.** No license will be issued to an ineligible person or entity. (3-15-22)

**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 hemp program for a period of five (5) years from the date of revocation. (3-15-22)

**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 tenth anniversary of the date of the conviction, hold a license, or be a key participant, 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. (3-15-22)

**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. (3-15-22)

**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. (3-15-22)

**e.** A person or entity with three (3) negligent violations in a five (5) year period is ineligible to produce hemp for a period of five (5) years from the date of the third violation. (3-15-22)

**09. License Expiration.** A license is valid from January 1 until December 31 of each year, except for a license issued as a result of a late application which is valid from date of issuance until December 31 of that year. (3-15-22)

**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 (10) business days of the change. Changes may be subject to Subsection 301.01 of this rule. (3-15-22)

**11. Additional Responsibilities.** A license holder must notify the Department of any theft of hemp materials, whether growing or not, within forty-eight (48) hours of discovery. (3-15-22)

**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. (3-15-22)

**a.** A suspended license may be restored after a waiting period of one (1) year. (3-15-22)

**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. (3-15-22)

**13. Revocation.** A hemp license will be revoked if the licensee: (3-15-22)

**a.** Pleads guilty to, or is convicted of, any felony related to a controlled substance; or (3-15-22)

**b.** Made any materially false statement with regard to this rule to the Department with a culpable mental state greater than negligence; or (3-15-22)

**c.** Was found to be growing cannabis exceeding the acceptable hemp THC level with a culpable mental state greater than negligence; or (3-15-22)

**d.** Negligently violated law or rule three (3) times in five (5) years. (3-15-22)

**14. No License For Official Duties.** Department employees and law enforcement are not required to have a license for handling hemp in performance of official duties. (3-15-22)

**301. FEES.**

**01. Licensing and Inspection Fees.** Hemp program fees are as follows: (3-15-22)

Fee Type	Grower	Handler
Annual application	\$100	\$100
Annual license	\$500	\$1,000

<b>Fee Type</b>	<b>Grower</b>	<b>Handler</b>
Modification to application information	\$250	\$500
Producer pre-harvest inspection and other inspections	\$250/lot + \$35/hour for travel to site + actual costs for shipping samples	
Handler annual site inspection and other inspections		\$500/site + \$35/hour for travel to site

(3-15-22)

**a.** Applicants seeking to produce and handle hemp require both license types. The annual application fee is charged only for the first license type. (3-15-22)

**02. Other Costs.** Licensees pay the costs of background checks and required testing directly to the entity providing the service. (3-15-22)

**302. – 399. (RESERVED)**

**400. PRODUCER RECORDS.**

**01. Producer Records.** Producers shall maintain the following records for three (3) years and make them available during normal business hours for the Department to review at the location where hemp is being grown: (3-15-22)

- a.** All documents related to the information required in the license application; (3-15-22)
- b.** Source of hemp seed; (3-15-22)
- c.** Total acreage of industrial hemp planted, harvested, and disposed; (3-15-22)
- d.** Record of all handlers sold to and quantities sold to each entity; (3-15-22)
- e.** Variety and strain for each lot; (3-15-22)
- f.** All records, documents, and forms regarding the disposal or remediation of hemp; (3-15-22)
- g.** Copies of all records submitted to the Department, USDA, or law enforcement related to hemp, as well as any supporting documentation. (3-15-22)

**02. Submission of Information to USDA.** All license holders shall report to their local USDA FSA office consistent with USDA requirements. (3-15-22)

**401. – 499. (RESERVED)**

**500. INSPECTION OF PRODUCERS.**

**01. Verification.** Inspections may be scheduled by the Department to verify information provided by the licensee. Any growing sites that do not conform to the license must be destroyed or the license must be amended. (3-15-22)

**02. Access.** The Department shall have access to hemp sites and may enter 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. (3-15-22)

**03. Harvest Notification.** A producer license holder must submit a sample request form to the Department at least thirty-five (35) days prior to the expected harvest date. (3-15-22)

**04. Procedure.** The sampling procedure is determined by the Department's Sampling Protocol. Inspections and sampling are subject to Subsection 301.01 of this rule. (3-15-22)

**05. Inspection and Sampling.** ISDA will conduct inspections and collect samples of each lot not more than thirty (30) days before the hemp is harvested. The industrial hemp may be harvested only after the official sample is collected. The producer licensee or a key participant must be present at the inspection. (3-15-22)

**06. Harvest.** The license holder will harvest the crop no more than thirty (30) days following the date of sample collection by the Department. (3-15-22)

**a.** If the licensee fails to complete harvest within thirty (30) days of sample collection, secondary samples of each lot to be harvested must be collected by the Department and submitted for testing. (3-15-22)

**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 is subject to Subsection 301.01 of this rule. (3-15-22)

**07. Lots Not Commingled.** Harvested hemp lots may not be commingled with hemp from other harvested lots or other material. (3-15-22)

**08. Movement.** No hemp may leave the control of the producer licensee until the licensee receives notification from the Department that the lot complies with this rule. (3-15-22)

**501. TRANSPLANTING.**

**01. Transplanting.** To transplant hemp, a producer licensee must submit transplant information with his or her license application or submit a lot change request on a form provided by the agency. (3-15-22)

**02. Lots Not Divided.** No licensee will divide a lot from the initial area of cultivation for transplant into more than one transplantation area for on-farm production. (3-15-22)

**03. Transplant Sales.** Selling hemp transplants for wholesale or retail requires a producer license and a handler license. (3-15-22)

**502. – 599. (RESERVED)**

**600. INSPECTION OF HANDLERS.**

**01. Handler Inspection.** The Department will inspect all handler locations annually. The licensee or a key participant must be present at the scheduled inspection. The Department may perform random inspections during normal business hours. A sample may be pulled at an inspection. Scheduled handler inspections are subject to Subsection 301.01 of this rule. (3-15-22)

**02. Handler Duties.** (3-15-22)

**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 hemp plan approved by USDA. (3-15-22)

**b.** Licensed handlers shall not sell, offer, or transfer within Idaho any hemp products not in compliance with Section 37-2701, Idaho Code. (3-15-22)

**03. Handler Records.** Handlers shall maintain the following records for three (3) years and make them available during normal business hours for the Department to review at the facility where hemp is being handled; (3-15-22)

- a.** Records of all hemp crop acquisitions with the corresponding producer name, producer address, copy of producer license number, quantity purchased, and transaction date; (3-15-22)
- 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; (3-15-22)
- c.** Records of hemp products made by licensee including description of each type of product, quantity sold, and date of distribution; and (3-15-22)
- d.** All records regarding the disposal of products exceeding the acceptable hemp THC level. (3-15-22)

**601. – 699. (RESERVED)**

**700. SAMPLES AND TESTING.**

**01. Sampling Protocol.** Sampling will be conducted according to the Department’s Sampling Protocol. The Department will send samples to an accepted laboratory selected by the license holder at the time of sampling. The licensee bears the full cost of laboratory testing. (3-15-22)

**02. Laboratory Testing.** An accepted laboratory must use appropriate and validated methods and procedures for all testing activities and evaluate the measurement of uncertainty. Samples must be tested using post-decarboxylation or a similarly reliable method 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 Protocol and the following steps: (3-15-22)

- a.** Maintain the chain of custody of each sample; (3-15-22)
- b.** Retain the sample for a minimum of thirty (30) business days from the sample submission date; (3-15-22)
- c.** Not commingle hemp from one (1) lot with hemp from any other lot; (3-15-22)
- d.** Send the test results of official samples to the Department, license holder and USDA no later than the fifteenth business day from the sample submission date; and (3-15-22)
- 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. (3-15-22)

**03. Test Results.** Any test result of a sample showing, with acceptable quality control passing, that the total THC content of the sample exceeds the acceptable hemp THC level shall be conclusive evidence that hemp from the lot represented by the sample contains a THC concentration in excess of that allowed. (3-15-22)

**a.** If the results of a test conclude that the THC levels of a sample exceeds the acceptable hemp THC level, the laboratory will promptly notify the producer, the Department, and the USDA. (3-15-22)

**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. (3-15-22)

**05. Retesting.** A license holder may request a retest of the original sample within five (5) days from the date the license holder receives the results of the first test. (3-15-22)

- a.** Retests must be performed by the laboratory that conducted the initial test. (3-15-22)
- b.** The laboratory must use the original sample used in the first test for the retest. (3-15-22)



- c. The results of the retest are final. (3-15-22)

**701. – 799. (RESERVED)**

**800. DISPOSAL.**

**01. Hemp Above the Acceptable Hemp THC Level.** No more than five (5) calendar 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 entire non-compliant hemp lot and by which method according to the Department's Disposal and Remediation Protocol. (3-15-22)

**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. (3-15-22)

**03. Remediation.** Lots may be remediated according to the Department's Disposal and Remediation Protocol. (3-15-22)

a. Remediated hemp will be resampled and retested according to Subsection 500.04 and Section 700 of this rule. Remediated hemp that fails the re-test must be destroyed and is not eligible for additional remediation efforts. (3-15-22)

**04. Verification.** The Department must inspect and document disposal or remediation of non-compliant hemp. (3-15-22)

**05. Other Hemp Disposal.** Disposal is required for the any of the following; (3-15-22)

a. Hemp plants located in an area that is not licensed, (3-15-22)

b. Hemp plants not accounted for in required reporting, or (3-15-22)

c. Hemp lots that have been destroyed due to pests, weeds, disease, poor stand, natural disaster, or a weather event such as a flood or hail. (3-15-22)

**06. Reporting.** All hemp disposed of, for any reason, must be reported to and verified by the Department and may be subject to Subsection 301.01 of this rule. (3-15-22)

**07. Costs.** All costs for disposal, remediation, and related activities will be paid by the license holder or land owner. (3-15-22)

**08. USDA Notification.** The Department will provide to USDA information about non-compliant plants, sites, and related test results. (3-15-22)

**801. – 899. (RESERVED)**

**900. VIOLATIONS.**

**01. Negligent Acts.** Negligent acts include: (3-15-22)

a. Failure to provide an accurate legal description of land where hemp is produced; (3-15-22)

b. Failure to obtain a license; or (3-15-22)

c. Production of hemp exceeding the acceptable THC level. (3-15-22)

**02. License holders shall not be subject to more than one (1) negligent violation per calendar year.** (3-15-22)

**03. Corrective Actions.** Upon any determination that a negligent act related to the growth or handling of hemp has occurred, the Department will institute a corrective action plan which must include: (3-15-22)

**a.** A reasonable date to correct the negligent act; and (3-15-22)

**b.** A requirement to periodically report to the Department regarding compliance with the corrective action plan for a period of not less than two (2) consecutive calendar years. (3-15-22)

**04. Agency Inspection.** The Department will conduct inspections to determine if the corrective action plan was implemented. (3-15-22)

**05. Not Subject to Criminal Enforcement.** As a result of a negligent violation, a licensee is not subject to criminal enforcement action. (3-15-22)

**06. 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. (3-15-22)

**07. Penalties and Procedure.** Penalties, including license suspension or revocation, and due process procedures are governed under Section 22-1705(5), Idaho Code, and the Idaho Administrative Procedure Act, Chapter 52, Title 67, Idaho Code. (3-15-22)

**901. – 999. (RESERVED)**