MONTANA ALTERNATIVE AGRICULTURAL CROPS (HEMP) ACT

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MONTANA DEPARTMENT OF AGRICULTURE

AGRICULTURAL SCIENCES DIVISION

HELENA, MONTANA

STATUTE

TITLE 80, CHAPTER 18

SECTIONS 80-18 through 101-111

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Disclaimer-
This document contains a copy of the statutes relating to the subject matter. Although every attempt is made to ensure that the information placed in this document is accurate and timely, the Department of Agriculture cannot assure the accuracy of any specific provision, and you are urged to consult the official printed versions of these publications or to contact legal counsel of your choice. All critical information should be independently verified.

The Montana Code and Constitution is at: http://leg.mt.gov/BILLS/MCA_toc/index.htm

CHAPTER 9
AGRICULTURAL COMMODITIES

PART 1
GENERAL PROVISIONS

MCA	CONTENTS	PAGE NO.
80-18-101	Definitions	4
80-18-102	Hemp Authorized as Agricultural Crop	4
80-18-103	Hemp Licensing	4
80-18-106	Hemp Production – Notification Requirements	4
80-18-107	Rulemaking Authority	4
80-18-110	Disposition of Fees	5
80-18-111	Affirmative Defense for Possession or Cultivation of Marijuana	5
SB 176	Hemp Certification Program	5
ARM		
4.19.101	Definitions	7
4.19.102	Application for MT State Hemp Program License	8
4.19.103	Montana State Hemp Program	8
4.19.104	Fees	9
4.19.105	Lab Testing Fees	9
4.19.106	Penalties or Revocations	9
4.19.107	Hemp Variety	9
4.19.108	Hemp Variety Categories	10
4.19.109	Prohibition on Growing Both Hemp and Medical Marijuana	11
4.19.110	Hemp Sampling	11
4.19.201	Hemp Processing License and Fee	11
4.19.202	Hemp Processing for a Commodity Dealer	12
	Sale of Live Hemp Plants Policy	13

80-18-101. Definitions

(1) "Hemp" means all parts and varieties of the plant Cannabis sativa L. containing no greater than 0.3% tetrahydrocannabinol.

(2) "Marijuana" means all plant material from the genus Cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

80-18-102. Hemp authorized as agricultural crop. Hemp that has no more than 0.3% tetrahydrocannabinol is considered an agricultural crop in this state. Upon meeting the requirements of 80-18-103, an individual in this state may plant, grow, harvest, possess, process, sell, or buy hemp if the hemp does not contain more than 0.3% tetrahydrocannabinol.

80-18-103. Hemp -- licensing. (1) An individual growing hemp for commercial purposes shall apply to the department for a license on a form prescribed by the department.

(2) The application for a license must include the name and address of the applicant and the legal description of the land area to be used for the production of hemp.

(3) The licensing requirements of this part do not apply to employees of the agricultural experiment station or the Montana state university-Bozeman extension service involved in research and extension-related activities.

80-18-106. Hemp production -- notification requirements. (1) Each licensee shall file with the department:

(a) documentation showing that the seeds planted are of a type and variety certified to have no more than 0.3% tetrahydrocannabinol; and

(b) a copy of any contract to grow hemp.

(2) Each licensee shall notify the department of the sale or distribution of any hemp grown by the licensee, including the name and address of the person receiving the hemp.

80-18-107. Rulemaking authority. The department shall adopt rules that include but are not limited to:

(1) testing of the hemp during growth to determine tetrahydrocannabinol levels;

(2) supervision of the hemp during its growth and harvest;

(3) assessment of a fee that is commensurate with the costs of the department's activities in licensing, testing, and supervising hemp production; and

(4) any other rules and procedures necessary to carry out this part.

80-18-110. Disposition of Fees. All fees assessed as provided in 80-18-107 must be deposited with the state treasurer to the credit of the state special revenue fund for the use of the department for administering and enforcing this part.

80-18-111. Affirmative defense for possession or cultivation of marijuana. (1) It is an affirmative defense to a prosecution for the possession or cultivation of marijuana under 45-9-102, 45-9-103, and 45-9-110 that:

(a) the defendant was growing hemp pursuant to this part;

(b) the defendant had valid applicable controlled substances registrations from the United States department of justice, drug enforcement administration; and

(c) the defendant fully complied with all of the conditions of the controlled substances registration.

(2) This section is not an affirmative defense to a charge of criminal sale or distribution of marijuana.

Certified Hemp Plan and Program (SB 176)

Section 1. Hemp certification program -- plan -- department authority -- rulemaking. (1) (a) The department may develop a state hemp certification program plan.

(b) If developed, the plan must conform with applicable federal standards and industry best practices.

(c) If a hemp commodity advisory committee is formed in accordance with 80-11-510, the department shall request the committee's input in developing the plan.

(2) The department may implement a state hemp certification program in accordance with chapter 18, this section, and rules adopted by the department in accordance with subsection (5) of this section.

(3) (a) A state hemp certification program must ensure that a product sold or labeled as Montana hemp:

(i) is grown under a valid state license and in accordance with chapter 18; and

(ii) undergoes laboratory testing protocols to meet applicable state and federal food safety and product labeling laws.

(b) A state hemp certification program may contain requirements that are more stringent than those contained in federal law or regulation.

(4) After establishment of a state hemp certification program, the department shall include the promotion of Montana-certified hemp in its agricultural product marketing programs.

(5) If the department establishes a state hemp certification program, the department shall adopt rules necessary to implement the program. The rules may include but are not limited to:

(a) provisions for the operation of a state hemp certification program by the department;

(b) fees to be paid by applicable entities commensurate to the costs of operating a state hemp certification program;

(c) penalties and enforcement provisions for a state hemp certification program; and

(d) additional requirements necessary for administering a state hemp certification program.

Administrative Rules of Montana

Chapter 19
Subchapter 1

Hemp Definitions and License Applications

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.

(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 no more than 0.3 percent on a dry weight basis.

(3) "Hemp plant extract" means a processed product from hemp plant or floral material including but not limited to oil, powder, cake, pellet, etc.

(4) "Hemp root extract" means a processed product that includes exclusively hemp root material including but not limited to oil, powder, cake, pellet, etc.

(5) "Hemp seed oil" means oil extracted exclusively from hemp seeds.

(6) "Location" means a single location as determined by the Director.

(7) "Manufacturing" means further processing hemp plants that have already been processed from a raw, unaltered state.

(8) "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.

(9) "Processing" means heating, mixing, grinding, separating, extracting, cutting, freezing, or otherwise physically or chemically altering hemp plants or plant parts from a raw, unaltered state or changing the physical characteristics of hemp plants or plant parts from a raw, unaltered state.

(10) "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.

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

(History: 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; NEW, 2017 MAR p. 283, Eff. 3/11/17; AMD, 2019 MAR p. 532, Eff. 5/11/19; AMD, 2019 MAR p. 1369, Eff. 8/23/19.)

4.19.102 APPLICATION FOR MONTANA STATE HEMP PROGRAM 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;

(c) pay all fees as established by rule; and

(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) Licenses will expire on the last day of April following the year the license is issued.

(4) The licensee must also provide all material required under 80-18-106, MCA.

(History: 80-18-107, MCA; IMP, 80-18-102, 80-18-103, 80-18-106, MCA; NEW, 2017 MAR p. 283, Eff. 3/11/17; AMD, 2019 MAR p. 532, Eff. 5/11/19.)

4.19.103 MONTANA STATE HEMP PROGRAM

(1) An applicant to the Montana State Hemp Program must:

(a) not be forbidden from participating by a federal agency and agree to a criminal background check;

(b) meet any additional requirements that the USDA or FDA places on the department for the continuation of the program;

(c) not grow Category D varieties listed in ARM 4.19.108; and

(d) apply to the department for participation in the program by May 1 unless the department extends the application deadline.

(2) The department may create a hemp seed repository as part of the pilot program. Only pilot program participants can buy from the repository. The varieties in the repository will be determined by the department. Availability of a particular variety or any seed is not guaranteed by the department.

(3) All post-harvest commercial use of the hemp must be approved by the department so as to not jeopardize the continued existence of the federal approval of the pilot program.

(a) Pre-approved and disapproved uses will be listed on the department web site.

(History: 80-18-107, MCA; IMP, 80-18-102, 80-18-103, 80-18-106, MCA; NEW, 2017 MAR p. 283, Eff. 3/11/17; AMD, 2019 MAR p. 532, Eff. 5/11/19.)

4.19.104 FEES

(1) The fee for a Montana State Hemp License is $450.

(2) The planting fee is $400 per Montana State Hemp License plus:

(a) an additional $250 for Category C seed varieties.

(History: 80-18-107, MCA; IMP, 80-18-102, 80-18-103, 80-18-106, MCA; NEW, 2017 MAR p. 283, Eff. 3/11/17; AMD, 2019 MAR p. 532, Eff. 5/11/19.)

4.19.105 LAB TESTING FEES

(1) The department will charge any licensee or law enforcement agency $250 per test for THC levels of a plant.

(2) Any lab approved by DPHHS for THC testing for medical marijuana may be used by hemp growers for THC testing.

(3) The department may approve third party testing providers.

(History: 80-18-107, MCA; IMP, 80-18-102, 80-18-103, 80-18-106, MCA; NEW, 2017 MAR p. 283, Eff. 3/11/17; AMD 2019 MAR p. 532, Eff. 5/11/19.)

4.19.106 PENALTIES OR REVOCATIONS

(1) After notice to the licensee, the department may suspend a license and start an administrative hearing under MAPA for permanent revocation.

(2) The department may suspend or terminate the hemp license for any violation of county, state, or federal law. This will be done in a manner consistent with Section 297 of The Agricultural Marketing Act of 1946 as amended (2018).

(3) The department may reinstate the license if good cause is shown and a reinstatement fee is paid. The reinstatement fee is $450 for the Montana State Hemp Program license.

(History: 80-18-107, MCA; IMP, 80-18-101, 80-18-103, 80-18-106, 80-18-107, MCA; NEW, 2017 MAR p. 283, Eff. 3/11/17; AMD, 2019 MAR p. 532, Eff. 5/11/19.)

4.19.107 HEMP VARIETY

(1) Applicants must inform the department of what varieties they are planting and the location of each variety by sending the information to the department.

(2) The department will send the full Montana State Hemp License for the year after receiving variety information from the applicant.

(3) The department will utilize a four-category system, found in ARM 4.19.108, to determine the amount of testing required and frequency of random sampling.

(4) Persons distributing hemp seeds for planting must comply with the Montana Agricultural Seed and Patented Plant Material Act, excluding exemptions listed in 80-5-130(4), MCA.

(5) Clones of industrial hemp plants may be approved for commercial production of industrial hemp. Clones are in the same category as their parent plant. Clones must

comply with the Montana Disease, Pest and Weed Control Act, and additional documentation may be required for interstate shipments.

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

(History: 80-18-107, MCA; IMP, 80-18-102, 80-18-103, 80-18-106, MCA; NEW, 2019 MAR p.532, Eff. 5/11/19.)

4.19.108 HEMP VARIETY CATEGORIES

(1) Categories will be as follows: Category A are varieties formally approved by the department, Category B are certified varieties approved by other states or countries at a level equivalent to the department, Category C are all other hemp varieties that an applicant reasonably believes will not produce a plant with over 0.3 percent THC at any time prior to harvest and are not in Category D, and Category D includes all varieties forbidden by any federal law or regulation or added by rule by the department because of its inability to consistently produce hemp.

(a) Category A: CFX-1, CFX-2, CRS-1, Canda, Carmagnola, Carmagnola Select, Fedora 17, Grandi, Joey, Katani, Picolo.

(b) Category B: Altair, Alyssa, Angie, Anka, Armanca, Asso, B 11, Beniko, Bialobrzeskie, C S, CanMa, Cannakomp, Carma, Carmen, Carmaleonte, Chameleon, Codimono, CHA, CHY, Crag, Dacia Secuieni, Debbie, Delores, Delta 405, Deltallosa, Denise, Diana, Dioca 88, Deni, ESTA-1, Eco Aglegra, Eco Nebliss, Eletta Campana, Epsilon 68, Elite, Fasamo, Fedrina 74, Felina 32, Felina 34, Ferimon, Fibrol, Fibranova, Fibrante, Fibriko, Fibrimon 24, Fibrimon 56, Finola, Futura 75, Georgina, GranMa, Glecia, Gliana, Helena, Henola, Hiration, IDA-0103, Ivory, Judy, Jutta, KC Bonusz, KC Dora, KC Virtus, KC Zuzana, Kompolti, Kompolti Hibrid TC, Kompolti Sargaszaru, Laura Secord, Lipko, Lovrin 110, Marcell, Marina, Markant, Martha, Medicine Mother, Monoica, Nadine, Novosadska, Petera, Quida, Rajan, Ratza, Santhica 23, Santhica 27, Santhica 70, Secuieni Jubileu, Silesia, Silistrenski, Silvana, Succesiv, Szarvasi, Tiborszállási, Tisza, Tygra, UC-RGM, USO 14, USO 31, Uniko B, VC Star, Victoria, Villanova, Wojko, X-59 (Hemp Nut), Yvonne, Zenit, Zolotonosha 11, Zolotonosha 15.

(c) Category C: All other hemp varieties that an applicant reasonably believes will not produce a plant with over 0.3 percent THC at any time prior to harvest and is not listed in Category D.

(d) Category D: Any varieties forbidden by any federal law or regulation.

(History: 80-18-107, MCA; IMP, 80-18-102, 80-18-103, 80-18-106, MCA; NEW 2019 MAR p. 532, Eff. 5/11/19.)

4.19.109 PROHIBITION ON GROWING BOTH HEMP AND MEDICAL MARIJUANA

(1) A licensed hemp grower in Montana may not grow both hemp and medical marijuana at the same location unless one is grown indoors and the other is grown outdoors or both are grown in separate buildings at the same location.

(History: 80-18-107, MCA; IMP, 80-18-102, 80-18-103, 80-18-106, MCA; NEW MAR 2019 p. 532, Eff. 5/11/19.)

4.19.110 HEMP SAMPLING

(1) The department may allow a grower to self-sample if the department believes the grower can successfully follow the protocol and it is in the best interest of the department to have the grower do so.

(History: 80-18-107, MCA; IMP, 80-18-102, 80-18-103, 80-18-106, MCA; NEW MAR 2019 p. 532, Eff. 5/11/19.)

Subchapter 2

Hemp Processing Definitions and License Applications

4.19.201 HEMP PROCESSING LICENSE AND FEE

(1) A Montana Hemp Processing License for hemp floral and root extracts is required.

(a) The fee for processing hemp floral and root extracts is $2,500 per year.

(b) All other hemp processors of hemp grain, seed, seed oil, and fiber may apply for a Hemp Processing License for $1,000 per year.

(2) Persons compliant with other state and federal licensing requirements specific to processing and manufacturing of hemp plants and plant parts are exempt from this processing license.

(a) A Hemp Processing License is required to be exempt from the Commodity Dealer License requirement.

(3) Licensed hemp growers may process their own hemp production without a Hemp Processing License.

(4) Hemp Processing Licenses expire on December 31 each year.

(5) A hemp processor is subject to inspection, THC testing, pesticide testing, and any other testing requested by law enforcement or the Montana Department of Agriculture. Both the hemp stored therein, and the products derived from the hemp must comply with state and federal law.

(6) Hemp processing derivatives may include products for food, fiber, oils, supplements, or drugs except for THC production. THC extracted from hemp plants or

hemp floral extraction must be legally disposed of in a manner consistent with state and federal regulations.

(7) Manufacturers purchasing from licensed hemp processors in Montana are not required to possess a Hemp Processing License.

(8) Hemp processors must comply with city, county, and tribal ordinances and laws. Such ordinances may prohibit hemp processing and/or specify additional requirements.

(9) Use of hemp and its derived products in food is subject to the laws and regulations of the United States Food and Drug Association (FDA) and the Montana Department of Public Health and Human Services (DPHHS).

(History: 80-18-107, MCA; IMP, 80-18-102, 80-18-103, 80-18-107, MCA; NEW, 2019 MAR p. 1369, Eff. 8/24/19.)

4.19.202 HEMP PROCESSING FOR A COMMODITY DEALER

(1) A person or entity with a Hemp Processing License for calendar year 2019 to 2020 may contract with licensed Montana hemp producers without a Commodity Dealer License under the following conditions:

(a) the hemp producer acknowledges the hemp processor is not a licensed commodity dealer in Montana, meaning the processor does not have a commodity dealer bond, by signing a written statement;

(b) the total amount of contracted hemp does not exceed $10 million; or

(c) they are purchasing or processing hemp stalks for fiber.

(2) Hemp processors are subject to all remedies of the department included in 80-4-612, MCA, and powers of inspection included in 80-4-601, MCA.

(a) In the event a hemp processor does not pay a licensed hemp producer possessing a contract that would otherwise be subject to Agricultural Commodity Dealer laws, the department may pursue remedies.

(History: 80-4-402, 80-4-601, 80-18-107, MCA; IMP, 80-4-402, 80-4-601, 80-18-102, MCA; NEW, 2019 MAR p. 1369, Eff. 8/24/19.)

MONTANA
Department of
AGRICULTURE

Requirements for the Sale of Live Hemp Plants

1.) The seller must have a current hemp license,

2.) The seller must have a current nursery license,

3.) The seller must verify the buyer has a current hemp license,

- The seller will need to review the hemp license list on the Department's website and record the buyer's license number on the invoice. A sale may not be made to an individual not listed on the Department's licensee list
- The seller must submit a weekly report to the Department listing each sale of a live hemp plant and the buyer's name, address and hemp license number
- The seller must notify the buyer to send updates to the Department for the additional varieties

4.) The seller must send the Department an official lab report listing the Total Delta 9-THC % test results of mature flowers from the mother plant(s),

5.) The Department will require the seller to grow out 1 (or more) mother plants to the bud stage so it can be sampled and tested within the typical maturity period of the variety for the plants sold,

- If the mother plant tests above the 0.3% Total Delta 9-THC threshold, all plants (including those already sold) will be subject to mitigation/destruction
- During the Department's inspection of the seller, the Department may audit their records and randomly select a percentage of sales to verify hemp plants were only sold to licensed growers

6.) In the event that items 3, 4 and/or 5 cannot be met, an appeal may be made to the Department Director outlining the reasons for why an exception or equivalency should be granted.

Ben Thomas, Director
Montana Department of Agriculture