Hemp in Montana- 2020

Montana Department of Agriculture
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Brief History of Federal Hemp Regulations

• Diverse crop grown by most cultures of the world (8,000 BCE – 1937)

• The Marijuana Tax Act of 1937 discouraged growing hemp (1937-1970)

• Controlled Substances Act of 1970
  • Schedule I drug

• 2001: Section 80-18-102, MCA - Industrial hemp authorized as an agricultural crop in Montana
  • Remained a controlled substance federally

• 2014 Farm Bill (Section 7606): defined industrial hemp under federal law and recognized state agricultural departments' authority to develop research pilot programs to study the growth, cultivation, and/or marketing of industrial hemp. (2014 – 2018)
2018 Farm Bill

• Removed industrial hemp from Controlled Substance Act. Transferred regulatory authority from DEA to USDA.
• Hemp is still very much a regulated crop.
• FDA still has federal regulatory authority of hemp in human and animal food though the Food, Drug, and Cosmetic Act (FD&C Act)
• Hemp seed (grain), hemp seed oil, and products made from the seed and stalk are designated as generally recognized as safe (GRAS) for human consumption.
• FDA and the Montana DPHHS have authority in Montana for products for human consumption
• Legitimacy of Industrial Hemp Research
• Clarifies hemp farmers are eligible for crop insurance, normal banking, and other federal farm programs
2018 Farm Bill

• Instructed USDA to review Tribal, State, and University program plans
• Sec. 297B: Plans approved by Secretary of Agriculture must include:
  • Procedure to license growers and maintain location information
    • Changes must be reported
  • Procedure to randomly sample hemp and verify THC not > 0.3%
  • Procedure to test delta-9 THC using post-decarboxylation lab method
  • Procedure for disposal of crop and products > 0.3% THC
  • Procedure to conduct enforcement
  • Procedure for sharing information with USDA
  • Certify the state has the resources to implement a state program

• Montana’s State Hemp Plan submitted to USDA Feb 26, 2019
  • USDA was not reviewing state plans until the Fall of 2019
  • Montana implemented our submitted plan in 2019
2019 Hemp Interim Final Rule Summary (USDA Guidance)

• Importation of seed covered under USDA APHIS
• No mention of hemp specific seed certification program
• Growers required to report hemp acreage to FSA w/ license number
• Labs:
  • Must include a measurement of uncertainty
  • May be required to be ISO 17025 accredited
  • Must be DEA registered lab for testing
  • Samples MUST be tested using post-decarboxylation methods
    • Total THC that includes THCA
2019 Hemp Interim Final Rule Summary (USDA Guidance)

• Compliance
  • Annual inspection
  • It is a violation (but not negligent) for grower with sample results 0.5% or less of Total THC on a dry weight basis
  • Producer who negligently violates state plan 3 times in 5 year period are ineligible to produce hemp for 5 years from date of 3rd violation
  • Negligent violations are not subject to criminal enforcement
  • Criminal background checks are required
  • Growers with a controlled substance felony conviction after enactment of 2018 Farm Bill are prohibited to participate in a hemp program
Sampling
- Samples must be collected within 15 days
- Samples must be of flower material from the top 1/3 of the plant
- All hemp fields should be tested prior to harvest
- Must be collected by USDA approved agent
- Sample of “lot” must be homogenous
- “Lot” – contiguous area in a field, greenhouse, or indoor structure containing the same variety throughout being sold to a single buyer at a single time; determined by the producer in terms of location and field acreage as reported to FSA
2019 Hemp Interim Final Rule Summary (USDA Guidance)

• The department will:
  • continue to negotiate with USDA on topics we disagree
    • 15-day sampling period requirement
    • No post-harvest sampling
    • Sampling method of top 1/3 of plant
    • Mitigation for crops that test >0.3 - <1.0% Total THC
    • Requirement that Growers double register with FSA
  • Provided comments back to USDA in January 2020
  • Revised and re-submitted the Montana State Hemp Plan to USDA
  • Implement the Montana State Plan in 2020
Hemp as an agricultural crop in Montana

• Montana Agricultural Warehouse, Commodity Dealer and Grain Standards Act
  • Any entity purchasing or contracting more than $30,000 of hemp crop production will need a Commodity Dealer License
  • [https://agr.mt.gov/Commodities](https://agr.mt.gov/Commodities)

• Montana Agricultural Seed and Patented Plant Material Act
  • Any entity selling hemp seed in or into Montana will need a seed dealer license and labeler license if selling directly to farmers
  • [https://agr.mt.gov/Topics/Seed](https://agr.mt.gov/Topics/Seed)

• Plant Variety Protection (PVP) Act
  • Certified hemp seed is variety protected
  • [https://www.ams.usda.gov/services/plant-variety-protection](https://www.ams.usda.gov/services/plant-variety-protection)
Hemp as an agricultural crop in Montana

- Montana Disease, Pest and Weed Control Act (Nursery)
  - Propagation and importation of clones
  - Additional documentation may be required for interstate shipments
  - [https://agr.mt.gov/Topics/Nurseries](https://agr.mt.gov/Topics/Nurseries)

- Montana Pesticides Act
  - Federally registered products with hemp on the label may be used on hemp
    - Four products registered in MT, no in-crop use, primarily for indoor use
    - One 25b (minimum risk) pesticide registered in MT
  - There are no herbicides approved and effective for large acreage hemp
  - Pre-plant interval – Hemp is not found on most labels; use the longest post-application period for ‘Other’ crops
  - [https://agr.mt.gov/PesticideProducts](https://agr.mt.gov/PesticideProducts)
  - [https://agr.mt.gov/Portals/168/Documents/IndustrialHemp/PestMgmtGuidelinesforHempinMT.pdf](https://agr.mt.gov/Portals/168/Documents/IndustrialHemp/PestMgmtGuidelinesforHempinMT.pdf) - list of ingredients that registrants may apply for
Hemp as an agricultural crop in Montana

• Definition – the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 THC concentration of not more than 0.3% on a dry weight basis
  • Includes delta-9 THCa due to required testing using post-decarboxylation method
Hemp as an agricultural crop in Montana

• Points to consider...
  • Maturity     Auto-flower vs Photosensitive
  • Seeding rate 2,000/ac to 800,000/ac
  • Plant spacing 5’ x 5’ to 3” x 8”
  • Seed Cost   $3/lb - $4/seed
  • Seed sexing  male plants

• Hemp is fragile early but competitive with weeds after established
  • Plant density is very important
  • Planting depth very important

• Yield and Profit – very much dependent on variety, quality of harvested crop, end use, market, buyers, and growing conditions
Four Risk Categories of Hemp Varieties
Administrative Rules of Montana publication Notice No. 4-19-255

- **Category A** - varieties formally approved by the department
- **Category B** - varieties approved by other states or countries at a level equivalent to the departments ("certified seed")
- **Category C** - all other hemp varieties that an applicant reasonably believes will not produce a plant with over 0.3% THC at any time prior to harvest and are not in Category D
- **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
2020 Montana State Hemp Program

• License application period: January – April 30
• Annual License: upon approval through April 30 of following year
  • Allows for indoor and outdoor grows
  • 2-stage license:
    • Planting – allows for purchase of seed and planting
    • Production – confirmation of hemp planted; allows for growing and harvest of compliant hemp

• Program Fees
  • $850 licensing fees
  • $250 Category C planting fee
  • Additional $250 testing fee for each Category C tested

• Hemp and medical marijuana cannot be grown in the same location
Hemp Processors in Montana

• Added a processor license for regulatory clarity
• Hemp Processor license implemented in September
  • Part A: $2,500 – hemp floral and root extracts (required)
    • Includes Part B
  • Part B: $1,000 – hemp grain, seed, seed oil and fiber (optional)
    • Provides for an exemption of the CD license with conditions
• Seven companies are currently licensed for 2020
Montana Hemp Statistics

• 2017 (first crop year in Montana)
  • 18 licensed growers planted ~525 acres

• 2018
  • 58 license holders planted ~22,000 acres on ~100 farms

• 2019
  • 277 licensed growers with ~60,000 permitted acres
  • 209 Growers planted ~50,000 acres in ~500 fields
    • 40,000 Cat C
    • 10,000 Cat A and B
  • 198 received Production licenses
  • Harvest information will be available later
    • Annual report required of growers
2019 Inspection/Samples

• 153 inspections
• 138 licensee sampled
• 225 samples collected
  • 215 Cs; 90 different varieties; 25% with elevated THC levels
  • 5 Bs; 5 different varieties; all passed
  • 4 As; 3 different varieties; all passed
• 18,418 miles travelled
• 1,509 hours worked
2019 Sample Results

• 55 samples failed representing 8,070 acres and 2,426 sq ft
  • 7,910 acres (45 samples) are allowed by Montana to be mitigated
  • 160 acres (9 samples) will require destruction

• Varieties
  • Hybrid, Abacus, Charlotte’s Web, Cherry Boax, Wife, T1, Cherry Abacus, Cherry-Abacus-Remedy, Cherry Blossom BX, Cherry Wine, Bubblegum, Special Sauce, Original Cherry, Cherry, BaOx, Cherry Struck,
USDA Announces Pilot Insurance Coverage

- eligible to producers in certain counties
  - must comply with applicable state, tribal or federal regulations
  - have at least one year of history producing the crop
  - have a contract for the sale of the insured hemp
  - be licensed under a state, tribal or federal program approved under the USDA interim final rule issued in October 2019

- coverage is for hemp grown for fiber, grain or CBD oil for the 2020 crop, in addition to the Whole-Farm Revenue Protection coverage

- having THC above the federal statutory compliance level will not constitute an insurable cause of loss

- hemp will not qualify for replant payments or prevented plant payments under MPCI

Questions?

https://agr.mt.gov/Hemp

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