

COLORADO DEPARTMENT OF AGRICULTURE

Plant Industry Division

Rules Pertaining to the Administration and Enforcement of the Industrial Hemp Regulatory Program Act

8 CCR 1203-23

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 “CDA Approved Certified Seed” means a variety of Cannabis that is approved by the Department for cultivating Industrial Hemp and certified by the seed certification service of Colorado State University or the authorized seed certifying agency of another state.
- 1.3 “Commercial” means the growth of Industrial 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 or under a pilot program administered by the Department for purposes of agricultural or academic research in the development of growing Industrial Hemp.
- 1.4 “Commissioner” means the Commissioner of Agriculture and any employee of the Department of Agriculture associated with the Industrial Hemp Regulatory Program.
- 1.5 “Department” means the Colorado Department of Agriculture.
- 1.6 “Harvest” means the movement of Industrial Hemp from a Registered Land Area to another location or movement within a Registered Land Area between indoor and outdoor planting areas.
- 1.7 “Industrial Hemp” means a plant of the genus Cannabis and any part of the plant, whether growing or not, containing a delta-9 tetrahydrocannabinol (THC) concentration of no more than three-tenths of one percent (0.3%) on a dry weight basis.
- 1.8 “Law Enforcement” means the activities of the federal, state and local agencies responsible for maintaining public order and enforcing the law.
- 1.9 “Registrant” means any individual or legal entity who holds a valid Registration to grow Industrial Hemp under these Rules.

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- 1.10 “Registration” means authorization by the Commissioner for any individual or legal entity to grow Industrial Hemp on a Registered Land Area.
- 1.11 “Registered Land Area” means a contiguous land area registered with the Department on which a Registrant plans to cultivate Industrial Hemp. A Registered Land Area may include land and buildings that are not used for cultivation.
- 1.12 “Research and Development” means cultivation of Industrial Hemp either by an institution of higher education or under a pilot program administered by the Department for purposes of agricultural or academic research in the development of growing Industrial Hemp.
- 1.13 “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 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:
 - 2.1.1 The name and address of the applicant.
 - 2.1.2 Type of business entity, such as corporation, LLC, partnership, sole proprietor, etc.
 - 2.1.3 Business name(s) if different from (2.1.1) above.
 - 2.1.4 The legal description (Section, Township, Range) in which the growing area is located.
 - 2.1.5 The global positioning location coordinates taken at the approximate center of the growing area.
 - 2.1.6 A map of the Registered Land Area on the which the applicant plans to grow the Industrial Hemp, showing the boundaries and dimensions of the growing area(s) in acres or square feet, and the location of different varieties within the growing area(s), if applicable.
 - 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.

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- 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 Industrial 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 business or organization such as corporation, LLC, partnership, sole proprietor, etc.
 - 2.2.3 Business name(s) if different from (2.2.1) above.
 - 2.2.4 The legal description (Section, Township, Range) of the growing area.
 - 2.2.5 Global positioning system location taken at the approximate center of the growing area.
 - 2.2.6 A map of the Registered Land Area on which the applicant plans to grow the Industrial Hemp, showing the boundaries and dimensions of the growing area in acres or square feet, and the location of different varieties within the growing area, if applicable.
 - 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 cannot be assigned or transferred to another business, individual or other entity.

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- 2.4 No Industrial Hemp plant shall 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% delta-9 THC concentration on a dry weight basis. No Registrant shall use any such variety for any purpose associated with the cultivation of Industrial Hemp.
- 2.6 Each noncontiguous land area on which Industrial Hemp is grown shall require a separate Registration. Any addition to a Registered Land Area shall also require a separate Registration.
- 2.7 In addition to the application form, each applicant for a Registration shall 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 Industrial Hemp shall be \$500 plus \$5.00/acre outdoors and/or \$.33/1000 sq. ft. indoors.
- 2.9 The annual Registration fee for production of Industrial Hemp for Research and Development shall be \$500 plus \$5/acre outdoors and/or \$.33/1000 sq. ft. indoors.
- 2.10 All Registrations shall be valid for one year from date of issuance.
- 2.11 All Industrial 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 or 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 Industrial 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

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

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- 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 delta-9 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 and a map showing where they will be planted. 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/or 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 of Cannabis planted, or of volunteer Cannabis plants that have emerged and are not destroyed, within a Registered Land Area.
 - 3.2.2 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, moved within or moved into a Registered Land Area, except for replanting into a larger container within the same indoor location.
- 3.3 At least 30 days prior to harvest, each Commercial Industrial 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 an in-state Industrial Hemp processor. If the Registrant has not entered into such an agreement, the Registrant shall include a statement of intended disposition of its Industrial Hemp crop.
 - 3.3.2 The harvest date(s) and location of each variety of Industrial 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. If any such changes are made the Commissioner may require additional testing prior to harvest.
- 3.4 Prior to planting, each Research and Development Industrial Hemp Registrant shall file, on a form provided by the Commissioner, a Pre-Planting Report that includes:

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- 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 delta-9 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 and a map showing where they are planted. 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/or 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 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 different container within the same indoor location.
- 3.6 At least 30 days prior to harvest, each Research and Development Industrial Hemp Registrant shall file a Harvest Report, on a form provided by the Commissioner that includes:
- 3.6.1 A statement of the intended use of all Industrial 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. If any such changes are made the Commissioner may require additional testing prior to harvest.
- 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.

Part 4 INSPECTION AND SAMPLING PROGRAM

This copy of the text of the "Rules Pertaining to the Administration and Enforcement of the Industrial Hemp Regulatory Program Act" is provided as a convenience to the public by the Colorado Department of Agriculture and does not constitute an official publication of these Rules. The official version of these Rules is published by the Office of the Secretary of State in the Colorado Code of Regulations at 8 CCR 1203-23 and may be obtained from the following website: <http://www.sos.state.co.us/CCR/Welcome.do>.

- 4.1 All Registrations are subject to routine inspection and sampling to verify that the delta-9 THC concentration of the Cannabis planted within a Registered Land Area does not exceed 0.3% on dry weight basis. The Commissioner may select up to 100% of the Registrants to be inspected. The Commissioner shall send notification to each Registrant of their selection. The notification shall 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 will result in the initiation of disciplinary proceedings pursuant to Part 6 of these Rules against the Registration.
- 4.2 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 he has reason to believe a violation of the Act or these Rules may be occurring. The Commissioner may also conduct such additional inspection and sampling to verify compliance with the reporting requirements of these Rules.
- 4.3 A Registered Land Area may be subject to inspection and sampling prior to voluntary termination of the Registration before its expiration date.
- 4.4 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 Industrial Hemp, and all documents and records pertaining to the Registrant's Industrial Hemp growing business.
- 4.5 All Cannabis plants within a Registered Land Area may be sampled to ensure compliance with the Industrial Hemp Program.
- 4.5.1 Individual or composite samples of each variety of Cannabis may be sampled from the Registered Land Area at the Department's discretion.
- 4.5.2 The sampled material will be prepared for testing using protocols approved by the Commissioner.
- 4.5.3 Quantitative laboratory determination of the delta-9 THC concentration on a dry weight basis will be performed according to protocols approved by the Commissioner.
- 4.5.4 A sample test result with a delta-9 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 delta-9 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 Industrial Hemp Registrant in accordance with the Act, these Rules and 24-4-104, C.R.S. Sample test results for Industrial Hemp Registrations with a delta-9 THC concentration greater than 0.3% on a dry weight basis may be provided to the appropriate law enforcement agencies.

- 4.6 Fields planted with CDA Approved Certified Seed may be inspected and sampled to confirm consistency with the Planting Report(s). The Department will waive all inspection and/or sampling costs if no inconsistencies or violations are identified.
- 4.7 Fees
 - 4.7.1 Registrants selected for inspection and sampling shall pay a charge of \$35 dollars per hour per inspector for actual drive time, mileage, inspection and sampling time.
 - 4.7.2 Registrants selected for inspection and sampling shall reimburse the Department for all laboratory analysis costs incurred by it within 30 days of the date of the invoice.

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% delta-9 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% delta-9 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% delta-9 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 Registrant or authorized representative thereof shall constitute violations for which civil penalties up to \$2,500 per violation and disciplinary sanctions, including summary suspension or revocation of a Registration, may be imposed by the Commissioner in accordance with Sections 35-61-107 and 24-4-104, C.R.S.:
 - 6.1.1 Refusal or failure by a Registrant or authorized representative to fully cooperate and assist the Department with the inspection process.

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- 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 Industrial 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 delta-9 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.

Part 7 CDA APPROVED CERTIFIED SEED

- 7.1 A variety of Industrial Hemp may be approved by the Department if it is tested by the Department and confirmed to produce mature plants with a delta-9 THC concentration below 0.3% on a dry weight basis in approved multiple geographic trials in Colorado.
- 7.2 In addition to the Registration fees required by Rules 2.8 and 2.9 all Registrants shall pay to the Department an additional fee established by the Committee, for the purpose of funding the costs of administering the CDA Approved Seed Certification program.
- 7.3 An applicant that submits a variety for approval under the CDA Approved Seed Certification program shall pay the testing costs incurred by the Department.

Part 8 RESERVED

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.

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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.

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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

This copy of the text of the "Rules Pertaining to the Administration and Enforcement of the Industrial Hemp Regulatory Program Act" is provided as a convenience to the public by the Colorado Department of Agriculture and does not constitute an official publication of these Rules. The official version of these Rules is published by the Office of the Secretary of State in the Colorado Code of Regulations at 8 CCR 1203-23 and may be obtained from the following website: <http://www.sos.state.co.us/CCR/Welcome.do>.

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.

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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.

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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.