

01-001 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

DIVISION OF ANIMAL AND PLANT HEALTH

Chapter 274: Rules for Growing Hemp

**SUMMARY:** These rules establish the requirements for becoming licensed to grow hemp, including fees, application and licensing processes, and procedures for monitoring the growth of hemp. These rules also align with the Department's State of Maine Hemp Program Plan approved by the United States Department of Agriculture, Agricultural Marketing Service.

**I. Definitions**

- A. **Acceptable hemp THC level** - The acceptable hemp THC level 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 the total THC limit in the definition of hemp in Section I(P). For example, if the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is 0.35% and the measurement of uncertainty is  $\pm 0.06\%$ , the measured delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the acceptable hemp THC level or as otherwise defined in federal law.
- B. **Biomass** – Harvested hemp which includes the stalks and leaves and may include flowers, buds and/or seeds.
- C. **Cannabinoid** - A group of closely related chemical compounds which include THC (tetrahydrocannabinol), THCA (tetrahydrocannabinolic acid), CBD (cannabidiol), CBDA (cannabidiolic acid), CBN (cannabinol), CBG (cannabigerol), CBC (cannabichromene), CBL (cannabicyclol), CBV (cannabivarin), THCV (tetrahydrocannabivarin), CBDV (cannabidivarin), CBCV (cannabichromevarin), CBGV (cannabigerovarin), CBGM (cannabigerol monomethyl ether), CBE (cannabielsoin), CBT (cannabicitran), and other active constituents that are naturally occurring in the *Cannabis sativa* L. plant.
- D. **Certificate of analysis** – A report issued by a third-party ISO 17025 accredited laboratory, which indicates the delta-9-tetrahydrocannabinol, tetrahydrocannabinolic acid, and total tetrahydrocannabinol content of hemp on a dry weight basis.

- E. **Certified seed source** – A source of hemp seeds that are certified by a third party as producing hemp having a total tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis or as otherwise defined in federal law. Certification may include a certificate of analysis from a third-party ISO 17025 accredited laboratory that indicates the parent plant seed source tested at or below 0.3% total tetrahydrocannabinol on a dry weight basis or as otherwise defined in federal law.
- F. **Clone** – A hemp plant produced using any part of another hemp plant other than the seeds of that hemp plant.
- G. **Commercial purposes** – Offering seed, plants, plant parts, extracts, or other derivatives of the hemp plant into commerce or distribution to another person for that purpose.
- H. **Criminal history report** - A report detailing an individual's conviction status related to a controlled substance within the past 10 years for all 50 states and the federal level, which must be dated within sixty days prior to the date of application submission, to be renewed every three years.
- I. **Decarboxylation** – The chemical reaction that converts THCA into delta-9 THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a molecular mass conversion ratio that sums delta-9 THC and eighty-seven and seven tenths (87.7) percent of THC-acid (Total THC=(delta-9 THC)+(0.877\*THCA)).
- J. **Department** – The Maine Department of Agriculture, Conservation and Forestry.
- K. **Dry weight** – The weight of hemp plant material with no greater than 12% moisture content.
- L. **Grower license** – The document issued to an individual after a successful application and review process, and following departmental receipt of a signed license agreement and submission of all licensing fees. The license allows the individual to possess, cultivate, grow and harvest hemp under Maine law.
- M. **Growing area** – The land or surface area on which a licensee cultivates or plans to cultivate hemp.
- N. **Hemp** – The plant *Cannabis sativa* L. and any part of that plant, including the seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts and salts of isomers, whether growing or not, with a total tetrahydrocannabinol concentration that is not more than 0.3% on a dry weight basis including any measurement of uncertainty, or as otherwise defined in federal law. "Hemp" includes agricultural commodities and products derived from hemp and topical or ingestible consumer products, including food, food additives, and food products derived from hemp,

which in their final forms contain a total tetrahydrocannabinol concentration of not more than 0.3% including any measurement of uncertainty or as otherwise defined in federal law.

- O. **Indoor facility** – A building, greenhouse, cold frame, hoop house, high tunnel, or other agricultural or horticultural method of enclosing the growing area.
- P. **Key participant** - A person who has a direct or indirect financial interest in an entity producing hemp, such as an owner or partner in a partnership. Key participant also includes a person in a corporate entity at an executive level including a chief executive officer, chief operating officer and chief financial officer. Key participant does not include other management positions such as farm, field or shift managers. With respect to colleges and universities conducting hemp research, the principal investigator is considered the applicant, with co-principal investigators as key participants.
- Q. **Law enforcement agency** – A federal, state, or local agency responsible for maintaining public order and enforcing the law, particularly activities involving prevention, detection, and investigation of crime, and the apprehension of violators.
- R. **Licensee** – An individual possessing a hemp license.
- S. **License agreement** – A document signed by the licensee agreeing to abide by these rules and any other terms and conditions the Department deems necessary for enforcing the hemp law.
- T. **Licensing period** – The time in which a hemp license is valid. Licenses are issued for up to one year and expire on April 30.
- U. **Lot** - A contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout planted at the same time and intended to be harvested at the same time. A “lot” is defined by the producer in terms of farm location, field acreage, and variety (i.e., cultivar).
- V. **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.
- W. **Non-contiguous growing area** – A growing area on which a licensee grows or plans to grow hemp that is separated from other growing areas by more than 50 miles.
- X. **Performance based sampling** - An alternative sampling method to ensure, at a confidence level of 95 percent, that the cannabis plant species *Cannabis sativa* L

variety or strain that will be subject to the alternative sampling method will not test above the acceptable hemp THC level.

- Y. **Planting date** - Planting date for an outdoor licensing agreement is the date seed is sown outdoors or when a seedling or clone is field planted. Planting date for an indoor licensing agreement is the day seed, seedlings or clones are planted inside.
- Z. **Planting report** – A report each licensed grower must provide to the Department within 14 days after planting hemp seeds, seedlings or clones. The report includes a listing of the varieties of seeds, seedlings or clones planted in each lot and a copy of a certificate of analysis which indicates the parent plants for the planted seed, seedlings or clones were found to contain no more than 0.3% total THC on a dry weight basis or as otherwise defined in federal law for each lot and for each hemp variety or strain planted. The report includes a final legal description of the land area or indoor facility to be used for the production of hemp, and a map, aerial photograph or global positioning coordinates sufficient for locating each lot in each field, site or indoor facility where hemp is growing, the total acres planted, the type of propagule planted, the planting date and estimated harvest date.
- AA. **Remediation** – The process of rendering non-compliant cannabis, compliant. Remediation can occur by removing and destroying flower material, while retaining stalk, stems, leaf material and seeds. Remediation can also occur by shredding the entire plant into a biomass like material, then re-testing the shredded biomass material for compliance.
- BB. **Sample** – Plant parts taken as representative of an individual plant or the combined total plants in an individual lot in a growing area.
- CC. **Seedling** – A hemp plant or rooted cutting that is not flowering, less than 24 inches in height and less than 24 inches in width.
- DD. **Strain** – A group of plants or an individual plant that exhibit(s) distinctive observable physical characteristic(s) or has a distinct genetic composition.
- EE. **Tetrahydrocannabinol (THC)** – Delta-9-tetrahydrocannabinol, the natural or synthetic equivalents of the substances contained in the plant, or in the resinous extractives of, *Cannabis sativa* L., or any synthetic substances, compounds, salts, or derivatives of the plant or chemicals and their isomers with similar chemical structure and pharmacological activity.
- FF. **Tetrahydrocannabinolic Acid (THCA)** – the acid form of tetrahydrocannabinol contained in the plant which can be converted into delta-9-THC through decarboxylation of other chemical processes. On average 87.7% of THCA is converted to delta-9-THC after decarboxylation.

**GG. Total THC** – On a dry weight basis, the post-decarboxylation value of THC, either after testing with gas chromatography or a similar chromatograph technique which uses heat that converts THCA from the acid form into the neutral form of THC or total THC can also be calculated using liquid chromatography (LC) which keeps the THCA intact. This technique requires use of the following conversion formula:  $[\text{Total THC} = (0.877 \times \text{THCA}) + \text{THC}]$  which calculates the maximum total THC in a given sample.

**HH. Variety** – A group of plants or an individual plant that exhibit(s) distinctive observable physical characteristic(s) or has a distinct genetic composition. Varieties are also known as cultivars.

## **II. Application Process**

A. Each applicant for a hemp grower license must submit a signed, complete, accurate and legible application to the Department at least 30 days prior to her/his intended planting date.

B. Applicants applying to renew a grower license must submit the same information and fees as applicants applying for a new grower license. In addition, applicants for renewal must include, on the application, the licensing numbers of any previous grower licenses held and year of issuance of those grower licenses.

C. The applicant must provide:

1. Name, address, telephone number, email address and other contact information as needed for the individual that will become the licensee;
2. Name of business, address of principal business location, full name and title of all key participants, a business email address, the business employer identification number and other contact information as needed;
3. If required by the USDA-AMS federal regulations, 7 CFR 990, a criminal history report for all key participants and authorized representatives;
4. A detailed description of the land area or indoor facility to be used for the production of hemp including, but not limited to: a map, aerial photograph or global positioning coordinates sufficient for locating production fields; the floor plan of any indoor facilities; and the boundaries, dimensions, and size of the growing area;
5. A signed and dated statement that the applicant is the owner or legal occupant of the growing area or indoor facility to be used for cultivation of hemp, or a statement, signed by the owner of the growing area or indoor facility, consenting to that use;

6. The estimated planting date for the first crop.
7. Any other information the Department determines is necessary for enforcing the hemp law and these rules.

E. Each applicant for grower licensure shall submit a non-refundable application fee of \$100 with the application. Fees will not be refunded if a license is not granted.

F. Incomplete applications will not be processed.

G. False, inaccurate or misleading information provided on an application is grounds for license denial. Grower licenses may be denied to applicants who have previously had a hemp grower license revoked or have violated any rules or statutes contained in CMR 01-001 Chapter 274 or MRS Title 7, Chapter 406-A.

### **III. Issuance of License Agreement and Grower License**

A. Upon approval of an application, the applicant for a grower license must pay the license fee. License fees are determined by the hemp crop to be grown. License fees must be paid prior to license issuance. All license fees are non-refundable for any reason.

1. A \$100.00 license fee with no additional per acre or square foot fee is required for growing hemp indoors or outdoors exclusively for production of:
  - a. seedlings for planting,
  - b. immature leafy greens, or
  - c. microgreens.
2. A \$100.00 license fee with no additional per acre or square foot fee is required for growing hemp exclusively for:
  - a. research purposes in cooperation with a recognized educational institution where no plant parts or derivatives will be used for commercial purposes or the entire crop will be destroyed.
3. A \$250.00 license fee with no additional per acre or square foot fee is required for growing hemp indoors or outdoors exclusively for the production of:
  - a. seed for food oil or grain;
  - b. fiber;
  - c. immature plants for human or animal food or feed;
  - d. breeding of new cultivars indoors on less than 100 square feet; or
  - e. soil remediation where no plant parts or derivatives will be used for commercial purposes or the entire crop will be destroyed.
4. A \$500 plus \$50.00/acre fee is required for growing hemp for production of floral material, viable seed or any other commercial purpose not listed in Section III(A)(1) or (3) to be planted outdoors and \$500.00 plus \$0.25 per

square foot of growing area for growing hemp for production of floral material, viable seed or any other commercial purpose not listed in Section III(A)(1) or (3) to be planted indoors, as reported on the application. Indoor facilities that will plant hemp on multiple levels within a structure shall calculate the square feet of growing area by adding the surface area of each tier together. The maximum license fee for an individual license agreement shall be \$20,000. Partial acreage or square footage should be rounded up to the next whole acre or square foot.

5. All grower license fees include THC lab analysis for one hemp lot. An additional fee of \$60.00 per additional lot must be submitted with the grower planting report.

B. Grower licenses are only for the site or sites listed in the license agreement. Non-contiguous growing areas as defined in this rule require a separate license.

C. Each applicant must sign a license agreement. The failure of the licensee to comply with any term or condition of the licensing agreement shall be grounds for license revocation. By signing the license agreement, the grower licensee agrees to the following terms and conditions:

1. Within 14 days after planting hemp seeds, seedlings or clones, the grower licensee shall:
  - a. submit a planting report;
  - b. submit any required sampling fees for additional lots; and
  - c. provide the street address and geospatial location for each lot or greenhouse where hemp will be produced including all grow locations to the United States Department of Agriculture, Farm Service Agency;
2. The grower licensee must allow the inspection and sampling of the hemp crop at any and all times that the Department deems appropriate;
3. All records relating to production, planting, cultivation, and harvest of the hemp crop must be kept for a period of 3 years. The records must be made available to the Department upon request;
4. The Department may require reporting of any information or data associated with the planting, cultivation, and harvest of the hemp crop. The Department may also require reporting of the types of commodities or products derived from the harvested hemp and manufactured or sold within or outside the state. The grower licensee must submit all required reports by the due dates specified by the Department; and
5. Grower licensees must comply with any other terms and conditions the Department determines necessary for enforcing the hemp law and these rules.

D. All grower licenses shall expire on April 30 of the year following the growing season. Licensees must re-apply to participate in the program each year. All outdoor grown hemp plant material must be planted and harvested within the licensing period. Indoor grown hemp must be planted within the license period, and harvesting can take place in a concurrent license period after license renewal that occurs within 30 days of the previous license expiration.

E. No hemp plants shall be included in other licensed cannabis production programs. No growing area may contain *Cannabis sativa* L. plants which the licensee knows or has reason to know are of a variety that will produce a plant that, when tested, will contain more than 0.3% total THC on a dry weight basis or as otherwise defined in federal law.

F. Amendments to an existing grower license are limited to reduction in the number of acres or square footage planted within the original growing area and changes to contact information.

1. Any grower licensee who wishes to reduce the growing area for hemp cultivation must submit to the Department, within 10 days of planting, an updated detailed description of the growing area including global positioning system location and map or a new floor plan for an indoor facility for each lot.
2. Additions to the original growing area must be done through a new grower license application and new license agreement.
3. Annual grower license fees are calculated based on the acreage reported in the application. No reimbursements of license fees shall result from a reduction in the actual number of acres or square footage of hemp planted during any licensing year.
4. Any changes related to the information required under Section II(C) of this rule must be reported to the Department within 10 days of the change.
5. Grower licenses are non-transferrable.

#### **IV. Sampling and Inspection**

A. All licensed hemp lots may be subject to sampling to verify that the total THC concentration of the hemp variety or strain planted does not exceed the acceptable hemp THC level. Sampling is required unless the hemp is grown exclusively for microgreens, immature plants for human or animal food or feed, seedlings or a Department approved variety or strain that meets the requirements for performance based sampling, including:

1. Varieties that have consistently demonstrated to result in compliant hemp plants;



2. When a producer is conducting research on hemp and the plants will not enter commerce or will be destroyed; and
3. When a producer has consistently produced compliant hemp plants over an extended period of time.

B. The grower licensee will be notified prior to inspection and sampling. During inspection and sampling, the licensee or an authorized representative must allow complete and unrestricted access to all hemp plants within the licensed growing area.

C. Unless exempted by Section IV(A), all hemp lots must be sampled prior to harvest. If a lot has not been sampled within 30 days prior to the intended harvest date, the licensee must notify the Department of the intent to harvest the hemp lot and allow for sampling.

D. All hemp plants within each lot may be sampled to ensure compliance with all the requirements of this chapter.

1. Each sample will be divided into two parts. One part will be used for testing, and the other retained for retesting.
2. Quantitative laboratory determination of the total THC concentration on a dry weight basis will be performed.
3. A sample test result greater than 0.3% total THC or as otherwise defined in federal law shall be prima facie evidence that at least one *Cannabis sativa* L. plant or part of a plant in the licensed growing area contains THC above the allowable limit and the licensee is therefore not in compliance. Such a result shall be grounds to suspend or revoke the hemp license, subject to an opportunity for the licensee to request a hearing. Any request for a hearing must be made to the Department, in writing, within 10 days of the receipt of the sample test result. Sample test results may be provided to the appropriate law enforcement agencies.
4. The grower licensee may request a retest of the retained portion of the sample. Any request for retesting must be made to the Department, in writing, within 10 days of the receipt of test results. The grower licensee must pay all analysis costs and shipping fees associated with the retest. If a retest is conducted, the results of the retest shall be final.
5. Upon completion of testing, any remaining samples will be destroyed 10 days after receipt of test results.
6. If a harvested lot exceeds the total THC limit, then the ISO 17025 accredited laboratory shall send the certificate of analysis containing the result within 24 hours of completing the lot test to the Department by electronic mail.

7. The Department will provide the certificate of analysis for the harvested lot to the licensed grower and request the licensee respond within 48 hours by providing a proposed action plan for disposal, destruction, or remediation of the non-compliant hemp crop.
8. The proposed action plan for disposal and destruction of harvested lot(s) will be reviewed and approved by the Department prior to implementation.
9. Failure to respond to the Department within 48 hours as required by chapter 274 section IV(D)(7) above may be enforced as a civil violation and shall be grounds for license suspension or revocation.
10. A harvested lot exceeding the acceptable potency level shall not be processed into hemp concentrate or used to formulate hemp products or hemp-infused products. Concentrate, products or infused products created from such a harvest lot may result in the required disposal or destruction of those concentrates or products.
11. The grower licensee is responsible for the full cost of disposal, destruction and/or remediation.

## **V. Violations**

A. Any violation of 7 M.R.S.A § 2231, or of these rules, may be enforced as a civil violation and shall be grounds for license suspension or revocation. Such violations include, but are not limited to:

1. Failure to comply with any term or condition of the grower license agreement;
2. Failure to provide any information required or requested by the Department for purposes of enforcing the hemp law or these rules;
3. Providing false, misleading or incorrect information pertaining to the licensee's cultivation of hemp to the Department by any means, including but not limited to information provided in any application, report, record or inspection required or maintained for purposes of the hemp law or these rules;
4. Failure to provide a legal description of the land or building/facility where hemp is produced;
5. Failure to submit a required report;
6. Failure to pay required fees;
7. Failure to destroy any crop following grower license revocation in accordance with Section V(B), below;

8. Growing *Cannabis sativa* L. that when tested is shown to have a total-THC concentration greater than 0.3% on a dry weight basis or as otherwise defined in federal law; or,
9. Refusal or failure by a licensee or authorized representative to fully cooperate and assist with the inspection process.

B. When instructed to correct a violation, the grower licensee must:

1. propose a written corrective action plan to the Department within 10 days of receipt of any notice of violation. The plan shall also include a proposed date for completion of the corrective action plan
2. obtain written Department approval for the corrective action plan;
3. comply with the approved corrective action plan; and
4. report to the Department in writing every six months for the next two calendar years explaining how the registrant is complying with 7 M.R.S.A. § 2231 and CMR 01-001 Chapter 274.

C. A grower licensee that negligently produces *Cannabis sativa* L. with a total-THC concentration greater than 0.3% on a dry weight basis or otherwise defined in federal law must arrange for destruction of the non-compliant hemp crop.

D. A person who negligently violates these rules three times in a five-year period shall be ineligible to produce hemp for a period of five years beginning on the date of the third violation.

E. Licenses that are revoked for any reason will result in crop destruction.

1. The licensee must destroy the crop in a manner approved by the Department within 10 days of notification of license revocation.
2. The licensee is responsible for paying all costs associated with crop destruction.

## **VI. Other Violations**

If the Commissioner determines that a licensee intentionally, willfully, and/or knowingly violated 7 M.R.S.A. §§ 2231, 2157, 2158-A, or these rules, the Department may take more significant enforcement action than if the licensee made a good faith effort to comply with the law and these rules.

## **VII Severability**

The provisions of this rule are severable. If any provision of this rule is invalid, or if any application of this rule to any person or circumstance is invalid, the invalidity shall not affect any other provisions or applications which can be given effect without the invalid provision or application.

STATUTORY AUTHORITY: 7 M.R.S. Chapter 406-A §2231

EFFECTIVE DATE:

AMENDED: