

ARTICLE 12:82

INDUSTRIAL HEMP

Chapter

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CHAPTER 12:82:01

DEFINITIONS

Section

12:82:01:01 Definitions.

12:82:01:01. Definitions. Terms defined in SDCL 38-35-1 shall have the same meaning in this article. In addition, terms used in this article mean:

(1) "Measurement of Uncertainty" means the parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.

Source:

General Authority: SDCL 38-35-11, 38-35-13.

Law Implemented: SDCL 38-35-1, 38-35-11, 38-35-13.

CHAPTER 12:82:02

APPLICATION AND LICENSURE

Section

12:82:02:01 Applications.

12:82:02:02 Grower application requirements.

12:82:02:03 Grower application submission period.

12:82:02:04 Grower license application fee.

12:82:02:05 Grower license approval -- License number -- License nontransferable.

12:82:02:06 Grower license fee.

12:82:02:07 Grower license amendment.

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12:82:02:09 Processor application requirements.

12:82:02:10 Processor license application fee.

12:82:02:11 Processor license approval -- License number -- License nontransferable.

12:82:02:12 Processor license fee.

12:82:02:13 Processor license amendment.

12:82:02:14 Processor license expiration--renewal.

12:82:02:01. Applications. Any person or legal business entity in South Dakota shall obtain a license from the department to purchase, receive, or obtain industrial hemp, other than industrial hemp product, for planting, storing, propagating, producing, or processing industrial hemp. Employees of the State of South Dakota are not required to obtain a license when performing official duties.

Source:

General Authority: SDCL 38-35-11(1).

Law Implemented: SDCL 38-35-2.

12:82:02:02. Grower application requirements. An applicant for a grower license shall apply to the secretary on a form prescribed by the secretary. No application to plant, grow, or produce industrial hemp may be for less than five contiguous outdoor acres. The application must contain:

- (1) The applicant name, mailing address, physical address, telephone number, and email address, if available;
- (2) A legal description and geospatial coordinates of the area where industrial hemp will be located.
- (3) If the applicant is a business entity, the full name of the business and physical address of the principal business location; and identify the full name and titles of the business entity's key participants who have authority on behalf of the business entity; the email address of the business entity, if available; and the business entity's taxpayer identification number;
- (4) An authorization to access state and federal background checks conducted by the South Dakota Division of Criminal Investigation and the Federal Bureau of Investigation on the applicant, key participants, and landowner; and

Source:

General Authority: SDCL 38-35-11(1).

Law Implemented: SDCL 38-35-3.

12:82:02:03. Grower application submission period. Applications for grower licenses shall be accepted by the department for the first sixty days after these rules become effective. Every year thereafter, the department shall accept grower license applications annually, during a sixty-day time period from November 1 through December 30.

Source:

General Authority: SDCL 38-35-11(1).

Law Implemented: SDCL 38-35-3.

12:82:02:04. Grower license application fee. An applicant shall submit at the time of application a nonrefundable grower license application fee in the amount of fifty dollars.

Source:

General Authority: SDCL 38-35-11(1), 38-35-11(5).

Law Implemented: SDCL 38-35-3.

12:82:02:05. Grower license approval -- License number -- License non-transferable. An applicant will be notified by email, if provided, or via U.S. Mail, when the application has been approved or denied. Upon approval, licensee will be assigned a grower license number by the department, which will not be duplicated or reassigned to any other licensee by the department. Licensee will retain the same grower number for all subsequent licenses.

Licenses are non-transferable.

Source:

General Authority: SDCL 38-35-11(1).

Law Implemented: SDCL 38-35-7.

12:82:02:06. Grower license fee. Upon notification of approval of a grower license application, the applicant must remit to the department a license fee in the amount of five hundred dollars. Upon receipt of payment of license fee, the grower license will be issued in electronic format by email, if provided, and the original mailed to the licensee via U.S. Mail.

Source:

General Authority: SDCL 38-35-11(1), (5).

Law Implemented: SDCL 38-35-3, 38-35-7.

12:82:02:07. Grower license amendment. Any change to the required information on an approved grower license requires a licensee to submit a license amendment on a form prescribed by the secretary, within ten business days of the change.

Source:

General Authority: SDCL 38-35-11(1).

Law Implemented: SDCL 38-35-3, 38-35-7.

12:82:02:08. Grower license expiration -- Renewal. A grower license is valid for fifteen months from the date of issue. A grower licensee who seeks to renew a license shall submit a new license application during the annual application submission period.

Source:

General Authority: SDCL 38-35-11(1).

Law Implemented: SDCL 38-35-3, 38-35-7.

12:82:02:09. Processor application requirements. An applicant for a processor license shall apply to the secretary on a form prescribed by the secretary. The application must contain:

- (1) The applicant's name, physical address, telephone number, and email address, if available;
- (2) The physical address of processing location(s);
- (3) The legal description and geospatial coordinates for any location where hemp will be processed;
- (4) If the applicant is a business entity, the full name of the business, the physical and mailing address of the principal business location; and the full names and titles of the business entity's key participants who have authority on behalf of the business entity;
- (5) The full name and title of the key participants, email address, if available, and the taxpayer identification number of the business entity;

(6) Authorization to access state and federal background check conducted by the South Dakota Division of Criminal Investigation and the Federal Bureau of Investigation on the applicant and key participants; and

Source:

General Authority: SDCL 38-35-11(1).

Law Implemented: SDCL 38-35-4.

12:82:02:10. Processor license application fee. An applicant for a processor license shall submit at the time of application a nonrefundable processor application fee in the amount of fifty dollars.

Source:

General Authority: SDCL 38-35-11(1), (5).

Law Implemented: SDCL 38-35-4.

12:82:02:11. Processor license approval -- License number -- License non-transferable.

An applicant for a processor license will be notified by email, if provided, or via U.S. mail, when the application has been approved or denied. Upon approval, licensee will be assigned a processor license number by the department, which will not be duplicated or reassigned to any other licensee by the department. Licensee will retain the same processor number for all subsequent licenses. Licenses are non-transferable.

Source:

General Authority: SDCL 38-35-11(1).

Law Implemented: SDCL 38-35-7.

12:82:02:12. Processor license fee. Upon notification of approval of a processor license application, the applicant shall remit to the department a license fee in the amount of two

thousand dollars. Upon receipt of payment of license fee, the processor license will be issued in electronic format by email, if provided, and the original mailed to licensee via U.S. mail.

Source:

General Authority: SDCL 38-35-11(1), (5).

Law Implemented: SDCL 38-35-4.

12:82:02:13. Processor license amendment. Any change to the required information on an approved processor license requires a licensee to submit a license amendment on a form prescribed by the secretary, within twenty days of the change.

Source:

General Authority: SDCL 38-35-11(1).

Law Implemented: SDCL 38-35-4, 38-35-7.

12:82:02:14. Processor license expiration -- Renewal. A processor license expires on December 31st of the calendar year that the license was issued. A processor licensee who seeks to renew a processor license, shall submit a processor license renewal application by October 1, prior to the expiration of the current license.

Source:

General Authority: SDCL 38-35-11(1).

Law Implemented: SDCL 38-35-4, 38-35-7.

CHAPTER 12:82:03

RECORDS

Section

12:82:03:01 Grower records.

12:82:03:02 Submission of planting and harvest data to United States Department of

Agriculture Farm Service Agency.

12:82:03:03 Processor records.

12:82:03:01. Grower Records. Grower records shall be available for examination by the department and the Department of Public Safety during normal business hours on site.
Grower licensees shall maintain the following grower records for three years in order to document and report as required:

- (1) All license number information and United States Department of Agriculture Farm Service Agency authorization number;
- (2) Physical address;
- (3) Geospatial location(s) of each lot where industrial hemp will be produced;
- (4) Industrial hemp crop acreage;
- (5) Total acreage of industrial hemp planted, harvested, and disposed;
- (6) Record of all processors sold to and quantities sold to each processor;
- (7) Variety/strain for each lot;
- (8) Copies of all notifications of delta-9 tetrahydrocannabinol (THC) test results for each lot;
- (9) All records, documents, and forms regarding the disposal of non-compliant industrial hemp produced in violation of the United States Department of Agriculture guidelines;
- (10) All records, documents, and forms regarding the disposal of industrial hemp for any reason other than produced in violation of the United State Department of Agriculture guidelines;
- (11) Copies of all records, forms, and reports submitted to the department, the Department of Public Safety, law enforcement officers, and to the United States Department of Agriculture Farm Service Agency related to industrial hemp; and
- (12) All records that support, document, or verify the information submitted to the department, the Department of Public Safety, law enforcement officers, and the United States Department of Agriculture Farm Service Agency related to industrial hemp.

Source:

General Authority: SDCL 38-35-11(6).

Law Implemented: SDCL 38-35-8, 38-35-9.

12:82:03:02. Submission of planting and harvest data to United States Department of Agriculture Farm Service Agency. Grower licensees are required to provide their industrial hemp license number and certify industrial hemp acreage planted for all growing location(s) with their local office of the United States Department of Agriculture Farm Service Agency.

Source:

General Authority: SDCL 38-35-11(6).

Law Implemented: SDCL 38-35-18.

12:82:03:03. Processor records. All processor records shall be available for examination by the department and the Department of Public Safety during normal business hours and be maintained onsite. A processor licensee shall maintain these records for three years.

Processor licensees shall keep the following information:

- (1) Industrial hemp crop acquisitions, including grower name, grower address, copy of grower license number, quantity purchased, and transaction date;
- (2) Records of all unprocessed industrial hemp purchased from another processor including processor name, processor address, processor registration or license, quantity purchased, and transaction date;
- (3) Records of all unprocessed industrial hemp sold to another processor including processor name, processor address, processor registration or license, quantity sold, and transaction date; and
- (4) THC byproduct storage and disposal records.

Source:

General Authority: SDCL 38-35-11(1).

Law Implemented: SDCL 38-35-9.

CHAPTER 12:82:04

ENFORCEMENT

Section

12:82:04:01 Negligent violation.

12:82:04:02 Corrective actions.

12:82:04:03 Non-negligent violations.

12:82:04:01. Negligent violation. Upon any determination that a negligent violation related to the growth or transportation of industrial hemp has occurred, the department and the Department of Public Safety will institute a corrective action plan. Negligent violations include:

- (1) Failure to provide accurate legal description of land where industrial hemp is produced;
- (2) Failure to obtain a license for inadvertent or unknown growth of industrial hemp;
- (3) Production of cannabis with THC exceeding the acceptable industrial hemp THC level; or
- (4) Growth of industrial hemp outside of a licensed planting site.

As a result of a negligent violation, a licensee shall not be subject to any criminal enforcement action. Three negligent violations in a five-year period shall result in a grower being ineligible to produce industrial hemp for a period of five years from the date of the last violation.

Source:

General Authority: SDCL 38-35-11(3), (8), 38-35-13(5).

Law Implemented: SDCL 38-35-2, 38-35-9, 38-35-11, 38-35-13, 38-35-16.

12:82:04:02. Corrective actions A corrective action plan established by the department and the Department of Public Safety to correct negligent violations may include:

- (1) A reasonable date to correct the negligent violation; and
- (2) A requirement to periodically report to the department regarding compliance with the corrective action plan for a period of not less than two consecutive calendar years.

The department shall notify the Department of Public Safety of all corrective action plans. The Department of Public Safety shall conduct inspections to determine if corrective action plans have been completed.

Source:

General Authority: SDCL 38-35-11(8), 38-35-13(2), (5).

Law Implemented: SDCL 38-35-10, 38-35-11, 38-35-13.

12:82:04:03. Non-negligent violations. Violations with a culpable mental state greater than negligence as determined by the department, including knowingly growing industrial hemp containing a delta-9-THC concentration that exceeds three-tenths percent (0.3%) on a dry weight basis or a tolerance range as specified by the United States Department of Agriculture, shall immediately be reported to the United States Attorney General and the South Dakota Attorney General, Division of Criminal Investigation.

The department may deem ineligible, and either deny any application for, or revoke or suspend, any license if any applicant, licensee, key participant, or landowner does any of the following:

- (1) Violates state law or USDA rules regarding industrial hemp;
- (2) Provides false or misleading information in connection with any application;
- (3) Has a conviction of a misdemeanor or felony relating to a controlled substance or marijuana under state or federal law in the last ten years, unless participating in a state industrial hemp pilot program authorized under the Agricultural Act of 2014, P.L 113-79, before December 20, 2018; or

- (4) Has been charged with a misdemeanor or felony relating to a controlled substance or marijuana under state or federal law since the most recent background check.

The department may deny, revoke, or suspend the license of a grower or processor following a contested case hearing pursuant to SDCL chapter 1-26.

Source:

General Authority: SDCL 38-35-11(3), (8).

Law Implemented: SDCL 38-35-7, 38-35-9, 38-35-11.

CHAPTER 12:82:05

HANDLING REQUIREMENTS

Section

12:82:05:01 Transportation.

12:82:05:02 Equipment.

12:82:05:01. Transportation. All industrial hemp seed must be covered during transport to avoid inadvertent dissemination of industrial hemp.

Source:

General Authority: SDCL 38-35-11(2).

Law Implemented: SDCL 38-35-11.

12:82:05:02. Equipment. All equipment used to sow or harvest industrial hemp must be thoroughly cleaned after each use to avoid inadvertent dissemination of industrial hemp.

Source:

General Authority: SDCL 38-35-11(2).

Law Implemented: SDCL 38-35-11.

CHAPTER 12:82:06

INSPECTIONS

Section

12:82:06:01 Inspection requirements.

12:82:06:02 Planting verification inspection -- Non-conforming lots.

12:82:06:03 Pre-harvest inspection.

12:82:06:04 Disposal inspection.

12:82:06:05 Pre-harvest inspection procedures.

12:82:06:06 Grower inspection fee.

12:82:06:07 Processor inspection procedures.

12:82:06:08 Processor inspection fee.

12:82:06:01. Inspection requirements. The department and the Department of Public Safety shall have complete and unrestricted access during business hours and may enter on any land or other property where industrial hemp is planted, stored, propagated, produced, or processed for the purpose of inspections, sample collections, testing, or investigation. The Department of Public Safety will report all inspection data to the department.

Source:

General Authority: SDCL 38-35-13(2).

Law Implemented: SDCL 38-35-9.

12:82:06:02. Planting verification inspection -- Nonconforming lots. Within thirty days of planting, each grower licensee shall file with the department documentation to identify the type and variety of each industrial hemp seed planted with its corresponding lot. Upon receipt of this documentation, a planting verification inspection may be scheduled by the department. This inspection will verify the geospatial coordinates of the lots and legal description, address, acreage, location ID, and the actual sites and acreage planted. The grower licensee or a key

participant, shall be present at the inspection. Any growing sites that do not conform to the license must be destroyed, or the license must be amended.

Source:

General Authority: SDCL 38-35-13(2).

Law Implemented: SDCL 38-35-8, 38-35-9.

12:82:06:03. Pre-harvest inspection. The Department of Public Safety shall conduct inspections and collect samples of each lot not more than 15 days before the hemp is harvested. The industrial hemp may only be harvested after the sample is collected. No harvested lot of industrial hemp may be comingled with another harvested lot of industrial hemp or other material except with documented prior written permission by the department. No industrial hemp may leave the dominion of control of the grower licensee until the licensee receives a laboratory result from the department confirming that the lot complies with the law. The grower licensee or a key participant shall be present at the inspection.

Source:

General Authority: SDCL 38-35-13(2).

Law Implemented: SDCL 38-35-10.

12:82:06:04. Disposal inspection.

The Department of Public Safety shall conduct disposal verification inspections to verify that the lot is disposed of in a manner that renders the lot non-retrievable, non-ingestible, and unfit to enter the stream of commerce. The grower licensee or a key participant must be present at the inspection.

Source:

General Authority: SDCL 38-35-13(2).

Law Implemented: SDCL 38-35-9.

12:82:06:05. Pre-harvest inspection procedures. The grower licensee must contact the Department of Public Safety at least 30 days prior to harvest in order to schedule an inspection. If the grower licensee or a key participant fails to be present at the scheduled inspection, a second request for inspection must be made to the Department of Public Safety. Failure to harvest the crop within 15 days after the lot was sampled requires a resampling for total THC concentration or issuance of an order of destruction by the Department of Public Safety.

Source:

General Authority: SDCL 38-35-13(2).

Law Implemented: SDCL 38-35-10.

12:82:06:06. Grower inspection fee. The licensee shall pay to the department a grower inspection fee in the amount of two hundred fifty dollars per lot.

Source:

General Authority: SDCL 38-35-13(2).

Law Implemented: SDCL 38-35-13.

12:82:06:07. Processor inspection. The Department of Public Safety shall inspect every processor location annually. The processor licensee or a key participant shall be present at the scheduled inspection.

Source:

General Authority: SDCL 38-35-13(2).

Law Implemented: SDCL 38-35-9, 38-35-10, 38-35-13.

12:82:06:08. Processor inspection fee The licensee shall pay to the department a processor inspection fee in the amount of five hundred dollars per location.

Source:

General Authority: SDCL 38-35-13(2).

Law Implemented: SDCL 38-35-13.

CHAPTER 12:82:07

SAMPLES AND TESTING

Section

12:82:07:01 Samples.

12:82:07:02 Sample Protocols.

12:82:07:03 Testing.

12:82:07:04 Notice.

12:82:07:01. Samples. Samples will represent a homogenous composition of the lot.

Source:

General Authority: SDCL 38-35-13(4).

Law Implemented: SDCL 38-35-13.

12:82:07:02. Sample protocols. Each sample must be sealed in a collection bag and identified by: inspector, grower licensee name, grower license number, date, and lot ID as provided by the United States Department of Agriculture Farm Service Agency.

Source:

General Authority: SDCL 38-35-13(4).

Law Implemented: SDCL 38-35-13.

12:82:07:03. Testing. The laboratory will determine Delta-9-Tetrahydrocannabinol (Δ^9 -THC) and Delta-9- Tetrahydrocannabinolic Acid (Δ^9 -THCA) concentration in industrial hemp sample by using liquid chromatography-electrospray/mass spectrometry. The laboratory must

report the Delta-9-Tetrahydrocannabinol content concentration level on dry weight basis and the measurement of uncertainty. The acceptable industrial hemp THC for the purpose of compliance is when the application of the measurement of uncertainty to the reported Delta-9-Tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution or range of 0.3% or less.

Source:

General Authority: SDCL 38-35-13(4).

Law Implemented: SDCL 38-35-13, 38-35-14.

12:82:07:04. Notice. Laboratory results must be provided to the department. The department will provide individual test results to licensees via email when provided, and if not provided, via U.S. mail. Industrial hemp may not be processed or enter the stream of commerce until the grower licensee is notified that the industrial hemp lot sampled and tested is compliant with an acceptable THC level when the application of the measurement of uncertainty to the reported Delta-9-Tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution or range of 0.3% or less.

Source:

General Authority: SDCL 38-35-13(4).

Law Implemented: SDCL 38-35-9, 38-35-13.

12:82:07:05. Retesting. When the sample test result reveals THC content concentration level on a dry weight basis that produces a distribution or range that exceeds 0.3% but is less than 0.5%, the sample may be retested at the expense of the grower licensee. The grower licensee may request the retest within 2 business days after the receipt of the initial test results by the grower licensee.

Source:

General Authority: SDCL 38-35-13(4).

Law Implemented: SDCL 38-35-13, 38-35-14.

CHAPTER 12:82:08

DISPOSAL

Section

12:82:08:01 Disposal of noncompliant hemp.

12:82:08:02 Disposal plan -- Witnessed destruction.

12:82:08:01. Disposal of noncompliant hemp. Disposal is required for any industrial hemp lot where the acceptable THC level is noncompliant. The acceptable THC level for the purpose of compliance is when the application of the measurement of uncertainty to the reported THC content concentration level on a dry weight basis produces a distribution or range of 0.3% or less. These noncompliant lots must be disposed of under the direction of, and documented by, the Department of Public Safety. On-site disposal is also required for industrial hemp lots that have been destroyed due to pests, insects, weeds, disease, poor stand, or industrial hemp lots destroyed by a natural disaster or weather event such as a flood or hail. Each lot must be chemically or mechanically destroyed and rendered non-retrievable, non-ingestible, and unfit to enter the stream of commerce using guidelines approved by the United States Department of Agriculture.

Source:

General Authority: SDCL 38-35-13(5).

Law Implemented: SDCL 38-35-9, 38-35-13.

12:82:08:02. Disposal plan -- Witnessed destruction. Licensee must submit a destruction plan to the department within five business days of the receipt of a notice of non-compliance. The disposal method must chemically or mechanically render industrial hemp non-retrievable,

non-ingestible, and unfit to enter the stream of commerce. The Department of Public Safety shall witness and document destruction and disposal of non-compliant hemp in accordance with the approved disposal plan.

Source:

General Authority: SDCL 38-35-13(5).

Law Implemented: SDCL 38-35-9, 38-35-13.

CHAPTER 12:82:09

TRANSPORTATION

Section

12:82:09:01 Industrial Hemp Grower Transportation Permit -- Fee.

12:82:09:02 Industrial Hemp General Transportation Permit -- Fee.

12:82:09:01. Industrial hemp grower licensee transportation permit -- Fee. The

Department of Public Safety may issue an industrial hemp grower transportation permit to an industrial hemp grower licensed pursuant to SDCL 38-35-7. The permit is valid for the length and time period of the grower license. The permit does not allow the permittee to exceed any size or weight limitations in SDCL chapter 32-22. The permit allows the grower licensee to transport industrial hemp from the land described in the licensee's grower license application, to the storage location described in the licensee's grower license application. No other plant material may be transported concurrently with the industrial hemp. Transportation under this permit may only be done by the grower licensee, a key participant, or a person working under contract with, or under the direction of, the grower licensee. The operator of any vehicle operated under this permit must have in their physical possession a copy of the permit, a copy of the grower license under which the industrial hemp was grown or produced, and a manifest that includes the following information about the industrial hemp being transported:

- (1) Specific name and address of the transporter;

- (2) Specific lot from which the hemp was harvested;
- (3) Destination storage location for the hemp; and
- (4) Type of vehicle being used to transport the hemp, to include the make and model of vehicle, and license plate number issued to the vehicle.

Permit applications must be made on a form and in a manner required by the Department of Public Safety. Applications must be submitted to the Department of Public Safety at least five business days before the trip. The fee for this industrial hemp grower transportation permit is twenty-five dollars.

Source:

General Authority: SDCL 38-35-13(3).

Law Implemented: SDCL 38-35-17.

12:82:09:02. Industrial hemp general transportation permit -- Fee. The Department of Public Safety may issue an industrial hemp general transportation permit for all other transportation not conducted under an industrial hemp grower licensee transportation permit issued pursuant to SDCL 38-35-17. The permit is valid for transportation of industrial hemp from the storage location, described in the licensee's application, to market, or for transportation of industrial hemp grown in another jurisdiction through this state. No other plant material may be transported concurrently with the industrial hemp. Permit applications must be submitted to the Department of Public Safety at least five business days before the trip. The permit must be issued to the motor carrier responsible for the transportation of the industrial hemp. A copy of this permit must be in physical possession of the vehicle operator when transporting industrial hemp. In addition to this permit, the operator must be in physical possession of:

- (1) A copy of the license under which the industrial hemp was grown or produced;

- (2) A laboratory report produced by a Drug Enforcement Administration-registered laboratory that confirms the lot of origin of all industrial hemp being transported complies with 7 U.S.C. Chapter 38, Subchapter VII, as provided in 7 C.F.R §§ 990.70(d) and 990.71(d) in effect as of January 1, 2020;
- (3) A signed affirmation from the licensee and the transporter that no illicit drugs or variations of hemp not explicitly authorized by 7 U.S.C. Chapter 38, Subchapter VII will be transported; and
- (4) A bill of lading or manifest that includes the shipment contents, the specific name and address of the transporter, the specific name and address of the origin and lot of origin, the destination of the shipment, the total weight of the load, and the type of vehicle being used, to include the make and model of vehicle, and license plate number issued to the vehicle.

Permit applications must be made on a form and in a manner required by the Department of Public Safety. Applications for the permit must be submitted to the Department of Public Safety at least five business days before the trip. The fee for this industrial hemp general transportation permit is twenty-five dollars.

Source:

General Authority: SDCL 38-35-13(3).

Law Implemented: SDCL 38-35-17.