DEPARTMENT OF AGRICULTURE

Plant Industry Division

RULES PERTAINING TO THE ADMINISTRATION AND ENFORCEMENT OF THE INDUSTRIAL HEMP REGULATORY PROGRAM ACT

8 CCR 1203-23

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

Pursuant to the provisions and requirements of the Industrial Hemp Regulatory Program Act, Title 35, Article 61, C.R.S., the following Rules are hereby promulgated to regulate the cultivation of Industrial Hemp:

Part 1 DEFINITIONS

1.1 "Act" means the Industrial Hemp Regulatory Program Act, Title 35, Article 61, C.R.S.

1.2 "Approved Laboratories" means a laboratory certified by the Colorado Department of Public Health and Environment that meets all standards of performance, personnel qualifications, operating procedures, analytical processes, proficiency testing, quality assurance, ISO accreditation and any other standard required by the Commissioner to meet State and Federal requirements for testing hemp.

1.3 "Commercial" means the growth of Hemp, for any purpose including engaging in commerce, market development and market research, by any person or legal entity other than an institution of higher education under the pilot program administered by the Department for purposes of agricultural or academic research in the development of growing Hemp.

1.4 "Commissioner" means the Commissioner of Agriculture.

1.5 "Culpable mental state greater than negligence" means to act intentionally, knowingly, willfully, or recklessly.

1.6 "Department" means the Colorado Department of Agriculture.

1.7 "Harvest" means the termination of the cultivation process, or the movement of Hemp from a Registered Land Area to another location or movement within a Registered Land Area between indoor and outdoor planting areas.

1.8 "Hemp" means a plant of the genus Cannabis Sativa L. and any part of the plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, containing a total delta-9 tetrahydrocannabinol (THC) concentration of no more than three-tenths of one percent on a dry-weight basis.

1.9 "Law Enforcement" means the activities of the federal, state and local law enforcement agencies responsible for maintaining public order and enforcing the law.

1.10 "Lot" means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of Cannabis throughout the area.

1.11 "Negligence" means the failure to exercise the level of care that a reasonably prudent person would exercise in complying with the regulations set forth in the Industrial Hemp Regulatory Program Act, section 35-61-101, et seq., or the rules adopted pursuant thereto.

1.12 "Planting" means the starting of the growing process including by planting seed, sticking cuttings, tissue culture, the transfer of plants moved into a Registered Land Area except for replanting into a larger container within the same Registered Land Area, and the emergence of volunteer plants that the Registrant intends to cultivate and not destroy.

1.13 "Registrant" means any individual or legal entity who holds a valid Registration to grow Hemp under these Rules and the Industrial Hemp Regulatory Program Act.

1.14 "Registration" means authorization by the Commissioner for any individual or legal entity to grow Hemp on a Registered Land Area.

1.15 "Registered Land Area" means a contiguous land area registered with the Department on which a Registrant plans to cultivate Hemp. A Registered Land Area may include land and buildings that are not used for cultivation.

1.16 "Research and Development" means cultivation of Hemp by an institution of higher education or other entity approved by the Department for purposes of agricultural or academic research in the development of growing Hemp.

1.17 "Variety" means a group of plants or an individual plant that exhibits distinctive observable physical characteristic(s) or has a distinct genetic composition.

Part 2 REGISTRATION

2.1 Each applicant for a Commercial Hemp Registration must submit a signed, complete, accurate and legible application form provided by the Commissioner at least 30 days prior to planting which includes the following information:

2.1.1 The name and address of the applicant and a list of all key participants, including the full name, title, and email addresses for each key participant.

2.1.2 Type of entity, such as corporation, LLC, partnership, or sole proprietor including the entity's employee identification number, the principal business location address, telephone number, and e-mail address (if available).

2.1.3 The Secretary of State ID Number under which a corporate entity is doing business.

2.1.4 The legal description (Section, Township, Range) in which the growing area is located.

2.1.5 The global positioning system location coordinates taken at the approximate center of the Registered Land Area.

2.1.6 A map of the land area on which the applicant plans to cultivate Hemp, showing the boundaries and dimensions of the land area(s) whether in acres or square feet or both as appropriate.

2.1.7 By submitting an application the Registrant acknowledges and agrees to the following terms and conditions:

2.1.7.1 Any information provided to the Department may be publicly disclosed and be provided to law enforcement agencies without further notice to the Registrant.

2.1.7.2 The Registrant shall allow and fully cooperate with any inspection and sampling that the Department deems necessary.

2.1.7.3 The Registrant shall pay for any inspection and laboratory analysis costs that the Department deems necessary within 30 days of the date of the invoice.

2.1.7.4 The Registrant shall submit all required reports by the applicable due-dates specified by the Commissioner.

2.1.8 A Registrant must have the legal right to cultivate Hemp on the Registered Land Area and the legal authority to grant the Department access for inspection and sampling.

2.2 Each applicant for a Research and Development Industrial Hemp Registration shall submit a signed, complete, accurate and legible application form provided by the Commissioner at least 30 days prior to planting which includes the following information:

2.2.1 The name and address of the applicant.

2.2.2 Type of organization.

2.2.3 Organization name(s) if different from (2.2.1) above.

2.2.4 The legal description (Section, Township, Range) in which the growing area is located.

2.2.5 The global positioning system location coordinates taken at the approximate center of the Registered Land Area.

2.2.6 A map of the land area on which the applicant plans to cultivate Industrial Hemp, showing the boundaries and dimensions of the land area whether in acres or square feet or both as appropriate.

2.2.7 By submitting an application the Registrant acknowledges and agrees to the following terms and conditions:

2.2.7.1 Any information provided to the Department may be publicly disclosed and be provided to law enforcement agencies without further notice to the Registrant.

2.2.7.2 The Registrant shall allow and fully cooperate with any inspection and sampling that the Department deems necessary.

2.2.7.3 The Registrant shall pay for any inspection and laboratory analysis costs that the Department deems necessary within 30 days of the date of the invoice.

2.2.7.4 The Registrant shall submit all required reports by the applicable due-dates specified by the Commissioner.

2.3 Registrations are non-transferable.

2.4 No Hemp plant may be included in more than one Registration simultaneously.

2.5 No Registered Land Area may contain Cannabis plants or parts thereof that the Registrant knows or has reason to know are of a variety that will produce a plant that when tested will produce more than 0.3% total THC concentration on a dry weight basis. No Registrant may use any such variety for any purpose associated with the cultivation of Hemp.

2.6 Each noncontiguous land area on which Hemp is grown must have a unique Registration. Any addition to a Registered Land Area must also have a separate Registration.

2.7 In addition to the application form, each applicant for a Registration must submit the Registration fee set by the Commissioner. If the Registration fee does not accompany the application, the application for Registration will be deemed incomplete.

2.8 The annual Registration fee for Commercial production of Hemp is $500 plus $5.00/acre outdoors or $3.00/1000 sq. ft. indoors.

2.9 The annual Registration fee for production of Hemp for Research and Development is $500 plus $5.00/acre outdoors or $3.00/1000 sq. ft. indoors. Application fees for Research and Development registrations may be waived for institutions of higher education.

2.10 All Registrations shall be valid for one year from date of issuance.

2.11 All Hemp plant material must be planted, grown and harvested under a valid Registration. Any plant material that is not harvested in the Registration period in which it was planted and any volunteer plants that are not destroyed must be declared for inclusion in a subsequent Registration.

2.12 Any Registrant that wishes to alter the growing area(s) on which the Registrant will conduct Hemp cultivation for either Commercial or Research and Development purposes shall, before altering the area, submit to the Department an updated legal description, global positioning system location, and map specifying the proposed alterations. Amendments to an existing Registration are limited to changes within the original land area registered, including variety changes, location(s) of varieties, and actual acreage or square feet of each variety planted.

2.13 Incomplete applications will not be processed, and application fees will not be refunded if a Registration is not granted.

2.14 Any changes to contact information must be provided within 10 days of the change.

2.15 No Land area may be included in more than one Registration at the same time.

Part 3 REPORTS AND RECORDS REQUIREMENTS

3.1 Prior to planting any Cannabis Commercial Hemp Registrant shall file, on a form provided by the Commissioner, a Pre-Planting Report that includes:

3.1.1 A statement of verification that the Registrant has reasonable grounds to believe that the crop the Registrant will plant is of a type and variety of Cannabis that will produce a total THC concentration of no more than 0.3% on a dry weight basis.

3.1.2 A description of the Cannabis varieties to be planted on the Registered Land Area . All plant material to be used for cultivation of Cannabis within a Registered Land Area must be included.

3.1.3 A statement of intended end use for all parts of any Cannabis plants grown within a Registered Land Area.

3.2 Within 10 days after planting any Cannabis and within 10 days after emergence of any volunteer Cannabis plants in a Registered Land Area that the Registrant chooses to cultivate and not destroy, each Commercial Registrant shall submit, on a form provided by the Commissioner, a Planting Report that includes:

3.2.1 A list or description of all varieties and intended use of Cannabis planted, or of volunteer Cannabis plants that have emerged and are not destroyed, within a Registered Land Area.

3.2.2 The global positioning system coordinates and a map showing the location and actual acreage or square feet of each variety of Cannabis planted, or of volunteer Cannabis plants that have emerged and are not destroyed, within a Registered Land Area.

3.2.3 A Planting Report must be submitted any time Cannabis is planted in, or moved into a Registered Land Area, except for replanting into a larger container within the same Registered Land Area.

3.3 At least 30 days prior to harvest, each Commercial Hemp Registrant shall file a Harvest Report, on a form provided by the Commissioner that includes:

3.3.1 Documentation that the Commercial Registrant has entered into a purchase agreement with a Hemp processor. If the Registrant has not entered into such an agreement, the Registrant shall include a statement of intended disposition of its Hemp crop.

3.3.2 The harvest date(s) and location of each variety of Hemp cultivated within a Registered Land Area.

3.3.3 A Registrant must notify the Commissioner immediately of any changes in the reported harvest date(s) in excess of 5 days by submitting an Amended Harvest Report to the Commissioner. If any such changes are made the Commissioner may require additional testing prior to harvest and may require that the Registrant retain possession and control of the hemp in its harvested form until such test results are received by the Department.

3.3.4 A Registrant is not required to document the removal of Cannabis plants on a Harvest Report provided that the Cannabis plants are destroyed on the Registered Land Area prior to filing a Harvest Report for the remaining Cannabis plants.

3.4 Prior to planting, each Research and Development Hemp Registrant shall file, on a form provided by the Commissioner, a Pre-Planting Report that includes:

3.4.1 A statement of verification that the Registrant has reasonable grounds to believe that the crop the Registrant will plant is of a type and variety of Cannabis that will produce a total THC concentration of no more than 0.3% on a dry weight basis.

3.4.2 A description of the Cannabis varieties to be planted on the Registered Land Area . All plant material to be used for cultivation of Cannabis within a Registered Land Area must be included.

3.4.3 A statement of intended end use for all parts of any Cannabis plants grown within a Registered Land Area.

3.5 Within 10 days after planting any Cannabis, and within 10 days after emergence of any volunteer Cannabis plants in a Registered Land Area that the Registrant chooses to cultivate and not destroy, each Research and Development Registrant shall submit, on a form provided by the Commissioner, a Planting Report that includes:

3.5.1 A list or description of all varieties of Cannabis planted, or of volunteer Cannabis plants that have emerged and are not destroyed within a Registered Land Area.

3.5.2 The global positioning system coordinates and a map showing the location and actual acreage or square feet of each variety of any Cannabis planted, or of volunteer Cannabis plants that have emerged and are not destroyed, within a Registered Land Area.

3.5.3 A Planting Report must be submitted any time Cannabis is planted in, moved into or moved within a Registered Land Area, except for replanting into a container of the same size within the same indoor location.

3.6 At least 30 days prior to harvest, each Research and Development Hemp Registrant shall submit a Harvest Report, on a form provided by the Commissioner that includes:

3.6.1 A statement of the intended use of all Hemp cultivated within a Registered Land Area.

3.6.2 The harvest date(s) and location of each variety cultivated within a Registered Land Area.

3.6.3 A Registrant must notify the Commissioner immediately of any changes in the reported harvest date(s) in excess of 5 days by submitting an Amended Harvest Report to the Commissioner. If any such changes are made the Commissioner may require additional testing prior to harvest and may require that the Registrant retain possession and control of the hemp in its harvested form until such test results are received by the Department.

3.6.4 A Registrant is not required to document the removal of Cannabis plants on a Harvest Report provided that the Cannabis plants are destroyed on the Registered Land Area prior to filing a Harvest Report for the remaining Cannabis plants.

3.7 Each Commercial and Research and Development Registrant shall report to the Commissioner any changes to information provided in the Registration or any previously submitted reports, including any changes to the purchase agreement or statement of intended disposition, within 10 days of such change.

3.8 Registrants shall maintain records of all Cannabis plants acquired, grown, produced, handled or disposed of, including THC test results, of all Cannabis lots grown within all Registered Land Area(s).

3.9 Registrants shall retain such records and reports for three years.

3.10 All records pertaining to Part 3.8 shall be made available for inspection by CDA and USDA inspectors, auditors, or their representative during reasonable business hours.

Part 4 INSPECTION AND SAMPLING PROGRAM

4.1 All Registrations are subject to routine inspection and sampling to verify that the total THC concentration of the Cannabis planted within a Registered Land Area does not exceed 0.3% on dry weight basis. For any registration issued pursuant to these Rules, the Commissioner must select 100% of the Registrants for sampling and must take samples within 30 days prior to the anticipated harvest. All lots grown on a Registered Land Area shall be sampled by the Department or Approved Sampler. The Commissioner shall send notification to each Registrant to inform the Registrant of the scope and process by which the inspection will be conducted and require the Registrant to contact the Department within 10 days to set a date and time for the inspection to occur. Failure to contact the Department as required may result in the initiation of disciplinary proceedings pursuant to Part 6 of these Rules against the Registration.

4.2 The Commissioner shall also conduct additional inspections and sampling to verify compliance with the reporting requirements of these Rules. A subset of applicants will be randomly selected each year for records audit, inspection of premises, and sampling to ensure compliance of these rules.

4.3 In addition to any routine inspection and sampling under Rule 4.1, the Commissioner may inspect and take samples from any Registered Land Area during normal business hours without advance notice if the Commissioner has reason to believe a violation of the Act or these Rules may be occurring or has occurred.

4.4 A Registered Land Area may be subject to inspection and sampling prior to voluntary termination of the Registration before its expiration date.

4.5 During the inspection, the Registrant or authorized representative shall be present at the growing operation. The Registrant or authorized representative shall provide the Department's Inspector with complete and unrestricted access to all Cannabis plants, parts and seeds within a Registered Land Area whether growing or harvested, and all land, buildings and other structures used for the cultivation and storage of Hemp, and all documents and records pertaining to the Registrant's Hemp growing business.

4.6 All Cannabis lots not subject to performance based sampling methods within a Registered Land Area must be sampled to ensure compliance with the Hemp Program.

4.6.1 Individual samples of each variety or lot of Cannabis must be sampled from the Registered Land Area.

4.6.2 The sampled material will be prepared for testing using protocols approved by the Commissioner.

4.6.3 Quantitative laboratory determination of the total THC concentration on a dry weight basis will be performed according to protocols approved by the Commissioner.

4.6.4 A sample test result with a total THC concentration on a dry weight basis greater than 0.3% THC shall constitute evidence that at least one Cannabis plant or part of a plant in the Registered Land Area contains a total THC concentration on a dry weight basis of more than 0.3% and that the Registrant of that Registered Land Area is therefore not in compliance with the Act. Upon receipt of such a test result, the Commissioner may summarily suspend or revoke the Registration of an Hemp Registrant in accordance with the Act, these Rules and 24-4-104, C.R.S. Sample test results for Hemp Registrations with a total THC concentration greater than 0.3% on a dry weight basis may be provided to the appropriate law enforcement agencies.

4.6.5 A producer shall not harvest the Cannabis prior to sample collection.

4.6.6 Harvested plant material may not leave the Registered Land Area prior to receiving sample results.

4.6.7 Lots tested above the acceptable Hemp THC level may not be further handled, processed or enter the stream of commerce and the producer shall ensure the lot is disposed of in accordance with Department guidelines.

4.6.8 Individual samples of Hemp lots shall not be commingled with other lots during sampling or laboratory analysis.

4.7 Fees and Costs

4.7.1 For all sampling conducted by the Department pursuant to these Rules, the Department will charge the Registrant $125 per inspection plus all laboratory costs associated with the inspection.

4.7.2 Registrants selected for inspection and sampling shall reimburse the Department for both the fees and costs incurred by the Department within 30 days of the date of invoice.

4.7.3 Registrant is responsible for paying all fees to approved samplers and third party labs.

4.8 Authorized Samplers

4.8.1 Any individual acting as an approved sampler must possess a valid sampler registration and certification issued by the Commissioner.

4.8.1.1 Each approved sampler shall complete and file with the Commissioner an application on a form furnished by the Commissioner which contains at a minimum the following: name, address, telephone number and any other information required on the form.

4.8.1.2 Each applicant for an authorized sampler certification shall take a yearly CDA-approved sampler training course and pass an examination administered by the Department.

4.8.1.3 The Commissioner, or Commissioner's designee shall administer a general training class on the authorized sampling and handling techniques according to protocols approved by the Commissioner.

4.8.2 The Commissioner may cancel an authorized sampler's registration and certification or refuse to register or certify any person who has engaged in any of the following activities:

4.8.2.1 Consistent disregard for established and approved methods of sampling determined by CDA in the USDA approved Colorado State Hemp Plan.

4.8.2.2 Failing or refusing to disclose a conflict of interest.

4.8.2.3 Tampering with samples to influence testing results.

4.8.2.4 Purposeful commingling of sampled lots.

Part 5 WAIVER

5.1 Notwithstanding the fact that a sample of a Research and Development Registrant's Industrial Hemp tests higher than 0.3% but less than 1.0% total THC concentration the Registrant shall not be subject to any penalty under the Act or these Rules if:

5.1.1 The sampled Industrial Hemp was grown solely for Research and Development purposes by an individual or entity holding a Research and Development Registration, and the crop is destroyed or utilized on site in a manner approved of and verified by the Commissioner.

5.1.2 Test results from a Research and Development Registrant may, at the Commissioner's discretion, be accepted in lieu of Department sampling.

5.2 Notwithstanding the fact that a sample of a Commercial Registrant's Industrial Hemp tests higher than 0.3% but less than 1.0% total THC concentration the Registrant shall not be subject to revocation or suspension of their Registration if the crop is destroyed or utilized on site in a manner approved of and verified by the Commissioner.

5.3 Registrants shall have 10 days from the date of notification of test results higher than 0.3% THC concentration to request a waiver as provided for in Rules 5.1 or 5.2.

Part 6 VIOLATIONS/DISCIPLINARY SANCTIONS/CIVIL PENALTIES

6.1 In addition to any other violations of Title 35, Article 61, C.R.S., or these Rules, the following acts and omissions by any applicant or Registrant or authorized representative thereof shall constitute violations for which civil penalties up to $2,500 per violation and disciplinary sanctions, including denial of an application or summary suspension or revocation of a Registration, may be imposed by the Commissioner in accordance with §§ 35-61-107 and 24-4-104, C.R.S.:

6.1.1 Refusal or failure by an applicant, Registrant or authorized representative to fully cooperate and assist the Department with all aspects of the administration and enforcement of the Act and these Rules, including the application, registration, reporting, inspection and sampling, and waiver processes.

6.1.2 Failure to provide any information required or requested by the Commissioner for purposes of the Act or these Rules.

6.1.3 Providing false, misleading, or incorrect information pertaining to the Registrant's cultivation of Hemp to the Commissioner by any means, including but not limited to information provided in any application form, report, record or inspection required or maintained for purposes of the Act or these Rules.

6.1.4 Failure to submit any required report in accordance with Part 3.

6.1.5 Growing Cannabis that when tested is shown to have a total THC concentration greater than 0.3% on a dry weight basis.

6.1.6 Failure to pay fees assessed by the Commissioner for inspection or laboratory analysis costs.

6.1.7 Negligent violations include, but are not limited to:

6.1.7.1 Failure to provide a legal description of the land on which the producer produces Hemp.

6.1.7.2 Failure to obtain a Registration or other required authorization from the Commissioner.

6.1.7.3 Production of Cannabis with a total THC concentration exceeding the allowable limit, except that a producer who has made reasonable efforts to grow Hemp and whose Cannabis does not have a total THC of more than 1.0 percent on a dry weight basis will not have committed a negligent violation.

6.1.8 Corrective actions for negligent violations include but are not limited to:

6.1.8.1 A date, set by the Commissioner, by which the producer shall correct the negligent violation.

6.1.8.2 Periodic reporting to the Commissioner, on a form provided by the Commissioner, on the Registrant's compliance with the Act and Rules for a period not less than two years from the date of the negligent violation.

6.1.8.3 The Commissioner will conduct inspections to determine whether the Registrant has implemented the corrective action plan as submitted.

6.1.9 Effective January 1, 2022, a producer that negligently violates the provision of these rules three times in a five year period shall be ineligible to produce hemp for five years beginning on the date of the third violation.

Part 7 RESERVED

Part 8 APPROVED LABORATORIES

8.1 The Department will maintain a list of approved Hemp testing laboratories that are certified by the Colorado Department of Public Health and Environment.

8.2 Authorized samplers must submit Hemp samples for official analysis only to those approved Hemp testing laboratories identified by the Department, as set forth in Rule 8.1.

Part 9 STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE

9.1 Adopted November 12, 2013 – Effective December 30, 2013

Statutory Authority

These rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Industrial Hemp Regulatory Program Act (the "Act"), §§ 35-61-104(5) and 35-61-105(2), C.R.S.

Purpose

The purposes of these proposed rules are to:

1. Adopt a Part 1 setting forth definitions of specific terms used in these Rules.

2. Adopt Rules in Part 2 establishing a process for registering growers of industrial hemp and setting forth the information and fees required.

3. Adopt Rules in Part 3 establishing the information reporting requirements with which registrants must comply.

4. Adopt Rules in Part 4 establishing an inspection program to ensure compliance with the provisions of the Act and these Rules.

5. Adopt Rules in Part 5 creating conditional penalty waiver provisions for registrants whose industrial hemp crop THC content tests between 0.3% and 1.0% by dry weight.

6. Adopt Rules in Part 6 specifying violations of these Rules for which penalties may be imposed.

Factual and Policy Basis

The factual and policy issues encountered when developing these rules include:

1. Senate Bill 13-241 authorized the creation of a program within the Department of Agriculture to regulate industrial hemp cultivation.

2. The bill created a nine-member advisory committee to work with the Department to develop rules establishing an Industrial Hemp Regulatory Program. This committee was appointed by Senator Gail Schwartz and Representative Randy Fischer.

3. The committee held three public meetings to determine what rules were necessary to implement this program and draft the appropriate language. The committee will continue to work with the Department to refine and update these Rules over the coming years, as well as review the testing protocols that Department staff is currently developing.

9.2 Adopted June 11, 2014 – Effective June 11, 2014

Statutory Authority

These emergency rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Industrial Hemp Regulatory Program Act (the "Act"), Sections 35-61-104(5) and 35-61-105(2), C.R.S.

Purpose

The purposes of these proposed rules are to:

1. Adopt a registration time period of 30 days prior to planting with the elimination of the May 1 registration deadline.

2. Allow the Department to collect crop intended harvest date and disposition information 30 days prior to harvest, rather than 7 days prior to harvest.

Factual and Policy Basis

The factual and policy issues encountered when developing these rules include:

1. Senate Bill 14-184 eliminated the May 1 deadline for program registration. The Department needs 30 days to process hemp applications.

2. The Department needs 3 -4 weeks to plan sampling.

9.3 Adopted August 5, 2014 – Effective September 30, 2014

Statutory Authority

These rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Industrial Hemp Regulatory Program Act (the "Act"), Sections 35-61-104(5) and 35-61-105(2), C.R.S.

Purpose

The purposes of these proposed rules are to make permanent emergency rules effective June 11, 2014. Specifically, these amendments:

1. Adopt a registration time period of 30 days prior to planting with the elimination of the May 1 registration deadline.

2. Allow the Department to collect crop intended harvest date and disposition information 30 days prior to harvest, rather than 7 days prior to harvest.

Factual and Policy Basis

The factual and policy issues encountered when developing these rules include:

1. Senate Bill 14-184 eliminated the May 1 deadline for program registration. The Department needs 30 days to process hemp applications.

2. The Department needs 3 -4 weeks to plan sampling.

9.4 Adopted February 11, 2015 – Effective March 30, 2015

Statutory Authority

These Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Industrial Hemp Regulatory Program Act (the "Act"), Sections 35-61-104(5) and 35-61-105(2), C.R.S.

Purpose

The purposes of these proposed Rules are to:

1. Amend the definition of "Commercial" in Rule 1.2. to establish clear separation between the activities permitted under a Commercial registration and a Research and Development registration.

2. Amend the definition of "Law Enforcement" in Rule 1.7.

3. Adopt a new Rule 1.8 to define "Registrant."

4. Adopt a new Rule 1.9 to define "Registration."

5. Adopt a new Rule 1.10 to define "Registered Land Area" and delete the definition of "Growing Area."

6. Amend the definition of "Research and Development" in Rule 1.11 to follow the 2014 Farm Bill language.

7. Adopt a new Rule 1.12 to define "Variety."

8. Amend language referencing site and growing area(s) used throughout the Rules to reflect the above definition changes.

9. Amend language referencing sampling and analysis costs and add terms of payment used in Rules 2.1.7.3 and 2.2.7.3.

10. Separate language from Rule 2.2.5 and create Rule 2.2.6 for Rule language consistency between Commercial and Research & Development Rules format.

11. Create a new Rule 2.3 barring the transfer of ownership of a registration.

12. Create a new Rule 2.4 language barring registration of one plant under two registrations.

13. Create a new Rule 2.5 barring any cannabis plants other than Industrial Hemp on a registered land area.

14. Create a new Rule 2.6 to define what can be included in a single registration.

15. Amend registration fees in Rules 2.8 and 2.9 to cover the cost of administering the program.

16. Adopt a new Rule 2.11 to require harvest of all plants within a registration period. Allow for material that is planted under one registration to be included in subsequent registrations through declaration during registration.

17. Adopt a new Rule 2.13 limiting amendments to a registration.

18. Adopt a new Rule 2.13 regarding processing of applications.

19. Adopt a new Rule 2.14 requiring registrants to maintain current contact information with the Department.

20. Amend Rules 3.1.2 and 3.4.1 to require reporting of all plant material used in an Industrial Hemp registered land area.

21. Adopt new Rules 3.1.3 and 3.4.2 requiring registrants to report the intended use of all parts of the Industrial Hemp crop included in a registered land area.

22. Adopt new Rules 3.2 and 3.5 requiring reporting of the varieties and location of all Industrial Hemp planted in a registered land area.

23. Adopt a new Rule 3.5.3 requiring research and development registrants to verify that all the Industrial Hemp to be cultivated is reasonably believed to produce a crop with a THC of 0.3% or less on a dry weight basis.

24. Amend Rules 3.3.2 and 3.6.2 to require reporting of specific crop location information at least 30 days prior to harvest.

25. Adopt a new Rule 3.7 to require reporting of any changes in information previously submitted to the Department within 10 days.

26. Amend Rule 4.1 to allow sampling of all cannabis plants on a registered Industrial Hemp land area, allow sampling of up to 100% of the registrants, allow the Department to notify the registrant of inspection by methods other than certified mail, require registrants to contact the Department within 10 days of inspection notification and explain the consequence for failing to do so.

27. Amend Rule 4.2 to allow access to all cannabis material associated with a registration.

28. Amend Rules 4.3 and 4.3.1 to allow individual or composite sampling of all cannabis plants on a registered Industrial Hemp land area.

29. Amend Rule 4.3.2 to allow more valid scientific testing protocols.

30. Amend Rule 4.3.4 to include the updated language from existing Rule 4.3.4.1 and remove the term commercial so any registration found not in compliance could be suspended or revoked in accordance with C.R.S. 24-4-104.

31. Amend Rule 4.4.2 to set terms of payment to 30 days of invoice.

32. Amend Rule 5.1 to include the same 1.0% THC limit for a waiver from penalty as applied to commercial registrations.

33. Amend Rule 6.1 to clarify scope and add summary suspension language for clarity purposes.

34. Amend Rule 6.1.5 to include proper terminology for cannabis exceeding 0.3% THC.

Factual and Policy Basis

The factual and policy issues encountered when developing these Rules include:

1. The revised definitions for “Commercial” and “Research and Development” in Rules 1.2 and 1.11 are intended to establish a clear separation between the activities allowed under a Commercial registration and a Research and Development registration. All Industrial Hemp production activities not authorized by the 2014 Farm Bill Research and Development language, including all privately-conducted research and development, are covered by a commercial registration. In addition to private scientific research, this change in definitional language will allow research for competitive advantage or product development without limiting the sale or distribution of plant material used and produced under a commercial registration, similar to what commercial enterprises in other industries do for product development in a research division of a company. This Rule change meets the needs of registrants who have requested sale of material from their research and development registrations by aligning their research to be conducted under commercial registration without structurally changing their research practices.

2. Rule 1.7 is intended to clarify the broad scope of governmental agencies involved in law enforcement and eliminate unnecessary language about their activities.

3. Rules 1.8 and 1.9 are intended to define the difference between a person or entity who has been granted approval from and the authorization to grow Industrial Hemp on a specific site.

4. Rule 1.10 creates a definition for an area registered to grow Industrial Hemp that includes property the registrant may want to include that is not a growing area.

5. Rule 1.12 creates a definition for plants used in the Rules that clarifies registration, planting and harvest requirements. The definition is also necessary for delineation purposes during sampling.

6. The changes in Rules 2.1, 2.2, 3.1, and 3.4 are needed to make the language in those Rules consistent with other language in the Rules.

7. Amending the language in 2.1.7.3 and 2.2.7.3 is intended to standardize the terminology with that used in Part 4, clarify the costs for which a registrant is responsible, and set the terms of payment which are not currently specified . This clarification is necessary because some registrants have delayed payment of fees until another registration is granted or until they have negotiated individual payment terms, creating administrative confusion and increasing program costs.

8. Separating the requirements in Rule 2.2.6 and 2.2.5 improves consistency with 2.1.6 and 2.1.5 for ease of Rule readability.

9. The prohibition in Rule 2.3 on the transfer of registration is necessary to facilitate inspection and sampling and to prevent the transfer of registrations to persons or entities who would not otherwise qualify for a registration due to previous sanctions and penalties. This also closes a potential loophole through which a legally acquired Industrial Hemp registration could be transferred to another individual for purposes of evasion in growing or transporting of Marijuana.

10. Rule 2.4 is necessary to avoid confusion when a registrant holds multiple registrations. This Rule will enable the Department to accurately identify, inspect and sample all of the plants grown under a specific registration.

11. Under Article XVIII, Section 16 of the Colorado Constitution (Adopted by voters as "Amendment 64") "Industrial Hemp" is defined and regulated separately from "Marijuana". The Department therefore has no legal jurisdiction over cannabis that contains more than 0.3% THC on a dry weight basis because it is constitutionally defined as Marijuana and not Industrial Hemp. The Department thus does not have the authority to grant the possession or use of any cannabis material above 0.3% THC within its Industrial Hemp registration program; all such material is regulated as Marijuana under the authority of the Department of Revenue. Rule 2.5 is necessary to prevent the use or presence of plant material in a registered land area that would be outside the Department of Agriculture's jurisdiction. The proposed Rule language does not limit the right to possess or conduct Marijuana research but does prevent Marijuana material from knowingly being used under the Industrial Hemp program by excluding it from the area the registrant has agreed is dedicated to Industrial Hemp.

12. Rule 2.6 defines what may be included in a single registration. The change is necessary to track registration sites, what is planted on a registered land area and ensure accurate testing can be done. The current system has created administrative issues as registrants have added sites miles away from existing registrations during the growing season and cancelled growing areas registered under the same registration, creating situations where it has become difficult to track where plant material currently is being grown for inspection purposes. These changes in registrations have also increased the cost of program administration as the Department attempts to track sites currently registered to grow Industrial Hemp. The Rule does not limit the registrants ability to stagger planting within a registered land area. The Rule is also intended to facilitate the establishment of an equitable fee structure to self-fund the program as mandated in the Act.

13. The Department is proposing to increase the fees in Rule 2.8 and 2.9 to comply with the self-funding mandate set forth in Section 35-61-106 (2), C.R.S. Current fees have generated less than 20% of the necessary revenue to support the program. Section 35-61-106 (2), C.R.S., limits the sources of revenue to registration fees and land area. Leaving registration fees at current levels would require per acre fees to exceed $55. The new registration fee structure was developed to equitably generate sufficient revenue to self-fund the program at current registration levels. The fees for Commercial and Research & Development registrations were set at the same level so as not to favor either type of registration or disadvantage research for competitive advantage conducted under a commercial registration.

14. Section 35-61-104(3), C.R.S. defines the effective period of a valid registration to one year. To regulate the program it is necessary for plant material to be registered before planting as required in Rules 2.1 and 2.2. To insure that all plant material is regulated under a valid registration and therefore protected under Section 35-61-102(2), C.R.S., Rule 2.11 was created to clarify the requirement to harvest within a registration and add language necessary for the perpetuation of genetics.

15. Rule 2.12 is necessary to prohibit the expansion of a registration outside of the original land area described in the application for registration. Without this limitation it is very difficult and time consuming for the Department to track plant material to a registration or ensure compliance with planting reports. Registrants have used the current amendment language to establish new growing sites and assume sites originally registered to another registrant. The current system allowing registrants to add new locations through amendments without cost has significantly increased the administrative costs of the program which must be passed on to all registrants.

16. Rule 2.13 insures that the cost to process an application incurred by the Department prior and regardless of whether a registration is issued are not passed along to other registrants should a registration not be granted. Under Section 35-61-106(2), C.R.S., the Commissioner is required to collect fees to cover all of the program's costs, including those associated with applications that are denied.

17. The Department has spent considerable resources trying to contact the registrants after registration due to changes in contact information. This has increased administrative costs for the program. Rule 2.14 requires registrant contact information remain current so the Department can contact registrants regarding sampling and inspection without added administrative costs. Some registrants have changed their contact information including mailing address, e-mail address and phone numbers to evade requests by the Department to conduct inspections.

18. Rules 3.1.2 and 3.4.1 require a registrant to disclose all plant material intended for use in a registered land area to be disclosed. This is necessary to enable the Department to confirm that all plant material used within a land area registered with the Industrial Hemp program is of a type and variety that will produce plants with a THC content not to exceed 0.3% on a dry weight basis.

19. Rules 3.1.3 and 3.4.2 are necessary to facilitate the inspection and sampling of Industrial Hemp grown in the program. The Industrial Hemp inspection is done by a limited number of inspectors who also inspect multiple other programs for the Department. To accomplish inspections required for all the programs considerable planning and coordination occurs months prior to the need to facilitate optimum use of inspection staff and control costs.

20. The requirement of a planting report in Rules 3.2 and 3.5 is necessary for the Department to determine what fields have actually been planted so we can determine what fields may need inspection, allocate resources for inspection, collect variety information to support a seed certification program and collect agronomic data on the crop to determine economic value to the state.

21. Rule 3.5.3 is intended to ensure that research and development registrants plant material that they reasonably believe will not exceed 0.3% THC on a dry weight basis and that all material used in the research project is included in the planting report.

22. Rules 3.3.2 and 3.6.2 are necessary for the Department to determine what will be harvested compared to what was actually planted, identify gaps, and schedule inspections appropriately. This will also allow the Department to collect harvest data to determine the size of the final crop and document crop size developments for economic purposes.

23. Rule 3.7 is necessary to ensure that the Department has the most current information on all registrants so that it can effectively plan inspection resources and monitor industry developments.

24. The change in Rule 4.1 allowing sampling of up to 100% of registrants is necessary to accommodate the July 1, 2014 statutory change allowing year round registration while still conducting an effective inspection program including testing in the event an unanticipated violation is reported or suspected. The amended language also eliminates the exemption from testing after two years which could prevent the Department from retesting registrants with prior violations in a timely or effective manner. The current language has the potential for abuse by registrants who have been tested for two years and thus could grow Marijuana without concern of inspection the third year.

    The amended language in Rule 4.1 with respect to notice of inspection allows the Department to communicate with the registrants in a method agreed to with the registrant or deemed effective from previous communications with the registrant. The use of certified mail has allowed some registrants to see the Department is sending them communication and avoid signing for it in an effort to evade inspection notification. In other cases the address provided has been returned as undeliverable via certified mail and the registrant has asked for an e-mail or phone call so they can comply.

    The time period for response to notification was changed from 30 days after notification to 10 days to allow the Department to determine harvest timing and arrange for inspections. The 30 days hampered the Departments ability to coordinate inspections of multiple sites increasing the inspection travel costs for the registrant as harvest in many cases was more immediate once the registrant replied.

25. Registrants have agreed under Rule 2.5 not to include plant material known or that should reasonably be known will exceed 0.3% THC on a registered land as terms of registration. This amended section of 4.2 is necessary to support, verify and enforce Rules 2.5, 3.1.2, 3.4.1, 4.1, 4.3, and 4.3.1.

    The changes to Rule 4.2 are necessary to allow the Department to inspect all plants in the registered land area. Registrants have used the current Rule language to assert that some plants used by them for cultivation of Industrial Hemp cannot be tested by the Department because they are Marijuana that is being grown for personal use or under a Medical Marijuana card application. The amendments to Rule 4.2 are necessary to verify compliance with Rules 2.5, 3.1.2, 3.4.1, 4.2, 4.3, and 4.3.1 which prohibit the presence or use of Marijuana within a land area registered for the cultivation of Industrial Hemp.

26. The amended language in Rules 4.3 and 4.3.1 allows all cannabis material grown in a land area under an Industrial Hemp registration to be sampled. It allows the Department or registrant to determine if a specific plant or group of plants is to be sampled. This amended language allows the Department to work with Industrial Hemp breeding projects where sampling every individual plant would be cost prohibitive to a registrant and could effectively destroy a breeding program if all plants were selected for inspection.

27. The amended language in Rule 4.3.2 clarifies a procedural process that inaccurately represented scientific methodology. Samples are divided after preparation for testing so that the two samples are of the same composite make up.

28. The amended language in Rule 4.3.4 clarifies the legal effect of tests results that exceed 0.3% THC for both commercial and research and development registrants.

29. The amended language in Rule 4.4.2 is for administrative purpose. Registrants have used the lack of clear terms of payment in Rule as a negotiation point to make payment plans for services or delay payment until a new registration is needed.

30. Amending Rule 5.1 to include an upper THC limit in plant material used in research and development is necessary to ensure programs are not knowingly using Marijuana with a high THC content under an Industrial Hemp registration.

31. The amendment to Rule 6.1 clarifies that a registration may be summarily suspended in appropriate circumstances under 35-61-107 and 24-4-104, C.R.S.

32. The amendment to Rule 6.1.5 conforms with the changes to other Rules prohibiting the presence or use of plant material that exceeds 0.3% THC on a registered land area.

33. These amendments incorporate changes as a result of the Department's Regulatory Efficiency Review Process.

9.5 Adopted February 10, 2016-Effective March 30, 2016

Statutory Authority

These Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Industrial Hemp Regulatory Program Act (the "Act"), Sections 35-61-104(5) and 35-61-105(2), C.R.S.

Purpose

1. Adopt a new Rule 1.2 defining "CDA Approved Certified Seed".

2. Adopt a new Rule 1.6 defining "Harvest".

3. Adopt a new Rule 2.1.8 requiring Registrants to have all legal rights necessary to cultivate Industrial Hemp on a Registered Land Area.

4. Amend language in Rule 2.11 to clarify the process for material that is perpetuated from one Registration to another Registration.

5. Adopt a new Rule 2.15 clarifying that land area cannot be covered by more than one Registration.

6. Amend Rules 3.1, 3.2, 3.3, 3.4, 3.5 and 3.6 to require reports be submitted on a form provided by the Commissioner.

7. Amend Rules 3.2 and 3.5 to address reporting of any volunteer Cannabis plants that the Registrant chooses to cultivate rather than destroy.

8. Adopt Rules 3.2.3 and 3.5.3 specifying when submission of a Planting Report is required.

9. Adopt Rules 3.3.3 and 3.6.3 requiring notification to the Commissioner of any changes to the reported harvest date of more than 5 days.

10. Adopt a new Rule 4.2 to allow the Commissioner to do additional inspection or sampling to confirm compliance with the Act and Rules.

11. Adopt a new Rule 4.3 to allow for inspection or sampling of a Registered Land Area that is voluntarily exiting the program.

12. Amend Rule 4.5.4 to clarify the legal limits where law enforcement has jurisdiction.

13. Adopt a new Rule 4.6 to allow reduced testing for Registrants who plant CDA Approved Certified Seed.

14. Adopt a new Rule 5.3 to establish a time period for requesting a waiver.

15. Adopt a new Part 7 to allow the Department to approve varieties of Industrial Hemp as CDA Approved Certified Seed and establish fees to cover the costs of the program.

16. Make non-substantive edits with respect to wording and capitalization changes throughout to improve consistency and readability.

Factual and Policy Basis

The factual and policy issues encountered when developing these Rules include:

1. The definition in Rule 1.2 of "CDA Approved Certified Seed" is intended to establish the term used in the development of a seed program to assist Industrial Hemp growers to purchase seed that is known to produce mature plants that will not exceed 0.3% THC.

2. The definition in Rule 1.6 of "Harvest" is intended to clarify when reporting to the Department is required and assist Industrial Hemp growers in meeting the reporting requirements.

3. Rule 2.1.8 is intended to ensure that the Department has the ability to inspect and sample land areas Registered in the Industrial Hemp Program and ensure that Registrants understand their obligations when entering into land lease agreements.

4. Rule 2.11 will allow Registrants the ability to carry plant material over from one Registration that is expiring into another Registration. The Rule will allow plant material to finish its life cycle under a new Registration rather than requiring premature harvest under the Registration period in which it was planted. This will allow perpetuation of parent stock for breeding purposes.

5. Rule 2.15 will ensure the Department has the ability to determine which Registration covers the plant material on a Registered Land Area and can apply any sanctions that may occur only to the Registration the plants are cultivated under.

6. The Amendments to Rules 3.1 through 3.6 requiring use of forms provided by the Department will ensure that the information reported by Registrants is complete and consistent.

7. The amendments to Rules 3.2 and 3.5 allow for the Registration and cultivation of volunteer plants so long as they are reported within 10 days of emergence. This provision allows growers to register volunteer plants on land areas on which Industrial Hemp was previously grown.

8. Rules 3.2.3 and 3.5.3 are intended to clarify for Registrants how to document the movement of plant material within or into a Registered Land Area. This facilitates the movement of young plant material to final growing locations.

9. Rules 3.3.3 and 3.6.3 provide growers a 10 day window for harvest. This recognizes the harvest date may vary due to factors beyond a Registrant's control such as weather events.

10. Rule 4.2 clarifies that the Department has the authority to conduct inspections and sampling in addition to the routine inspection and sampling described in Rule 4.1 when the Department determines that it is necessary to ensure compliance with the Act and Rules.

11. Rule 4.3 ensures that a Registrant cannot avoid inspection and sampling through early termination of their Registration.

12. Rule 4.5.4 was changed to clarify that 0.3% delta-9 THC concentration is the legal limit of the Program and does not limit the Departments ability to reach out to law enforcement when appropriate circumstances arise.

13. Rule 4.6 will allow the Department to set testing protocols for fields planted with CDA Approved Certified Seed that differ from the protocols for fields planted with non-certified seed. Registrants who plant CDA Approved Certified Seed will not be subjected to inspection and testing fees unless inspections establish that the variety planted was not the same variety as indicated on the Planting Report.

14. Rule 5.3 sets a reasonable time for a Registrant to indicate his desire to exercise the waiver provisions set forth in Rule 5.1 and 5.2. The Rule is necessary to ensure the Department can communicate with law enforcement the timeliness of actions the Registrant is taking to destroy the crop should he chose to exercise the waiver.

15. Under Rule 7.1 a variety of seed to be certified must first undergo testing conducted by the Department to verify that it will consistently produce mature plants with a delta-9 THC concentration at or below 0.3% on a dry weight basis. These trials will be conducted in various regions in the state to ensure stability across the different growing environments in the state. Varieties approved by the Department may be certified by Colorado State University or the authorized seed certifying agency of another state when produced under certified field standards.

16. Rules 7.2 and 7.3 establishes the mechanism for equitably funding the CDA Approved Certified Seed program between the breeder applicants and Registrants. This is intended to encourage the development of CDA Approved Certified Seed while also recognizing the economic benefits to Registrants of planting CDA Approved Certified Seed.

9.6. Adopted February 8, 2017 -Effective March 30, 2017

Statutory Authority

These Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture (“CDA”) pursuant to his authority under the Industrial Hemp Regulatory Program Act (the “act”), Sections 35-61-104(5) and 35-61-105(2), C.R.S.

Purpose

The purpose of these proposed Rules are to:

1. Amend the definition of “CDA Approved Certified Seed” in Rule 1.2.

2. Amend the definition of “Harvest” in Rule 1.6 to add the common language used to define the term “Harvest”.

3. Amend Rules 2.1.6, 2.2.6, 3.1.2 and 3.4.2 to remove premature requirement for submitting a variety location map.

4. Amend Rules 3.2.2 and 3.5.2 to move the variety location requirements to a more appropriate time when the Registrants can comply.

5. Amend Rule 3.5.3 to exempt reporting of changes in growing container except for larger sizes.

6. Adopt Rules 3.3.4 and 3.6.4 to allow the removal of unwanted male Cannabis plants prior to harvest without submitting a Harvest Report.

7. Amend Rule 4.2 to include both present and past tense of potential violations as cause for inspection.

8. Amend Part 6 to expand the scope of the obligation to cooperate and assist the Department to all aspects of the administration and enforcement of the Act and these Rules.

9. Amend Rule 7.1 to clarify the requirements for CDA Approved Certified Seed.

10. Adopt Rules 7.1.1, 7.1.2, 7.1.3 and 7.1.4 to add clarity to the CDA Approved Certified Seed process.

11. Make typographical, grammatical, and non-substantive changes throughout for clarification.

Factual and Policy Basis

The factual and policy issues encountered when developing these Rules include:

1. Rule 1.2 was amended to clarify that the term “CDA Approved Certified Seed” is specific to seed lots that meet the program standards and not just the variety name.

2. The definition of “Harvest” in Rule 1.6 was amended to clarify that this term includes the normal and common practice of reaping a mature plant.

3. The map requirements under Rules 2.1.6, 2.2.6, 3.1.2 and 3.4.2 as part of their Pre-Planting requirement required premature reporting by Registrants. Realigning the time of reporting to the Planting Report in Rules 3.2.2 and 3.5.2 allows Registrants to accurately report their final planting locations at the appropriate time.

4. Amending Rule 3.5.3 to reduce the reporting burden for normal occurrences of the growing such as broken pots while still allows for the Department to adequately regulate the cultivation and growing cycle.

5. The removal of unwanted male plants is a common practice in breeding programs and all female plant production. New Rules 3.3.4 and 3.6.4 accommodate and facilitate this industry practice by eliminating the need to file unnecessary Harvest Reports for discarded male plants within some specific parameters.

6. Amend Part 6 to reflect the equal importance of cooperation and assistance by an applicant or registrant with all aspects of the administration of the program. This will help ensure the Commissioner has all information necessary to ensure compliance with the Program requirements.

7. The amendment to Rule 7.1 identifies CDA Approved Certified Seed as seed that will produce mature plants that will not exceed the .3% delta-9 tetrahydrocannabinol concentration standard. The Rule distinguishes CDA Approved Certified Seed from other certified seed not approved by the CDA for which the mature plants' delta-9 tetrahydrocannabinol concentration has not been verified in CDA trials conducted across the state.

8. Rule 7.1.1 establishes a system through a variety review board to ensure that the investments in breeding and the intellectual property rights of breeders are protected. Breeders entering a variety must be able to demonstrate ownership of the variety to a panel of experts by identifying unique characteristics that distinguish their entry from other varieties.

9. Rule 7.1.2 ensures that the information submitted to the variety review board accurately represents the variety when viewed in the field and ensures integrity in the process.

10. Rule 7.1.3 ensures the same production practices used in other agricultural crops are applied to CDA Approved Certified Seed lots to ensure purity and trueness to type.

11. The labeling requirement in Rule 7.1.4 provides consumer confidence and easily identifies seed being purchased as true to type and pure, and verifies that mature plants of this variety have not surpassed the .3% delta-9 tetrahydrocannabinol concentration limit in CDA trials conducted across the state.

9.7. Adopted February 22, 2018 – Effective April 15, 2018

Statutory Authority

These Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Industrial Hemp Regulatory Program Act (the "act"), Section 35-61-104(5), C.R.S.

Purpose

1. Amend and clarify the definitions of "commercial" and "research and development".

2. Amend the definition of "harvest" to add the common language used to define the term "harvest" to include the practice of taking cuttings.

3. The changes to Rule 4.7.2 are necessary to recapture language that was inadvertently deleted during the last rulemaking.

4. Amend Rule 7.3 to require reporting on a form provided by the Commissioner in order for the Department to capture additional information as deemed necessary by the certified seed program.

Factual and policy basis

1. To clarify the language in 1.3 and 1.12 and make it consistent with the implementation of the program.

2. The definition of "harvest" was amended to clarify that this term includes the normal and common practice of harvesting cuttings.

3. Add language that was intended to be included in Rule 4.7.2 and was inadvertently deleted during the last rulemaking.

4. The amendment to Rule 7.3 allows the Department to track varietal identity entering into the certified seed program.

9.8. Adopted February 13, 2019 – Effective March 30, 2019

Statutory Authority

These Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Industrial Hemp Regulatory Program Act (the "Act"), § 35-61-104(5) and 35-61-105(2) C.R.S.

Purpose

The purposes of these proposed Rules are to:

1. Adopt a new Rule 1.9 to define "Planting,"

2. Amend Rule 2.1.2 to clarify that an entity can be a business or an individual.

3. Amend Rules 2.1.6 and 2.2.6 to clarify that both outdoor acres and indoor square feet should be included on the required map.

4. Amend Rule 2.2.2 by removing the types of businesses.

5. Amend Rule 2.2.3 by removing the term "Business."

6. Amend Rule 2.2.4 to mirror correct language as written in Rule 2.1.4.

7. Amend registration fees in Rules 2.8 and 2.9 to cover the cost of administering the program. Amend Rule 2.9 to clarify that the application fee for an institution of higher education may be waived.

8. Adopt Rules 3.2.4 and 3.5.4 to document requirements for CDA Approved Certified Seed plantings on Planting Reports.

9. Amend Rules 3.3.3 and 3.6.3 to clarify harvest reporting requirements.

10. Amend Rules 3.3.4 and 3.6.4 to clarify when a Harvest Report does not need to be submitted.

11. Amend Rule 4.1 to change the requirement for disciplinary action.

12. Amend Rule 4.7 to include "costs" along with fees.

13. Amend Rule 4.7.1 to a fee that adjusts the inspection fee to a set amount.

14. Amend Rule 4.7.2 to clarify when fees and costs are due.

15. Amend Rule 7.1.1 to conditional approval with the Colorado Seed Growers Association, pending the Department's validations of THC level and trueness to type.

16. Adoption of Rule 7.4 allows CDA to identify CDA Approved Certified Seed production fields at the time of application.

Factual and Policy basis

The factual and policy issues encountered when developing these Rules include:

1. The definition of “Planting” in Rule 1.9 clarifies that “Planting” includes all phases of the various types of cultivation practices, voluntary plant emergence, and plant movement including within Registered Land Areas and to Registered Land Areas. This rule is necessary to clarify when a Planting Report must be submitted.

2 Amended rule 2.1.2 deletes the word “business” before the word “entity”. This rule is necessary to clarify that a sole proprietor is an entity but not necessarily a business entity.

3. Amendments in Rules 2.1.6 and 2.2.6 clarify that an application for a Registered Land Area that includes both outdoor acreage and indoor square feet must include a map that shows the boundaries and dimensions of both the outdoor acreage and indoor square feet. The term “Registered” is deleted clarifying that a land area is not registered until a Registration is issued. The term “grow” replaces “cultivate” in accordance with generally accepted agricultural practices. These revisions are necessary because they provide accuracy in rule language which is good practice and contributes to program integrity.

4. Amendments in Rule 2.2.2. clarify that a business is not the type of organization that is issued a Research and Development Registration. This rule is necessary to clarify that non-commercial organizations such as institutions of higher education are issued Research and Development Registrations.

5. Amended language in Rule 2.2.3 deletes the term “business” as business organizations are not issued Research and Development Registrations. This Rule is necessary to clarify that the name of an organization on a Research and Development Registration cannot be a business organization.

6. Amended language in Rule 2.2.4 is a housekeeping correction that makes the language consistent with Rule 2.1.4.

7. The Department is proposing to increase the fees provided in Rules 2.8 and 2.9 for indoor square feet from $.33/1000 square feet to $3.00/1000 square feet. Under § 35-61-106(2) C.R.S. the Commissioner is required to collect fees to cover all of the program’s costs including those associated with indoor grow areas that generate multiple reports. Amended Rule 2.9 allows the Department to waive the application fee for a Research and development registration for an institution of higher education in an effort to encourage research and development.

8. Adoption of Rules 3.2.4 and 3.5.4 are necessary for the CDA to track and recognize plantings of CDA Approved Certified Seed.

9. Amended language in Rules 3.3.3 and 3.6.3 clarifies that reporting a change in harvest date must be done by submitting an “Amended Harvest Report”. Rules 3.3.3 and 3.6.3 also clarify that if a change in harvest date is submitted and the crop is sampled this may require that the Registrant retain possession and control of the crop in its harvested form until the Department receives test results. This rule is necessary because it prevents material from entering the stream of commerce pending test results.

10. The removal of both unwanted male and female plants is a common practice in breeding programs and a common production practice. Amended Rules 3.3.4 and 3.6.4 are necessary in order to accommodate and facilitate this industry practice of eliminating infested and unwanted plants.

11. Amended Rule 4.1 changes the disciplinary action from mandatory to allowing the Department discretion to work with a Registrant.

12. Amend Rule 4.7 to include “Costs” along with Fees is a non-substantive edit that clarifies Rule 4.7.

13. Amended Rule 4.7.1 allows the Department to set a statewide fee to cover inspection costs more equitably.

14. Amended Rule 4.7.2 clarifies that inspection fees and laboratory costs are due to the Department within 30 days of invoice.

15. Rule 7.1.1 establishes a system through a variety review board (Colorado State University Seed Certification or Association of Seed Certifying Agencies) to ensure that the investments in breeding and the intellectual property rights of breeders are protected. Breeders entering a variety must be able to demonstrate ownership of the variety to a panel of experts by identifying unique characteristics that distinguish their entry from other varieties. This rule is necessary to clarify that the variety review board will only conditionally approve the variety(s) prior to CDA validation of THC level.

16. Adoption of Rule 7.4 requires a member of the Colorado Seed Growers Association who intends to grow CDA Approved Certified Seed to provide on a form approved by the Commissioner to identify and track where the seed will be grown.

9.9. Adopted June 9, 2021 – Effective July 30, 2021

Statutory Authority

These Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture (“CDA”) pursuant to their authority under the Industrial Hemp Regulatory Program Act (the “Act”), § 35-61-104(5) and 35-61-105(2) C.R.S.

Purpose

The purposes of these proposed Rules are to align Colorado’s hemp program with Federal law and Colorado SB 20-197, effective September 1, 2020. Generally, the proposed changes include updating the text to remove typographical and other errors, non-critical spelling and grammatical errors.

Specifically, the proposed changes to each of the parts are as follows:

1. Changes to Part 1, Definitions, to conform definitions within these rules to revisions made to the Industrial Hemp Regulatory Program Act and to USDA’s Domestic Hemp Production Program.

2. Changes to Part 2 to identify additional information that USDA’s Domestic Hemp Production Program requires a state agency with primary regulatory authority over the production of hemp to gather from registrants.

3. Changes to Part 3 to remove the references to the non-existent certified seed program. Removing 3.3.4, as it was an exception to harvest reporting that is no longer applicable. Finally, add specific identification of what records a registrant must maintain, how long those records must be maintained, and what agencies must be permitted access to those records.

4. Changes to Part 4 to conform the rule to the USDA's Domestic Hemp Production Program, including that 100 percent of all Registrants must be tested and that all lots grown at a Registered Land Area must be tested. Further revisions to Part 4 establish a random inspection program to comply with USDA's Domestic Hemp Production Program. The proposed changes to 4.6.5 through 4.6.7 establish that a producer may not harvest prior to sample collection and establish restrictions with what a producer may do with the producer's hemp after sampling and before receiving results and after receiving sample test results that show the tested hemp is above the Acceptable Hemp THC level. Part 4.6.8 provides specific restrictions against commingling hemp from any other lots during sampling or laboratory analysis. Changes to 4.7.1 contemplate that the department will not test all registrants and, therefore, must collect the testing fee from each one sampled. The addition of Part 4.8 establishes the authorized sampler program, including to provide for authorized sampler training, testing, registration, and cancelation of registrations.

5. Changes to Part 6 to establish the three specific violations that result in a producer's having committed a violation negligently. As well, the new rules provide that any producer who has committed a negligent violation must submit to a correction action plan. The proposed change identifies the elements necessary to be part of any such corrective action plan. Finally, the proposed changes to Part 6 identify the increased penalties to any person who commits a violation with a culpable mental state greater than negligence.

6. Delete Part 7 to reflect that Hemp Seed Certification is no longer a provision contemplated by Colorado's Industrial Hemp Regulatory Program Act. Seed certification rests under the authority of the Colorado Seed Growers Association and Colorado State University.

7. Addition of Part 8 to identify that a list of testing laboratories will be maintained that the Colorado Department of Public Health and Environment have certified to conduct hemp testing in Colorado. The addition of Part 8 also requires that authorized samplers, as approved by the Department, must submit their sample results only to those laboratories that the Colorado Department of Public Health and Environment has certified.

Factual and Policy Basis

The factual and policy issues encountered when developing these rules include:

Changes to state and federal law constitute the factual issues that required the proposed changes to this rule.

In 2018, the US Congress amended the Agricultural Marketing Act of 1946, the Agricultural Improvement Act of 2018, Pub. L. 115-334 (the "2018 Farm Bill"). The 2018 Farm Bill legalized the production of hemp nationwide and offered states and tribes that wanted the authority to regulate the production of hemp within their borders to submit individual plans to USDA pursuant to rules USDA would adopt.

In 2019, Colorado's General Assembly amended the Industrial Hemp Regulatory Program Act to authorize the Commissioner to submit a hemp management plan in accordance with the 2018 Farm Bill. The General Assembly further authorized the Commissioner to consult with stakeholders, including local governments and state and federal and law enforcement agencies and required the Commissioner to consult with private industry. Throughout 2019, the Commissioner, by means of the Colorado Hemp Advancement and Management Plan (CHAMP) met with representatives of all the permissive and required stakeholders to gather information related to the development of industrial hemp in Colorado and to prepare to submit a state plan after USDA issued its rules.

In October 2019, USDA issued an interim final rule, and in 2020 Colorado's General Assembly again amended the Industrial Hemp Regulatory Program Act by means of SB 20-197 to comport to USDA's Interim Final Rules. In January 2021, USDA issued its final rule.

The proposed rules represent the Commissioner's response to revised federal and state requirements as well as her response to stakeholder input and involvement throughout the development process.

Senate Bill 20 -197 aligned Colorado's Industrial Hemp Program with Federal law. Rules were developed to further clarify and communicate with registrants and stakeholders regarding compliance with Federal law.

The Department considered comments received at its May 25, 2021, rule-making hearing. In consideration of the relevant comments, the Department provides the following. First, the Department will engage in subsequent rule-making upon USDA's approval of Colorado's submitted state plan. That rule-making will, in part, address the comment to make a Registrant's failure to report to the Farm Services Agency a violation of law; consider rules regarding third party samplers; and implement alternative and performance-based sampling. While the Department is aware of proposed legislation currently before Colorado's General Assembly, the Department will not promulgate changes to these rules to implement proposed statutory changes. The Department will await the bill's passage to be able to respond completely to all statutory changes. Use of the general word "cannabis" in parts of the rule is specific and intentional to distinguish those plants of the genus Cannabis Sativa L. Whose THC content is unknown from those whose THC content is known to be at or below 0.3 percent THC and thus "hemp." With regard to the suggestion to amend 4.6.6 to include a reference to a total THC concentration of 0.3 percent on a dry-weight basis, that is unnecessary in light of Rule 4.6.7. Finally, the five-year penalty for those who have committed three negligent violations of the law in a five-year period is required by USDA's Final Rule and may not be adjusted at the state level.

9.10. Emergency Rule Adopted August 10, 2021 – Effective August 10, 2021

Statutory Authority:

The Commissioner of Agriculture adopts these rules pursuant to §35-65-105(2) and § 35-61-113(2), C.R.S., and § 24-4-103(6), C.R.S.

Purpose:

This is a temporary emergency rule that will correct an error in Rule 4.1 which, as written, prevents the Commissioner of Agriculture from sampling Industrial Hemp in Registered Land Areas within 30 days of anticipated harvest.

Factual Policy and Issues:

This temporary emergency rule will permit the Commissioner of Agriculture to sample and test within 30 days of the anticipated harvest date. USDA's rule, 7 CFR 990.3(a)(2)(i) requires that samples must be collected within 30 days prior to the anticipated harvest. This rulemaking is imperatively necessary to comply with USDA's federal regulation and does not comply with the requirements of section 24-4-103, C.R.S. Compliance with section 24-4-103, C.R.S., at this time would contradict federal law and would jeopardize Colorado's State Plan for Regulation of Industrial Hemp. Immediate adoption is imperatively necessary to comply with federal law. Additionally, because the harvest of Industrial Hemp will begin in a few weeks, it is imperatively necessary to protect the public's health, safety, and welfare that the Commissioner be able to conduct sampling and testing for THC content within 30 days of anticipated harvest to protect the public from the possibility of levels of THC in Industrial Hemp that exceed the allowable limit.

Editor's Notes

History

New rule eff. 12/30/2013.
Parts 2, 3, 9.2 emer. rules eff. 06/11/2014.
Parts 2, 3, 9.2-9.3 eff. 09/30/2014.
Entire rule, Part 9.4 eff. 03/30/2015.
Entire rule, Part 9.5 eff. 03/30/2016.
Entire rule, Part 9.6 eff. 03/30/2017.
Parts 1.3, 1.6, 1.12, 4.7.2, 7.3, 9.7 eff. 04/15/2018.
Entire rule, Part 9.8 eff. 03/30/2019.
Entire rule, Part 9.9 eff. 07/30/2021.
Rules 4.1, 9.10 emer. rules eff. 08/10/2021.