

Overview of Texas Hemp Production Rules

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History of Legal Rules

- December 2018 – Farm Bill paves the way for legal hemp.
- June 10, 2019 – Gov. Abbott signs hemp production bill.
- October 2019 – USDA issues Final Interim Rule on hemp production.
- January 2020 – TDA submits Texas Hemp Plan.
- January 10, 2020 – TDA published proposed hemp regulation.
- January 27, 2020 – USDA approves Texas Hemp Plan.
- March 6, 2020 – TDA issues final hemp regulations.
- March 16, 2020 – TDA begins taking license applications.
- January 15, 2021 – USDA issues Final Rule on hemp production.
- March 22, 2021 – USDA Final Rule effective.



Overview of TDA Hemp Regulations

- Licensing/Permits
- Fees
- Seeds/Transplanting
- Production
- Inspection/Sampling/Testing
- Disposal of Unauthorized Plants
- Enforcement
- Reporting and Recordkeeping



Licensing

- License required for anyone producing or handling.
- Annual application, no automatic renewals.
- Application form, orientation course, background check (for all “key participants”), good standing with TDA.
- Will consider “willingness to comply” with TDA instructions/rules and must not owe TDA money under final order.
- No license if under 18, previous license revoked or terminated, felony drug conviction within last 10 years.
- Licenses are not transferrable.
 - If license holder dies, estate must hire another licensed grower to finish cultivating/harvesting existing crops.



Permits

- Producer must obtain a lot permit.
 - “Lot” is defined as “a contiguous area in a facility, field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout the area.”
- Anytime hemp will leave facility where it is located (including seed and samples for testing), a transport manifest must be obtained.
 - A “facility” is defined as “a location with a legal description and is within the legal control of a person or entity.”
 - A facility may consist of multiple fields, lots, greenhouses, or storage.



Fees

- License application fee: \$100
- License modification fee (if applicable): \$500
- Annual license renewal fee (when applicable): \$100
- Annual background check fee: Currently no fee charged
- Participation fee (each facility, each lot, processor registration): \$100 each
- Facility modification fee (if applicable): \$500
- Fee for licensed samplers: Depends on sampler
- Shipment/transportation fees to get sample to laboratory: Depends on shipper
- Fee for transport manifest to ship sample to laboratory: To be set by TDA



Fees (cont)

- Testing fees payable to laboratory: Depends on laboratory
- Transport manifest fee: To be set by TDA
- Organic certification fee (if applicable)
- Participation fee for optional TDA marketing program (if applicable)
- Fee for destruction of hot crop (if applicable)



Seeds

- Seed must be certified or approved.
- TDA has published list of approved hemp varieties.
- There are a number of labeling requirements for seed. Must meet TX labeling requirements & those for state of origination.



Texas Approved Hemp Varieties
TDA does not guarantee THC Compliance for Texas Approved Varieties
6/12/2020

837MC	Henola
862MC	Hercules
887MC	HK05
A2	Honey Badger Auto
Abacus	Honolulu Haze
Abbie	Hot Blonde
Abigail Superfit	Hybrid #5
ACDC	Hybrid #9
ACDC x Cherry Wine	Indiana Velvet
Alpha CBG	Indoor Angie
Altair	Janet's G
Altitude 1	JCM
Alyssa	Jin Ma
Angie	Jin Ma #1
Anka	Joey
Anna Lee Superfit	Judy
ASG-202-1001	Jutta
Athena Superfit	Katani
Auto	KCC13
Auto Bahn	KHRD1
Auto Pilot	KHRD100
Auto Pilot 1.0	KHRD2
Auto Tsunami	KHRD3
Auto Tune	KHRD4
Auto-Wilhelmiha	KHRD5
AV1	KHRD6
B11	Kino Vision
B12	Kompolti
B-20	Kompolti Hibrid TC
Bankroll	Kompolti Sargaszaru
BaOx	Kush Hemp E1
BaOx 2017	La Crème Soda
BaOx 2018	Late Sue
BaOx F1	Laura Secord
BaOx Improved	Letter of Intent
BaOx of Cherries	Lindorea



Transplants

- Initial area of cultivation and final transplant area are considered one lot—must be listed on lot permit.
- May not transplant from initial area to more than one final area.
- Sale/transfer of plants from one owner to another constitutes “harvest” and testing procedures appear to apply.
- Transport manifest is required when plants are sold to a new owner or will leave a particular lot.



Production

- Producer may not produce or handle hemp in any location not listed on the license.
- Producer may not produce or handle any cannabis other than hemp.
- Producer must have complete control over land where hemp is grown.
 - For leased land, landowner must be eligible to qualify for license & never had a license revoked, terminated, or denied.



Production (cont)

- May not interplant hemp with any other crops.
- Must keep hemp physically segregated from any other crops.
- May not commingle hemp from multiple lots prior to processing.
- Must notify TDA of any plant theft within 48 hours.



Inspection

- License holder must produce license upon request.
- License holders consent to entry on & inspection of all locations identified in application & all land on which hemp or other cannabis plants or materials are located.
- TDA, DEA, DPS, US authorities, and local law enforcement agencies shall have complete and unrestricted access to all hemp plants, whether growing or harvested, all facilities used for the production and storage of hemp in all locations where hemp is produced or handled with or without cause & with or without advanced notice.



Sampling

- Each lot must be sampled.
- Hemp must be sampled and tested within 15 days of harvest.
 - USDA Final Rule amends this to 30 days.
- Sampling must be done by TDA or TDA licensed representative.
- Producer or representative must be present at sampling.
- Sampling procedures outlined in regulations, including number of cuttings taken per lot.
 - Example: Less than 10 acres – cuttings from 5 plants to make 1 sample.
 - Example: Over 10 acres – use pesticide residue sampling formula.
 - USDA final rule amends requirements to allow additional flexibility.



Sampling (cont)

- USDA Final Rule modified where samples taken from the plant to allow more stems and leaves. IFR said top 1/3. FR says from the flowering tops of the plant by cutting 5-8" from the main stem (includes the leaves and flowers), terminal bud (occurs at the end of a stem), or central cola (cut stem that could develop into a bud).
- USDA Final Rule allows for performance-based approach.
 - State and Tribal sampling plan must be approved by USDA.
 - May consider seed certification programs, history of producer compliance, other factors determined by the State or Tribe.



Testing

- May not sell or use harvested plants until tested for THC content.
- Rule requires testing be conducted by TDA & DEA registered laboratory, chosen by producer.
 - New USDA Rule suspends DEA registration requirement until 12/2022.
 - TDA website states exemption as well.
- Test will determine if crop is within “acceptable hemp THC level.”
 - Includes measurement uncertainty.
 - Crop is within acceptable hemp THC level if .3% or less is included anywhere within range of test results.
 - Example: Crop tests at .35%, with a .06 MU. Because range is .29%-.41%, crop is within acceptable hemp THC level.



Testing (cont)

- Testing method must measure “total THC content.”
 - Must measure both THC and THC acid (which can potentially convert into THC) to report total THC level.
 - Many comments seeking to change this, but USDA Final Rule did not do so.
- If hot, producer has 5 days to request retest.
 - Retesting must be from same sample by same lab.
 - Retest results are final.
 - Producer has 7 days from final test result to submit a completed disposal report to TDA, which may trigger a TDA field inspection.



Disposal of Unauthorized Plants

- Plants are subject to destruction with no compensation from government, no insurance coverage if:
 - Exceed the acceptable hemp THC level.
 - Plants located in area not licensed by TDA.
 - Plants not accounted for in TDA reporting.
- TDA Rules require compliance with CSA/DEA reverse distributor requirements for destruction.
 - TDA and USDA suspended this requirement prior to 2020 growing season. Allowed destruction methods.
 - USDA Final Rule does not require reverse distributor, lists multiple options.



Disposal of Unauthorized Plants (cont)

- USDA Final Rule allows for either remediation option.
 - Remediation
 - May remove & destroy flowering material and retest stalk, stems, leaf, seed and re-test.
 - May shred entire plant to create biomass-like material and re-test.

- USDA Final Rule allows for disposal by:
 - Plowing under
 - Mulching/composting
 - Disking
 - Shredding with bush mower or chopper
 - Burying
 - Burning
 - Remediation



Enforcement

- Anyone can file complaint for violation of regulations – TDA will investigate and make report.
- Negligent violations
 - If guilty, create corrective action plan.
 - 3 negligent violations in 5-year period results in license revocation for 5 years.
 - No criminal enforcement.
 - Safe Harbor – Hot crop is NOT negligent if reasonable production practices were used and crop tests less than .5% THC.
 - New USDA Rule changes this to 1%.
 - New USDA Rule limits number of negligent violations/year to 1.



Enforcement (cont)

- Culpable state greater than negligence
 - Mental states including intentional, knowing, willful, or reckless.
 - Will be reported to state and federal criminal agencies
 - Subject to license revocation, monetary civil penalties.



Reporting and Recordkeeping

- License holders must maintain records of all hemp plants acquired, produced, handled, sampled & collected, or disposed of for at least 3 years.
- Growers must report required info to USDA AMS or USDA FSA.
- Must submit lot reports to TDA no later than the 20th day after the final sample is collected from a lot, or no later than 180 days from the lot permit issue date, whichever is earlier.



Reporting and Recordkeeping (cont)

- Person who sells, offers to sell, distributes, or uses hemp seed in TX must maintain records for 5 years of:
 - Origin
 - Person from whom seed was purchased
 - Documentation indicating certification
 - Location and jurisdiction of original seed



Conclusion

- It is hard to overstate the significant regulatory burden on producers interested in growing hemp.
- It is critical for potential growers to take time to read, understand, and consider the requirements and limitations prior to growing the crop.
- Keep an eye on Texas Legislature & TDA amendments to statutes and regulations based on Final USDA Rule.

