

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of a) NOTICE OF ADOPTION OF A
Temporary Emergency Rule and) TEMPORARY EMERGENCY RULE
temporary emergency amendment of) AND TEMPORARY EMERGENCY
ARM 4.12.3104 and 4.19.101 through) AMENDMENT OF FIVE CURRENT
4.19.104 pertaining to Industrial) RULES
Hemp)

TO: All Concerned Persons

1. The Department of Agriculture is adopting the following emergency rule because the 2018 Farm Bill, passed on December 12, 2018, removed industrial hemp from the federal government's list of controlled substances. Before, hemp seeds were sourced through the Department of Agriculture only. Now, approved hemp varieties can be sourced through anyone licensed in Montana. Growers must license through the Department of Agriculture and are still bound by state law.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Agriculture no later than 5:00 p.m. on February 4, 2019, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59601; telephone (406) 444-3156; fax (406) 444-5409; or e-mail agr@mt.gov.

3. The temporary emergency rules are effective January 15, 2019, when this rule notice is filed with the Secretary of State.

4. The text of the temporary emergency rule provides as follows:

NEW RULE I HEMP PLANTING SEED (1) The applicant must:

(a) obtain seed through program-approved methods only; and

(b) obtain industrial hemp seed certified by an official seed certifying agency to standards recognized by the department.

(i) The department recognizes seed certifications by the Association of Official Seed Certifying Agencies (AOSCA) and the Organization for Economic Cooperation and Development (OECD) standards. The department may recognize and publish on its website other standards that certify hemp seed varieties as being true to varietal traits and less than 0.3% THC on a dry weight basis.

(ii) The department will publish an annual list of approved varieties for planting in the current license season by March 1 each year.

(2) Persons distributing hemp seeds for planting must comply with the Montana Agricultural Seed and Patented Plant Material Act, excluding exemptions listed in 80-5-104(4), MCA.

(3) Clones of industrial hemp plants may be approved for commercial production of industrial hemp. The approval process for clones is the same as for seed of any new hemp varieties. Clones must comply with the Montana Disease, Pest and Weed Control Act and additional documentation may be required for interstate shipments.

AUTH: 80-18-107, MCA

IMP: 80-18-102, 80-18-103, 80-18-106, MCA

Reason: Although industrial hemp is no longer a DEA regulated controlled substance, the growing of hemp and hemp products, including seed for planting, is still regulated by state and federal regulations. Additionally, most forms of industrial hemp, including planting seeds and the plants grown from seed, are indistinguishable from marijuana without laboratory testing. To help assure that only approved industrial hemp seeds are distributed for the industrial hemp program, only seeds certified by an official certifying agency to standards recognized by the department will be allowed for planting in Montana's hemp program. This includes any amount of seed and propagative plants parts (clones). Thus, the addition of (2) and (3) in this rule.

An element of consumer protection is provided by these regulations which sufficiently monitor seed quality, differentiate between hemp and marijuana plants, and comply with the 2018 Farm Bill and state plan pending approval by USDA.

Economic Impact: Additional resources are necessitated by department staff to review and approve of new seed varieties as well as assure compliance with Montana's hemp regulations and the 2018 Farm Bill. Although it is difficult to determine precisely, the department estimates this work will require 2.0 FTE. The total cost for personal services based on two Environmental Science Specialist positions is \$134,729 annually.

5. The text of the temporary emergency amendment of existing rules provides as follows:

4.12.3104 LABELING FOR SEED KIND AND VARIETY (1) Agricultural seeds ~~shall~~ must be labeled with kind and variety information as stated in this rule:

(a) the following agricultural seeds ~~shall~~ must be labeled to show kind and variety:

- (i) barley;
- (ii) bean, field;
- (iii) beet, field;
- (iv) canola;
- (v) corn, field;
- (vi) ~~oats~~ hemp;
- (vii) ~~peas, field~~ oats;
- (viii) ~~safflower~~ peas, field;
- (ix) ~~soybean~~ safflower;
- (x) ~~sunflower~~ soybean; ~~and~~

(xi) ~~wheat.~~ sunflower; and

(xii) wheat.

(b) through (2) remain the same.

AUTH: 80-5-139, MCA

IMP: 80-5-123, MCA

Reason: Although industrial hemp is no longer a DEA regulated controlled substance, the growing of hemp and hemp products, including seed for planting, is still regulated by state and federal regulations. Varietal characteristics can affect seed quality, end-product use, and the amount of regulatory oversight required. To make sound purchasing decisions, industrial hemp purchasers must know the kind and variety. Knowing the kind and variety allows the Department of Agriculture to review and determine approval for seed varieties as outlined in the pending USDA-state plan. All agricultural seeds require labeling as outlined in the Montana Agricultural Seed Act. The addition of kind and variety as a requirement to a hemp seed label does not fiscally impact the department.

4.19.101 DEFINITIONS (1) "Clone" means an organism developed asexually from another and genetically identical to it, such as a group of genetically identical plants produced by vegetative propagation, including but not limited to cutting, grafting, or division.

~~(1)~~(2) "Hemp" means the plant Cannabis sativa L. and any part of such plant, whether growing or not, with a delta-nine tetrahydrocannabinol (THC) concentration of ~~not~~ no more than 0.3 percent on a dry weight basis.

~~(3)~~ "Location" means a single growing area not including growing acres more than a half-mile away and owned by a single entity.

~~(2)~~(4) "~~Pilot program~~" "Montana State Hemp Program" means a program to grow hemp under the regulation of the Montana Department of Agriculture for the purposes of complying with federal law.

~~(3)~~(5) "Seed repository" means the storage area for those approved varieties of hemp available for sale by the department.

~~(4)~~(6) "Specialty variety" means a variety of hemp that the department has not already made an approved variety or does not currently plan to import for that growing year.

~~(5)~~(7) "State hemp license" means a license to grow hemp that shows the holder is in compliance with Montana state hemp laws. The holder is also responsible for obeying all applicable federal and tribal regulations.

~~(6)~~(8) "Testing" means a testing for the amount of THC, pesticides, or other tests for legal compliance of departmental or federal regulations.

AUTH: 80-18-107, MCA

IMP: 80-18-101, 80-18-102, 80-18-103, 80-18-106, 80-18-107, 80-18-110, 80-18-111, MCA

Reason: Definition additions are necessary for clarification of intent for the new rules. No fiscal impact is associated.

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4.19.102 APPLICATION FOR HEMP LICENSE (1) An applicant must:

- (a) provide the information required by state law for a hemp license on the form provided by the department;
 - (b) apply to the department for participation in the program by May 1 unless the department extends the application deadline;
 - ~~(b)(c)~~ pay all fees as established by rule; and
 - ~~(e)(d)~~ consent to entrance of their property by the department to inspect their hemp fields.
- (2) If the applicant is not a single individual, then all proper filings with the Secretary of State must be current and in good order.
- ~~(3) The applicant, including all corporate officers, must be fingerprinted at a law enforcement agency. The law enforcement agency, not the applicant, must send the fingerprint sheet to the department.~~
- ~~(4)(3)~~ Licenses will expire on the last day of ~~December~~ April following of the year that they are the license is issued for.
- ~~(5) Renewals do not require new fingerprinting unless the department requests it or if the corporate officers have changed.~~
- ~~(6)(4)~~ The licensee must also provide all material required under 80-18-106, MCA.

AUTH: 80-18-107, MCA

IMP: 80-18-102, 80-18-103, 80-18-106, MCA

Reason: Changing the license year from January through December to May through April and the license application due date to May 1 aligns better with the growing season of industrial hemp. Doing so allows growers more time for seed purchasing and planting decisions. License application and location information submitted by growers in May instead of January will improve the process for submitting information to the department. The fingerprinting requirement is addressed in Montana law and is not required in these rules. No fiscal impact is associated.

4.19.103 PILOT MONTANA STATE HEMP PROGRAM (1) An applicant to the ~~pilot~~ Montana State Hemp Program program must:

- (a) through (f) remain the same.
 - ~~(g) have applied~~ apply to the department for participation in the program by ~~January 31st~~ May 1 unless the department extends the application deadline.
- (2) and (3) remain the same.

AUTH: 80-18-107, MCA

IMP: 80-18-102, 80-18-103, 80-18-106, MCA

Reason: Pilot program rules remain in effect until USDA approves Montana's state hemp plan. The Pilot program name is renamed Montana State Hemp Program. No fiscal impact is associated.

4.19.104 FEES (1) The fee for a ~~state hemp license~~ Montana State Hemp License is ~~\$50~~ \$450.

~~(2) The fee for participation in the state pilot program is \$400.~~

~~(3)(2)~~ The special variety fee of the pilot Montana State Hemp Program program is \$600.

~~(4)(3)~~ If official sampling is requested by a licensed hemp grower, the fee for providing such a service will be consistent with ARM 4.12.1811.

AUTH: 80-18-107, MCA

IMP: 80-18-102, 80-18-103, 80-18-106, MCA

Reason: Section 80-18-107, MCA requires fees be commensurate with department activities for the implementation of the hemp program. Applicants are required to pay \$450 to participate in the Montana State Hemp Program and receive a state license.

Economic Impact: \$450 is the current licensing fee amount and has no associated fiscal impact.

6. The department is filing MAR Notice No. 4-19-254, which addresses a public hearing on this same subject to adopt these rule changes as permanent. That notice is also available in this issue of the Montana Administrative Register.

7. Concerned persons are encouraged to submit their comments during the upcoming standard rulemaking process. If concerned persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to Cort Jensen at the address above.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 2 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Ben Thomas
Ben Thomas
Director
Agriculture

Certified to the Secretary of State January 15, 2019.