NOTICE OF CHANGE

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
DIVISION OF PLANT INDUSTRY

RULE NUMBER:  5B-57.014
RULE TITLE:  State Hemp Program

Notice is hereby given that the following changes have been made to the proposed rule in accordance with Section 120.54(3)(d)1., F.S., published in Vol. 45, No.198, October 10, 2019, issue of the Florida Administrative Register.

Rule 5B-57.014 - State Hemp Program

(1) No change.

(2) Definitions. The definitions provided in ss. 581.011, 581.217, F.S., and the following shall apply to this rule:

(a) “Acceptable THC level” means that the representative sample has a Total delta-9 tetrahydrocannabinol concentration that does not exceed 0.3% on a dry-weight basis.

(a) reordered as (b) No change.

(c) “Designated laboratory” means a laboratory that:

1. Holds an ISO 17025 accreditation; and

2. Is registered with Drug Enforcement Administration (DEA) in accordance with 21 CFR 1301.13; and

3. Has entered into a compliance agreement with the Department to conduct Tetrahydrocannabinol concentration sampling and testing. The Designated Laboratory Compliance Agreement, FDACS – 08121, 12/19, is incorporated herein by reference and available online at https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXX. The Pre-Harvest Sampling Manual, FDACS – 08127, 02/20, is incorporated herein by reference and available online at https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXX. The Cannabis Sample Submission Form, FDACS-08114, 02/20, is incorporated herein by reference and available online at https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXX. JCGM 100:2008, Evaluation of Measurement Data -Guide to the expression of uncertainty in measurement (September 2008) is incorporated herein by reference. Copies may be obtained from http://www.bipm.org and are also available for public inspection during regular business hours at the Florida Administrative Code and Register, R.A. Gray Building, 500 South Bronough Street, Tallahassee, FL 32399-0250 and at the Florida Department of Agriculture and Consumer Services, Division of Plant

(b) reordered as (d) No change.

(c) “LotPlot” means a contiguous area in a field, greenhouse, or indoor growing structure used for cultivation of the same variety or strain of hemp.

(d) through (g) reordered (f) through (i) No change.

(3) No change.

(4) Application. It is unlawful for a Person to cultivate hemp in this state without a License to Cultivate Hemp issued by the Department. A Person seeking a license to cultivate hemp shall submit the following to the Department:

(a) A completed Application for License to Cultivate Hemp, FDACS-08112, 12/19 10/19, incorporated herein by reference and available online at https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXX.

(b) A detailed description of each Plot location intended for the cultivation of hemp, including address, legal land description, tax parcel number, and GPS coordinates.

(c) A full set of fingerprints for each Control person and the Responsible person submitted through a Livescan service provider evaluated by the Florida Department of Law Enforcement for state and national processing to Department ORI number FL925080Z. The Livescan service provider receipt for payment and process reference number must be provided with the Application For License to Cultivate Hemp, FDACS-08112, 12/19 10/19. If the fingerprint processing identifies criminal charges or convictions related to a controlled substance violation under state or federal law, the Department will notify the applicant that additional information is needed to complete the application. The applicant must provide to the Department a certified copy of the final disposition concerning the matter which the Department requested additional information pursuant to this section within ninety (90) days of receipt of the notification.

(d) An environmental containment plan for each LotPlot. An environmental containment plan must include the following:

1. A containment system of silt fences, berms, or fallow areas consisting of bare earth or ground cover to prevent the hemp from spreading beyond the LotPlot.

2. A plan to clean any equipment used on the LotPlot of all debris before it is moved from the property.
3. No change.

(5) License.

(a) through (c) No change.

(d) A licensee must notify the Department before changing the cultivation location(s) approved on the licensee’s application. This notification must be made to DPIHemp@FDACS.gov sixty (60) days before any changes. A Licensee must request an amendment to the application sixty (60) days prior to planting additional cultivation locations.

(6) Cultivation requirements. The licensee must:

(a) No change.


(c) No change.

(d) Maintain the certification, label, and receipts for all Certified hemp seed, Pilot project hemp cultivars, or Pilot project hemp seed. Certified hemp seed or Certified hemp cultivars used in the cultivation of hemp for three (3) years from the date of harvest. These documents must be provided to the Department upon request.

(e) Use only Certified hemp seed, Pilot project hemp cultivars, or Pilot project hemp seed as defined in Rule 5E-4.016, F.A.C., or nursery stock obtained from a Florida nursery registered with the Department that was grown from Certified hemp seed, Pilot project hemp cultivars, or Pilot project hemp seed. Certified hemp seed or a Certified hemp cultivar.

(f) Only cultivate hemp on lands that are used primarily for bona fide agricultural purposes pursuant to s. 193.461, F.S., or lands located within an area zoned for agricultural or industrial use, or at a nursery as defined in s. 581.011, F.S.

(g) No change.
(h) Each LotPlot must be identified separately using a numeric plot designation.

(i) Report the hemp crop acreage to the USDA Farm Service Agency in accordance with 7 CFR 990.23.

(j) Only use Designated laboratories that qualify as Independent testing laboratories pursuant to section 581.217(3)(f), Florida Statutes.

(7) Nurseries. Nurseries propagating hemp plants for distribution shall:

(a) through (b) No change.

(c) Only distribute hemp plants for cultivation to Persons who are authorized to cultivate Hemp. Only distribute hemp plants for cultivation to Persons in the state of Florida who are licensed pursuant to this rule or to Persons within the United States who are authorized to cultivate hemp under a plan authorized pursuant to 7 U.S.C. 1639p.

(d) No change.

(8) Tetrahydrocannabinol concentration field sampling.

(a) Within fifteen (15) days prior to the harvest date, the Department or its agent shall collect a representative sample from each Lot to be tested for Total delta-9 tetrahydrocannabinol concentration. Any sampling by the Department or its agent shall be done in accordance with the Pre-Harvest Sampling Manual, FDACS – 08127, 02/20. The licensee shall be responsible for any fees or costs to conduct sampling or laboratory testing. The licensee or its agent must be present during any sample collection. Prior to each harvest, the licensee shall collect a representative sample from each Plot of hemp to be tested for Total delta-9 tetrahydrocannabinol concentration. The representative sample must be collected and submitted in accordance with the Hemp Field Sampling Manual for Licensees, FDACS-08114, 10/19. The Hemp Field Sampling Manual for Licensees is incorporated herein by reference and available online at https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXX.

(b) The Department or its agent will place the sealed representative sample in the mail or deliver to the Designated laboratory of the licensee’s choosing within one business day of collection. A Cannabis Sample Submission Form, FDACS-08114, 02/20, must be submitted with each representative sample. The representative sample shall be submitted by the licensee to an ISO 17025 accredited laboratory for testing. The licensee must use laboratories whose methods for testing Total delta-9 tetrahydrocannabinol concentration are within their scope of accreditation. The licensee must require the laboratory to report the analysis results for Total delta-9 tetrahydrocannabinol concentration and a copy of the Hemp Sample Submission Form, FDACS-08113, 10/19, directly to the Department by email at DPIHemp@FDACS.gov within twenty-four (24) hours of test completion.
The licensee shall not harvest the Plot until the laboratory results indicate the representative sample does not have a Total delta-9 tetrahydrocannabinol concentration that exceeds 0.3% on a dry weight basis unless authorized under paragraph 5B-57.014(9)(b), F.A.C. If the representative sample results indicate that the Total delta-9 tetrahydrocannabinol exceeds 0.3% on a dry weight basis, the Department will perform a confirmatory test.

(c) The Designated laboratory’s initial report must be issued to DPIHemp@FDACS.gov within one business day after completion of the analysis. Within one business day of receipt, the Department will notify the licensee if the representative sample has an Acceptable THC level. If the representative sample has an Acceptable THC level, the Lot may be harvested.

(d)(c) If the Department notifies the licensee initial laboratory report and the Department’s confirmatory results indicate that the representative sample has an unacceptable THC level Total delta-9 tetrahydrocannabinol exceeds 0.3% on a dry weight basis, the licensee must:

1. Request that the Designated laboratory retest the retained sample held pursuant to the Designated Laboratory Compliance Agreement, FDACS – 08121, 12/19. A request to retest the retained sample must be made to the Designated laboratory within one business day of receipt of the notification provided in paragraph (d) of this subsection. The licensee shall be responsible for any fees or costs to conduct laboratory testing; or

2. Arrange for the collection or destruction of the non-compliant Lot by a DEA-registered reverse distributor, or a duly authorized Federal, State, or local law enforcement officer; or the licensee will be responsible for the destruction of all hemp plants in the Plot. The licensee shall completely destroy all hemp plants, rendering the plants as non-viable in accordance with the Hemp Waste Disposal Manual FDACS-08115, 10/19. However, if a licensee removes and destroys all leaf and floral material from the plants, the hemp plants may be processed for barestalk fiber, hulled hemp seed, hemp seed protein powder, or hemp seed oil.


(e) If a retest report is issued and the Department again notifies the licensee that the representative sample has an unacceptable THC level, the licensee must:

1. Arrange for the collection or destruction of the non-compliant Lot by a DEA-registered reverse distributor, or a duly authorized Federal, State, or local law enforcement officer; or

2. Dispose of the Lot in accordance with the Hemp Waste Disposal Manual, FDACS-08115, 12/19; or
3. Request that the Department collect a confirmatory sample and perform a confirmatory test of the Lot. This request must be made to DPIHemp@FDACS.gov within one business day of receipt of the notification provided in paragraph (e) of this subsection.

(f) Any confirmatory sampling by the Department of unharvested hemp shall be done in accordance with the Pre-Harvest Sampling Manual, FDACS – 08127, 02/20. Any confirmatory sampling by the Department of harvested hemp shall be done in accordance with the Post-Harvest Sampling Manual, FDACS – 08129, 02/20, which is incorporated herein by reference and available online at https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXX. Any confirmatory testing by the Department shall be done in accordance with the procedures outlined in the Designated laboratory Compliance Agreement, FDACS – 08121, 12/19. The expense of the confirmatory sampling and the confirmatory testing shall be assessed, collected, and enforced against the licensee by the Department. The licensee or its agent must be present during any sample collection.

(g) If the Department’s confirmatory report indicates that the Lot has an Acceptable THC level, the Lot may be harvested. If the Department’s confirmatory test indicates that the Lot has an unacceptable THC level, the director of Plant Industry or her or his designee shall notify the licensee and the licensee shall within 10 days after the notice:

1. Arrange for the collection or destruction of the non-compliant Lot by a DEA-registered reverse distributor, a duly authorized Federal, State, or local law enforcement officer; or

2. Dispose of the Lot in accordance with the Hemp Waste Disposal Manual, FDACS-08115, 12/19.

(h) If the licensee refuses or neglects to comply with the terms of the notice in paragraph (g) of this subsection, the director or her or his authorized representative may, under authority of the Department, proceed to destroy the plants. The expense of the treatment or destruction shall be assessed, collected, and enforced against the licensee by the Department. No damages shall be awarded to the licensee for the destruction of the plants under the provisions of this rule.

(i) The licensee shall notify the Department within one business day of the collection or destruction of a non-compliant Lot. This notification must be made via Notice of Disposal, FDACS-08116, 12/19, which is incorporated herein by reference and available online at https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXX.

(9) Harvest.

(a) The licensee must notify the Department no fewer than thirty (30) days prior to each intended harvest date by email at DPIHemp@FDACS.gov or by phone at 1-888-397-1517. The licensee shall not harvest the Lot hemp
until the Department notifies the licensee the pre-harvest laboratory results indicate that the representative sample has an Acceptable THC level unless authorized under paragraph (b) of this subsection, does not have a Total delta-9-tetrahydrocannabinol concentration that exceeds 0.3% on a dry weight basis.

(b) If a representative sample has been collected, the licensee may harvest the Lot before the Designated laboratory results are available if the licensee complies with the following: If sample or resample results are not available before the intended harvest date or the licensee needs to alter the intended harvest date, the Plot may be harvested if the licensee complies with the following:

1. through 3. No change.

4. The harvested material must remain segregated from other harvested hemp until the Designated laboratory results are available.

(10) Inspections. The Department shall conduct random annual inspections of each licensee to ensure compliance with the following:

(a) No change.

(b) Maintenance of Certified hemp seed, Pilot project hemp cultivars, or Pilot project hemp seed Certified hemp seed or Certified hemp cultivar documentation required under paragraphs 5B-57.014(6)(c)-(d), F.A.C.

(c) through (e) No change.

(11) Transportation Requirements.

(a) Intrastate movement. Any Person transporting propagative parts of hemp, live hemp plants, Processed hemp plant material, and Unprocessed hemp plant material within the state of Florida shall:

1. No change.

2. Have in their possession a bill of lading or proof of ownership, documentation showing the name, physical address, LotPlot designation number, and license number of the originating licensed cultivator, and the name and physical address of the recipient of the delivery when transporting between non-contiguous locations.

3. No change.

(b) Interstate movement. Any Person outside the State of Florida who desires to ship into this state propagative parts of hemp, live hemp plants, Processed hemp plant material, and Unprocessed hemp plant material from any state, U.S. possession, territory, or district of the United States, or foreign jurisdiction, shall comply with the following regulations:
1. The movement of propagative parts of hemp or live hemp plants into the State of Florida is prohibited unless:
   a. Maintained and shipped in a soilless growing media, sterile growing media, or sterile and environment; and
   b. Accompanied by proof of origin with hemp cultivation license number, or equivalent, from the jurisdiction of origin and an original phytosanitary certificate of inspection issued by a state or country plant protection governmental agency.

2. The movement of any Unprocessed hemp plant material destined for processing into the State of Florida is prohibited unless: accompanied by proof of origin and transported frozen or dried.
   a. Accompanied by proof of origin with a hemp cultivation license number, or equivalent, from the jurisdiction of origin; and
   b. Accompanied by a certificate of analysis showing that the Unprocessed hemp plant material has an Acceptable THC level; and
   c. Transported frozen or dried.

3. The movement of any Processed hemp plant material into the state of Florida is prohibited unless:
   a. No change.
   b. Accompanied by proof of origin with a hemp cultivation license number, or equivalent, from the jurisdiction of origin; and
   c. Accompanied by a certificate of analysis showing that the Processed hemp plant material has an Acceptable THC level.

4. No change.

   (12) Abandoned operations. It is the responsibility of the licensee to completely destroy all hemp plant material, rendering the plants non-viable in accordance with the Hemp Waste Disposal Manual FDACS-08115, 12/19 10/19, prior to vacating the property or stopping hemp cultivation.

   (13) through (14) No change.

   (15) Destruction verification. All destructions must be conducted under the supervision of an authorized representative of the Department.