



January 9, 2020

United States Department of Agriculture
Agricultural Marketing Service, USDA Domestic Hemp Production Program
410 L'Enfant Plaza S. W.
Post Office Box 23192
Washington, D.C. 20026

Re: Montana 2020 Revised Hemp Plan

Montana's Revised Hemp Plan is enclosed. In the year since we submitted our first plan, the Montana Department of Agriculture has worked with nearly 300 hemp growers to create a program that rationally regulates over 50,000 acres of hemp cultivation. The Montana State Hemp Program sensibly develops and regulates both the crop and the industry. We urge the United States Department of Agriculture (USDA) to approve this plan to allow our farmers to continue to thrive without undue federal interference.

Our revisions include updates to laws and rules to reflect their current status ([Attachment A](#) and [Attachment B](#)); creates a new section to operate within USDA Interim Final rule (IFR) requirements ([Attachment C](#)); and updates forms that are currently used pertaining to disposal protocols, lab qualifications, and sampling procedures ([Attachment F](#)).

While the department understands it is the USDA's policy to require every field be tested in states that do not differentiate varieties by risk, our risk-sensitive categories are included in this proposal for consideration. Montana created a risk profile for seeds and seed categories which the state prefers to base its sampling methods upon. Established categories involving certified seeds are associated with low levels of risk which should not be subject to yearly testing. The Department also submitted comments on the IFR as a whole.

Please reach out to the department with questions or concerns regarding Montana's revised plan.

Andy Gray, Hemp Program Coordinator: (406) 444-0512, angray@mt.gov

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State of Montana Hemp Plan

Montana law requires the Montana Department of Agriculture (hereafter Department) to license hemp growers in the state and provides broad rulemaking authority to create a functional hemp regulatory plan. The Department believes its current plan meets requirements set forth in the 2018 Farm Bill and seeks approval from the United States Department of Agriculture (USDA). Farm Bill requirements are numbered below with the Department's response following each.

1. How will the Department show a practice to maintain relevant information regarding land on which hemp is produced in the State or territory of the Indian tribe, including a legal description of the land, for a period of not less than 3 calendar years?

- (Department Response) Montana Law ([Attachment A](#)) requires a license to grow hemp. Our Hemp License Application form, for both the two years (2018 and 2019) of the pilot program and moving forward with the USDA program, requires the legal description of the land or the longitude and latitude from which the legal description can be obtained. We have updated our forms to be consistent with the proposed USDA forms. The current form is [Attachment F](#). We maintain all governmental records for a minimum of three years and a minimum of 7 years for information such as this.

2. Does the Department have a procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of hemp produced in the State or territory of the Indian tribe?

- (Department Response) Montana has an Analytical Chemistry Lab which has applied for DEA approved status and expects to obtain it soon ([Attachment G](#)). The plan performs two tests:
 1. Determination of Delta-9-Tetrahydrocannabinol (Δ^9 -THC) and Delta-9-Tetrahydrocannabinolic Acid (Δ^9 -THCA) in Hemp Using Liquid Chromatography-Electrospray/Mass Spectrometry;
 2. Determination of Total Moisture in Forages using a Two-Step Procedure.

3. Does the Department have a procedure for the effective disposal of plants, whether growing or not, that are produced in violation of this subtitle; and products derived from those plants?

- (Department Response) The Department has legal authority over hemp and hemp processing. See [Attachment A](#) (Laws) and [Attachment B](#) (Rules). The disposal procedure is outlined in [Attachment E](#).

4. Does the Department have a procedure to comply with the enforcement procedures under the 2018 amendments to the Agricultural Marketing Act of 1946 Section 297A subsection (e)?

- (Department Response) We are adopting procedures to mirror by reference the Farm Bill enforcement actions by rule ([Attachment B](#)). The Department has the ability by state law to adopt additional rules as needed or required by the USDA. All enforcement actions will be conducted with proper due process as guaranteed by Montana law. The Agricultural Marketing Act of 1946 Section 297A subsection (e) is adopted by reference. The Department plans to utilize the DEA procedures and policies including "DEA Internal Directive Regarding the Presence of Cannabinoids in



Products and Materials Made from the Cannabis Plant (May 22, 2018)” when taking compliance actions.

5. Does the Department have a procedure for conducting annual inspections of, at a minimum, a random sample of hemp producers to verify that hemp is not produced in violation of the limits on THC found in the Farm Bill?

- (Department Response) The Department adopted rules ([Attachment B](#), [Attachment C](#)) with plans to have four categories of seed with different risk profiles. Random compliance checks on paperwork and procedures are planned annually for a random number of growers. The schedule for this is 20 percent per year. The risk profiles determine inspection and sampling schedules. Our proposed sampling protocol is found in [Attachment H](#) and our inspection schedule is found in [Attachment I](#). The Department will test all Category C growers and varieties.

6. Does the Department have a procedure for submitting the information described in the Agricultural Marketing Act of 1946 Section 297C(d)(2), as applicable, to the Secretary not more than 30 days after the date on which the information is received?

- (Department Response) The Department already collects required information as part of its state hemp program and will share information based on the schedule specified by the USDA including on a monthly and yearly basis as indicated. See [Attachment C](#).

7. Can the Department certify that the State or Indian tribe has the resources and personnel to carry out the practices and procedures described in 1 through 6 above?

- (Department Response) The Department has proven its capability to do so over the course of the last three years while operating its hemp pilot program. Montana laws and rules allow us to raise fees as needed to pay for costs incurred. [Attachment B](#) includes the Department’s rules that include fees for additional work required by the 2018 farm bill. The Department plans to have two full-time employees in the program and utilize additional staff during the pre-harvest season sampling. The Department certifies that it can, has, and will continue to perform all the duties outlined herein and required in the 2018 Farm bill.

8. Has the Department included any other practice or procedure established by a State or Indian tribe, as applicable, to the extent that the practice or procedure is consistent with this subtitle?

- (Department Response) The Department has included all portions of its current program in the attachments that follow. The Department views failure to obtain a required license as an intentional violation and not a negligence violation.

9. Who are the Department’s contacts for this program?

- Andy Gray
Hemp Program Coordinator
(406) 444-0512
AnGray@mt.gov
- Cort Jensen
Chief Attorney



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Helena, MT 59601



List of Attachments

[Attachment A – Montana Law](#)

[Attachment B - Current Rules](#)

[Attachment C – USDA Compliance Procedures](#)

[Attachment D - Proposed Rules \(currently none\)](#)

[Attachment E – Disposal Protocols](#)

[Attachment F – Current Form](#)

[Attachment G – Lab Qualifications](#)

[Attachment H - Sampling Policy](#)

[Attachment I - Inspection Schedule](#)



Attachment A

Hemp Laws of Montana (MCA)

80-18-101 Definitions

80-18-102 Hemp authorized as agricultural crop

80-18-103 Hemp -- licensing

80-18-104 and 80-18-105 reserved

80-18-106 Hemp production -- notification requirements

80-18-107 Rulemaking authority

80-18-108 and 80-18-109 reserved

80-18-110 Disposition of fees

80-18-111 Affirmative defense for possession or cultivation of marijuana

80-18-101. Definitions. As used in this part, the following definitions apply:

(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.



Attachment B

Current Hemp Rules of Montana

<u>Subchapter 1</u> <u>Hemp Definitions and License Applications</u>			
<u>4.19.101</u>	DEFINITIONS		8/24/2019
<u>4.19.102</u>	APPLICATION FOR MONTANA STATE HEMP PROGRAM LICENSE		5/11/2019
<u>4.19.103</u>	MONTANA STATE HEMP PROGRAM		5/11/2019
<u>4.19.104</u>	FEES		5/11/2019
<u>4.19.105</u>	LAB TESTING FEES		5/11/2019
<u>4.19.1e06</u>	PENALTIES OR REVOCATIONS		5/11/2019
<u>4.19.107</u>	HEMP VARIETY		5/11/2019
<u>4.19.108</u>	HEMP VARIETY CATEGORIES		5/11/2019
<u>4.19.109</u>	PROHIBITION ON GROWING BOTH HEMP AND MEDICAL MARIJUANA		5/11/2019
<u>4.19.110</u>	HEMP SAMPLING		5/11/2019
<u>Subchapter 2</u> <u>Hemp Processing Definitions and License Applications</u>			
<u>4.19.201</u>	HEMP PROCESSING LICENSE AND FEE		8/24/2019
<u>4.19.202</u>	HEMP PROCESSING FOR A COMMODITY DEALER		8/24/2019



Attachment C

USDA Compliance Policy

The Montana Department of Agriculture will utilize the following internal policies and procedures when emulating the USDA approved state hemp plan. The Department would like to state that this in no way waives or abridges the sovereignty of the State of Montana. The USDA is limited in what it can require of states by the language of the 2018 Farm Bill and the US Constitution. These implementations are provided in the spirit of cooperation, with consistency between levels of government, and to create straightforward compliance for our farmers. The Department asks for the USDA's careful consideration before imposing additional requirements not included in the Farm Bill. Our ability to work with the USDA and the FDA is codified in our hemp rules at [ARM 4.19.103\(b\)](#).

A. Reporting to the USDA, AMS, and FSA

1. The Department will provide ("real-time") data on hemp licensees and compliance actions utilizing the fields and formats requested by the USDA. The Department respectfully asks that the USDA consider revising the required field to include only those needed as opposed to those desired (such as emails).
2. Reports will include any changes to the status of producers and the implementation of a license number consistent with the USDA format.
3. The Department will work with growers and the AMS and FSA to create formats that allow for ease of data sharing and consistent labeling to allow for ease of use of federal and state programs.
4. Materially false statements on required forms is prohibited by Montana law and is grounds for denying an applicant participation in the Montana State Hemp Program and may also trigger action from law enforcement.

B. Sampling/Testing Additions

1. The producer or their representative will be present at the growing site for sampling unless a compelling and documented reason is provided by the grower and the Department consents.
2. The Department will have access to samples and inspect any and all cannabis in the hemp program or claimed as hemp by a grower. This is not meant to create or imply jurisdiction or responsibility over medical marijuana.
3. The Department's sampling procedure is pre-harvest sampling. The Department does not believe this is necessary to comply with the Farm Bill and permits post-harvest sampling in situations where it may be necessary due to weather events and where field identities are preserved.
4. Montana's Analytical Chemistry Lab is in the process of attaining its DEA license and expects to receive it before the 2020 testing season.
5. The Department will utilize the Measurement of Uncertainty in a manner consistent with the USDA. The Department urges the USDA show similar flexibility and practicality in sampling variations and procedures.

C. How to Handle a "Hot" Hemp Violation

1. The Department will work with the USDA, DEA, and local law enforcement to ensure that non-compliant hemp is prohibited from entering the stream of commerce or being replanted. This will be accomplished consistently with the "DEA Internal Directive Regarding the Presence of Cannabinoids in Products and Materials Made



- from the Cannabis Plant” (May 22, 2018), focus on rendering plants unable to replant, and isolate and destroy THC consistent with DEA policies when feasible. This will also allow for some portions of the crop to be utilized if rendered DEA complaint. A negligent violation would apply as well. The Department’s forms and procedures for doing so are found in [Attachment E](#) and [Attachment F](#).
2. Procedures for all violations are consistent with the 2018 Farm Bill and incorporate the federal law, including timeframes and corrective action plans, into the Montana Hemp Rule in [ARM 4.19.106](#).

D. Compliance Inspections

The Department incorporated a five-year random rotation of compliance inspections into its Inspection Schedule ([Attachment I](#)).

E. Montana Procedures not listed in the Federal Plan but consistent with it

1. Montana developed hemp seed variety classifications to determine the amount of testing required and frequency of sampling (rated A-D). See [ARM 4.19.108](#).
2. Montana views failure to obtain a hemp license as an intentional violation (instead of negligent) of the act and does not provide any protection in that case should law enforcement view this as criminal action.



Attachment D

Proposed Rules

(currently none)



Attachment E

Disposal Protocol

Throughout this protocol the term “owner” is defined as the grower of the hemp crop, or the owner of hemp product, under the jurisdiction of the Montana Department of Agriculture.

1. If the hemp tests positive for a prohibited amount of THC during sampling, in an inspection, or by self-disclosure of a grower, the Department may notice the owner and either retest the second half of a sample or take a second sample for testing.
2. The owner will receive notice of the non-compliant crop and be issued a stop movement order (other than harvest) and the right to appeal (formally or informally) under the Montana Administrative Procedures Act.
3. The Department will work with the owner to create a plan of action to either destroy the non-compliant hemp or render it compliant.
4. The USDA will also receive notice of the non-compliant hemp and be asked if a remediation plan will be allowed (See 6) or whether destruction will be required.
5. If destruction is required by the USDA, the Department will work with the owner to find a methodology to safely destroy the hemp consistent with state law and any safety concerns present. This may result in the crop being harvested prior to destruction. The owner is responsible for all costs of the destruction. The USDA will then be informed of how and when the hemp was destroyed.
6. If the USDA allows a remediation plan to dilute or eliminate the THC present, the Department will require the owner to sign a consent order and will retest the hemp post-remediation to assure compliance. The order and retest will be sent to the USDA.
7. The owner may be subject to additional regulatory scrutiny (including more frequent testing) during the five years post positive test by the Department or the USDA.



Attachment F

Current Forms

Links are provided to the location of application, reporting, compliance and destruction forms to ensure our USDA counterparts can access current versions of documents. Inspection and sampling forms are included in [Attachment H](#).

Application and Licensing Forms:

[MT Hemp License Application, Stage 1, 2020](#)

[MT Hemp Planting Report, Stage 2, 2020](#)

[MT Planting License Certificate](#)

[MT Production License Certificate](#)

Compliance documents:

[MT Hemp Sample Test Results Report](#)

[MT Hemp Sample Results Informational letter](#)

[MT Hemp Sample Results Affidavit letter](#)

[MT Hemp Sample Results Affidavit](#)

[MT Hemp Sample Results Corrective Action Plan letter](#)

[MT Hemp Sample Results Destruction letter](#)

[MT Hemp Sample Results Destruction form](#)

[MT Mitigation Guidance Document](#)

Reporting documents:

[MT 2019 Annual Hemp Harvest Report](#)



Attachment G

Analytical Lab

The Department utilizes the Montana State University Analytical Lab located in Bozeman, MT and calculates Total Delta9-THC on a dry weight basis ($\% \text{Total delta9-THC} = \% \text{Delta9-THC} + (\% \text{Delta9-THCA} \times 0.8772)$). The 2018 Farm Bill requires testing methodology that utilizes post decarboxylation, which includes THCA.

Contact information and qualifications are provided below. The lab has provided regulatory work for our internal use for decades and has completed contract work for both the federal government and other states. The Analytical Lab's DEA license was applied for in November 2019 and this attachment will be updated once it is received.

Jona Verreth

Laboratory Bureau Chief

Phone : (406) 994-6408

E-mail : JVerreth@mt.gov

McCall Hall, Montana State University

PO Box 173620

Bozeman, MT 59717-3620

ISO/IEC 17025

The laboratory is accredited to ISO/IEC 17025 for the specific tests listed on A2LA Certificate Number 2694.01

Certification

The laboratory is certified in forage analysis by NFTA.

Proficiency Testing

The laboratory participates in the following proficiency testing programs every year:

- § National Forage Testing Association (NFTA)
- § Association of American Feed Control Officials (AAFCO)
- § Magruder (Fertilizer)
- § EPA pesticide residues in soil and plant tissue



Attachment H

Sampling Protocols

The Department will post its current sampling protocols on its website to stay current with the requirements of the USDA, DEA, and the Industry. The sampling protocol provided is the most current version, as of January 1, 2020. The Department has proposed its guidance document for sampling and testing of hemp which outlines the internal procedures the Department will use to guide sampling and testing protocol. These procedures are in draft form and are subject to change at the discretion of the Department. Licensed hemp growers are encouraged to review this document in preparation of having their crop sampled and for guidelines on self-testing.

[Procedure Guidance for Sample Collection, Sample Prep and Delivery](#): includes all inspection and sampling forms.



Attachment I

Inspection/Sampling Schedule

Montana will determine the amount of sampling as it relates to the risk of elevated THC levels in certain varieties. Many varieties of hemp seed, and thereby genetics, exist that are “certified” by an independent third-party agency to internationally recognized standards. Certified hemp seed varieties must meet standards for genetic purity, identity, seed quality and THC testing.

1. The Department will always prioritize inspections by complaints of non-compliance.
2. The Department will strive to minimize the number of inspections needed to avoid unnecessary expense or burden on farmers.
3. The Department's will sample:
 - a. 10% basis for hemp fields in Category A;
 - b. 20% basis for hemp fields in Category B; and
 - c. 100% of hemp fields in Category C.
4. Category D includes forbidden varieties. The Department will notify law enforcement and require testing if plants are discovered in the program.
5. To the extent required by the USDA, the Department will inspect 100% of all fields instead of the sampling schedule proposed in (3).
6. The Department will collect paperwork and conduct procedure inspections on 20% of growers each year to ensure compliance and the growers' understanding of program requirements.