

Texas Hemp Program

Statutes and Regulations

In 2019 following the federal legalization of hemp production, Texas established a regulatory framework regarding hemp production consistent with federal guidelines laid out in the Agricultural Improvement Act of 2018, and House Bill 1325 enacted by the 86th Texas Legislature. Two agencies oversee the newly established hemp industry; the Texas Department of Agriculture (TDA) which regulates hemp production and non-consumable hemp products, and the Texas Department of State Health Services (DSHS) which regulates consumable hemp products.

Hemp is defined as the plant *Cannabis sativa* L. and any part of that plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis. A consumable hemp product is a food, drug, device, or cosmetic that contains industrial hemp or hemp-derived cannabinoids, including cannabidiol (CBD).

Local governments are not permitted to enact policy which prevents the cultivation, handling, transportation, or sale of hemp, however they may regulate retail sales so long as they do not prohibit the sale of hemp products. Products which contain hemp ingredients on the FDA's Generally Recognized as Safe (GRAS) list, which include hulled hemp seeds, hemp seed protein, and hemp seed oil, are not considered Consumable Hemp Products in Texas.

Prohibition:

The manufacture, processing, distribution, or retail sale of consumable hemp products for smoking is prohibited, however this does not include loose flower. Private possession is not regulated. Four Texas companies are suing to overturn Texas' ban on the manufacture and sale of smokable hemp products, which they warn will shut Texas companies out of a multibillion-dollar industry and lead to inaccurately labeled products on store shelves. These companies (the plaintiffs) and their attorneys were granted a temporary restraining order (TRO) against the state until they can have the temporary injunction hearing in September.

Licensing:

This regulatory framework establishes licensing for farmers, manufacturers, and distributors of hemp products. Certified seeds must be purchased through state approved sources, which will be provided through the TDA. License holders consent to entry on and inspection of all locations where hemp plants and materials are located, with or without cause or advanced notice, and are subject to GPS tracking of plants and materials.

Any person who wishes to produce, process, handle, collect, or sample hemp must hold a valid license with the TDA, or in cases of consumable hemp, with DSHS as well. License holders must complete a mandatory orientation course, and a sampling and collection training course. All submitted information is shared with the USDA.

License holders must be 18 years old. A person who has had a hemp license revoked by TDA, USDA, or other state, Indian nation, or US territory is ineligible to apply for a license for a period of 5 years. Those convicted of a felony related to a controlled substance are ineligible to participate in the state program for a period of 10 years. Those ineligible to participate may not hold ownership of land where hemp is produced. Each applicant must undergo and pay for an annual criminal background check. Applicants may appeal the denial of a license application with TDA. Licenses are not transferable.

Texas Hemp Program

Statutes and Regulations

Fees:

A fee of \$100 will be assessed for each license application. Licenses must be renewed annually for a fee of \$100. Annual renewal is not automatic and requires an application. A participation fee of \$100 is assessed for each facility, lot, and processor registration. The facility modification fee is \$500 for each facility modified after submission. A sampling fee of \$300 will be assessed for collection and testing. The license holder is responsible for all fees related to the shipment or transport of a hemp sample to the laboratory, and all testing fees payable to the laboratory. A fee of \$250 per licensed facility is required to manufacture, process, or distribute consumable hemp products.

Farming:

Any plants or materials found to be in violation of regulatory rules must be destroyed without compensation. This includes material found in excess of an acceptable THC level, plants located in an area that is not licensed by TDA, and plants not accounted for in required reporting. Samples must be tested at least 15 days prior to the expected harvest date, and crops may not be harvested prior to sampling. All plants in a lot which test over the acceptable level of THC must be destroyed without compensation.

Manufacturing:

Manufacturers of consumable products must obtain the DSHS Food Manufacturer License.

Distribution / Transportation:

While hemp is in transit, whether intrastate or interstate, it may not be transported with other crops, and a TDA issued transport manifest must be available for inspection to state officials upon request. Law enforcement officials may collect a sample for testing purposes to determine THC content but may not seize the plant material or arrest the person transporting it, though they may detain the hemp being transported until the manifest is produced. If a peace officer believes that a person transporting hemp is also transporting marijuana or a controlled substance, they may seize and impound the hemp.

Laboratories:

An independent testing laboratory must be registered with TDA and must be accredited by an independent accreditation body in accordance with International Organization for Standardization ISO/IEC 17025 and must be registered with the United States Drug Enforcement Administration. A list of all TDA-registered laboratories will be available to license holders on the TDA website. Laboratories must demonstrate quality assurance to ensure the validity and reliability of results. Analytical testing of samples for THC concentration levels must use post-decarboxylation or other similarly reliable methods and must consider the potential conversion of delta-9 tetrahydrocannabinolic acid (THCA) in hemp to THC. Testing will also be conducted for the presence or quantity of residual solvents, heavy metals, pesticides, and harmful pathogens. Alternative testing protocols will be considered by TDA if they are comparable and submitted in writing.

Test results must be reported no later than the 14th business day from the sample collection date. A retest must be requested within five days of the results of the first test. License holders must use a third-party laboratory which they have no private ownership interest in, or less than 10 percent ownership if the laboratory is publicly traded.

Texas Hemp Program

Statutes and Regulations

Retail:

Retail license holders must submit to routine inspection or complaint investigations. DSHS, within its statutory authority, may detain products, including dietary supplements, that are labeled as or contain hemp, including CBD, and that make unproven health claims, such as preventing, diagnosing, treating and/or curing a health or medical condition. Retail sales of out-of-state consumable hemp products are permitted if the products are processed or manufactured in compliance with that state or jurisdiction's plan approved by the United States Department of Agriculture (USDA). Retailers with products not in compliance with state law must be given fair notice of a potential violation and given an opportunity to cure a violation made unintentionally or negligently. Consumable products must be labeled with a batch identification number, batch date, product name, and link to certificate of analysis.

Research:

Institutions of higher education may apply for a Hemp Research License and must specify the nature and purpose of the hemp-related research to be conducted. License holders other than a Hemp Research License Holder are not permitted to interplant hemp with any other crop without express written permission from TDA.

Record Keeping:

Records regarding all transactions, production, disposal, and procedures, including trade secrets, must be kept for a period of at least three years and made available upon request to TDA.

Violations:

For each negligent violation, the TDA will issue a Notice of Violation and require the license holder to submit a corrective action plan, which must be reviewed and approved by TDA. Corrective action plans will be in place for a minimum of two years. License holders which negligently violate the terms of a license three times in a five-year period shall have their license revoked.

Sources used:

<https://www.informedtexas.org/wp-content/uploads/2020/03/TDA-Adopted-Rules-Title-4.pdf>

<https://www.texasnorml.org/manufacturing-consumable-hemp-rules/>

<https://www.dshs.texas.gov/consumerprotection/hemp-program/default.aspx>

<https://www.texasagriculture.gov/RegulatoryPrograms/Hemp.aspx>

https://www.texasagriculture.gov/Portals/0/forms/COMM/Hemp/TDA_State_Hemp_Plan_FINAL.pdf

<https://legiscan.com/TX/text/HB1325/2019>

https://texas.public.law/statutes/tex._agric._code_section_122.001