

# OKLAHOMA INDUSTRIAL HEMP AGRICULTURAL PILOT PROGRAM LAW AND RULES



OKLAHOMA DEPARTMENT OF AGRICULTURE FOOD and FORESTRY

CONSUMER PROTECTION SERVICES

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# OKLAHOMA DEPARTMENT OF AGRICULTURE FOOD & FORESTRY

CONSUMER PROTECTION SERVICES DIVISION

INDUSTRIAL HEMP LAW

AS AMENDED MAY 2018

TITLE 3. OKLAHOMA STATUTES, SECTIONS 401-410.

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# Oklahoma Industrial Hemp Agricultural Pilot Program Act

## SECTION 3-401 Introduction

This act shall be known and may be cited as the "**Oklahoma Industrial Hemp Agricultural Pilot Program**".

## SECTION 3-402 Definitions

As used in the Oklahoma Industrial Hemp Agricultural Pilot Program:

1. "**Certified seed**" means industrial hemp seed that has been certified by the Oklahoma Department of Agriculture, Food, and Forestry as having no more than three-tenths of one percent (0.3%) delta-9 tetrahydrocannabinol concentration on a dry-weight basis;
2. "**Department**" means the Oklahoma Department of Agriculture, Food, and Forestry;
3. "**Industrial hemp**" means the plant *Cannabis sativa* L. and any part of the plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent (0.3%) on a dry-weight basis;
4. "**Licensee**" means a university or an institution of higher education located in Oklahoma which holds a valid Industrial Hemp License to grow industrial hemp under the Oklahoma Industrial Hemp Agricultural Pilot Program. Nothing in the Oklahoma Industrial Hemp Agricultural Pilot Program shall prevent the licensee from adopting policies and procedures to subcontract with persons or other legal entities to carry out the purposes of the program; provided, that the Oklahoma Department of Agriculture, Food, and Forestry shall ensure subcontractors comply with the program requirements; and
5. "**Industrial Hemp License**" or "**License**" means authorization by the Department for any university or an institution of higher education in Oklahoma to grow and cultivate industrial hemp on a registered land area for research and development purposes as part of the Oklahoma Industrial Hemp Agricultural Pilot Program.

## **SECTION 3-403** Licensee authorization

A. A licensee is authorized to:

1. Engage in the growth and cultivation of industrial hemp from certified seeds for agricultural plant research and development purposes; and
2. Engage in the growth and cultivation of industrial hemp from certified seeds for marketing development purposes.

B. The activities performed under the Oklahoma Industrial Hemp Agricultural Pilot Program shall not subject the persons participating in the program to criminal liability under the Uniform Controlled Dangerous Substances Act. The exemption from criminal liability provided for in this subsection is a limited exemption that shall be strictly construed and shall not apply to an activity that is not expressly permitted under the Oklahoma Industrial Hemp Agricultural Pilot Program.

## **SECTION 3-404** Institution of Higher Learning

A. A university or an institution of higher education located in Oklahoma wishing to engage in industrial hemp growth and cultivation authorized under the Oklahoma Industrial Hemp Agricultural Pilot Program shall apply to the Oklahoma Department of Agriculture, Food, and Forestry for a license prior to planting the industrial hemp.

1. The application shall include:
  - a. the name and address of the university or an institution of higher education,
  - b. the legal description, global positioning system location, and map of the land area on which the licensee will engage in industrial hemp growth and cultivation operations,
  - c. a statement of intended end use, and
  - d. a statement that the licensee intends to plant only certified seeds.

2. By submitting an application, the licensee acknowledges and agrees that:

- a. information provided to the Department may be provided to law enforcement agencies,
- b. the licensee and any entities contracting with the licensee shall allow and fully cooperate with any inspection and sampling that the Department deems necessary,
- c. the licensee will submit all required reports by the applicable due dates specified by the Department, and
- d. the licensee has the legal right to cultivate industrial hemp from certified seeds on the registered land area and shall grant the Department access for inspection and sampling.

B. The Department shall collect a nonrefundable fee from the licensee at the time of application. The Department shall set a fee schedule based on the size and use of the land area on which the licensee will conduct industrial hemp growing or cultivation operations and shall set the fee at a level sufficient to generate the amount of monies necessary to cover the Department's direct costs in implementing the Oklahoma Industrial Hemp Agricultural Pilot Program. Denied applications for a license may be resubmitted within a twelve-month period. The Department may waive the fee for resubmitted applications.

C. A license issued pursuant to this section is valid for one (1) year. In order to continue engaging in industrial hemp growth and cultivation operations in Oklahoma, the licensee must annually apply for a license in accordance with subsection A of this section. The Department may set a separate fee schedule for renewal of existing licenses in good standing.

D. All industrial hemp plant material shall be planted, grown and harvested under a valid license. Any plant material that is not harvested in the license period in which it was planted or volunteer plants that are not destroyed must be declared for inclusion in a subsequent license.

E. If the licensee wishes to alter the land area on which the licensee will conduct industrial hemp growth and cultivation operations within thirty (30) days of any new license, before altering the area, the licensee shall submit to the Department an updated legal description, global positioning system location, and map specifying the proposed alterations.

F. Each licensee shall report any changes to information provided in the license application within ten (10) days of such change to the Department.

G. The Department shall promulgate rules necessary to implement the licensing program and to implement the Oklahoma Industrial Hemp Agricultural Pilot Program.

### **SECTION 3-405** Establish a certified seed program

A. The Department shall establish a Certified Seed Program to identify seeds that have been confirmed to produce industrial hemp. In accordance with all federal state laws and regulations, the Department may import seeds.

B. A variety of industrial hemp may be approved and certified by the Department if it is tested and confirmed to produce mature plants with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent (0.3%) on a dry-weight basis.

C. The Department shall provide and maintain a list of certified seeds to be used by licensees.

### **SECTION 3-406** Harvest report required

A. At least thirty (30) days prior to harvest, each licensee shall file a harvest report on a form approved by the Department that includes:

1. A statement of intended disposition of its industrial hemp crop;
2. The harvest date or dates, location and yield of each variety cultivated within a registered land area;

3. The documented environmental impacts and viability of each variety; and
4. Research data that would assist the Department in future commercialization of industrial hemp.

B. A licensee shall notify the Department immediately of any changes in a reported harvest date by more than five (5) days.

### **SECTION 3-407** Inspection and sampling

A. Any plants of the licensee are subject to routine inspection and sampling to verify that the delta-9 tetrahydrocannabinol concentration of the plants planted does not exceed three-tenths of one percent (0.3%) on a dry-weight basis. The Department shall notify each licensee of the scope of the inspection and the process by which the inspection will be conducted.

B. In addition to any routine inspection and sampling under subsection A of this section, the Department may inspect and take samples from any licensee's plants during normal business hours.

C. The Department shall make a good-faith attempt to have the licensee present at the time of inspection and sampling. The licensee or authorized representative shall provide the Department's inspector with complete and unrestricted access to all plants, parts and seeds, whether growing or harvested, and all land, buildings and other structures used for the growth, cultivation, harvesting or storage of industrial hemp, and all documents and records pertaining to the licensee's industrial hemp-growing and cultivation operation.

D. The licensee shall pay for any inspection and laboratory analysis costs that the Department deems necessary within thirty (30) days of the date of the receipt of an invoice for the costs. The Department shall waive all inspection or sampling costs if no inconsistencies or violations are identified during an inspection that is not part of the regular inspection process.

E. The Department shall promulgate rules to establish a process by which a licensee may contest the procedures, protocols and results or findings of the inspection.



## **SECTION 3-408** License denial or revocation

A. The Department may deny, revoke or suspend a license if the licensee:

1. Violates any provision of the Oklahoma Industrial Hemp Agricultural Pilot Program or rules adopted pursuant to the program;
2. Engages in fraud or deception in the procurement of or attempt to procure a license under this Oklahoma Industrial Hemp Agricultural Pilot Program or provides false information on a license application;
3. Refuses or fails to cooperate and assist the Department with the inspection process;
4. Refuses or fails to provide any information required or requested by the Department for purposes of the Oklahoma Industrial Hemp Agricultural Pilot Program;
5. Knowingly provides false, misleading or incorrect information pertaining to the licensee's cultivation of industrial hemp to the Department by any means, including information provided in any application form, report, record or inspection required or maintained for purposes of the Oklahoma Industrial Hemp Agricultural Pilot Program;
6. Fails to submit any report required by the Oklahoma Industrial Hemp Agricultural Pilot Program; or
7. Fails to pay fees required by the Oklahoma Industrial Hemp Agricultural Pilot Program.

B. If a sample of a licensee's industrial hemp tests higher than three-tenths of one percent (0.3%) but less than one percent (1%) delta-9 tetrahydrocannabinol concentration, the licensee shall not be subject to any penalty under the Oklahoma Industrial Hemp Agricultural Pilot Program if the crop is destroyed or utilized on site in a manner approved of and verified by the Department

## **SECTION 3-409** Feasibility

The Department shall study the feasibility of attracting federal and private funding to implement the Oklahoma Industrial Hemp Agricultural Pilot Program.

## **SECTION 3-410** Revolving fund created

There is hereby created in the State Treasury a revolving fund for the State Board of Agriculture to be designated the "Oklahoma Industrial Hemp Agricultural Pilot Program Fund". The fund shall be a continuing fund, not subject to fiscal year limitations and shall consist of all monies received by the State Board of Agriculture from fees received and collected pursuant to the Oklahoma Industrial Hemp Agricultural Pilot Program, donations, grants, contributions and gifts from any public or private source. The Board may expend funds for the purposes set forth in the Oklahoma Industrial Hemp Agricultural Pilot Program. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment.

Section 11. 63 O.S. 2011, **Section 2-101**, as last amended by Section 1, Chapter 43, O.S.L. 2017 (63 O.S. Supp. 2017, Section 2-101), reads as follows:

Section 2-101. As used in the **Uniform Controlled Dangerous Substances Act**:

23. "**Marijuana**" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin, but shall not include:

- a. the mature stalks of such plant or fiber produced from such stalks,
- b. oil or cake made from the seeds of such plant, including cannabidiol derived from the seeds of the marijuana plant,
- c. any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), including cannabidiol derived from mature stalks, fiber, oil or cake,

- d. the sterilized seed of such plant which is incapable of germination,
  
- e. for any person participating in a clinical trial to administer cannabidiol for the treatment of severe forms of epilepsy pursuant to Section 2-802 of this title, a drug or substance approved by the federal Food and Drug Administration for use by those participants,
  
- f. for any person or the parents, legal guardians or caretakers of the person who have received a written certification from a physician licensed in this state that the person has been diagnosed by a physician as having Lennox-Gastaut Syndrome, Dravet Syndrome, also known as Severe Myoclonic Epilepsy of Infancy, or any other severe form of epilepsy that is not adequately treated by traditional medical therapies, spasticity due to multiple sclerosis or due to paraplegia, intractable nausea and vomiting, appetite stimulation with chronic wasting diseases, the substance cannabidiol, a nonpsychoactive cannabinoid, found in the plant *Cannabis sativa* L. or any other preparation thereof, that has a tetrahydrocannabinol concentration of not more than three-tenths of one percent (0.3%) and that is delivered to the patient in the form of a liquid,
  
- g. any federal Food and Drug Administration-approved cannabidiol drug or substance, or
  
- h. industrial hemp, from the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis which shall only be grown pursuant to the Oklahoma Industrial Hemp Agricultural Pilot Program and may be shipped to Oklahoma pursuant to the provisions of subparagraph e or f of this paragraph;

## **Part 2. RULES FOR OKLAHOMA AGRICULTURAL INDUSTRIAL HEMP PILOT PROGRAM**

### **35:30-24-1. Purpose**

The rules of this subchapter establish the licensing requirements and regulation of the Oklahoma Industrial Hemp Agricultural Pilot Program pursuant to the Oklahoma Agricultural Code, 2 O.S. § 3-401 et seq. The licensing requirements and regulation of the Oklahoma Industrial Hemp Agricultural Pilot Program shall be administered by the Department and shall conform to the Administrative Procedures Act, 75 O.S. § 250 et seq.; to the Oklahoma Agricultural Code, 2 O.S. § 1-1 et seq.; and to the procedural rules promulgated by the State Board of Agriculture in Title 35 of the Oklahoma Administrative Code.

### **35:30-24-2. Definitions**

1. "**Building**" means any single standing structure with walls and a roof but shall not include separate structures connected by corridors or breezeways.
2. "**Contiguous field**" means any contiguous tract of land used for the cultivation of industrial hemp and may include contiguous tracts of land occasionally intersected by roads, streams, or other natural features but shall not include a tract or tracts of land intersected by property owned by a third party or gaps in the cultivation of industrial hemp exceeding one quarter of a mile.
3. "**Cultivation**" means the act of planting, growing, or harvesting industrial hemp and any related agricultural activities.
4. "**Cultivation site**" means the contiguous field, building, storage area, or processing area in which one or more varieties of industrial hemp may be lawfully cultivated, stored, or processed.
5. "**Department**" means the Oklahoma Department of Agriculture, Food, and Forestry, its employees, officers, and divisions.
6. "**Growing Area**" means the portion of a contiguous field or building in which a single variety of industrial hemp is planted, grown, and harvested.
7. "**Industrial Hemp**" means any part of the plant, *Cannabis sativa* L., with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis, whether growing or not, and the seeds thereof.

8. "**Institution of higher education**" means any public or private college or university located in Oklahoma that is part of the Oklahoma State System of Higher Education.
9. "**Institutional licensee**" means any institution of higher education possessing a license to participate in the Oklahoma Industrial Hemp Agricultural Pilot Program.
10. "**License**" means a valid license issued by the Department allowing an institutional licensee to cultivate industrial hemp from low THC seed in Oklahoma.
11. "**Listed low THC seed**" means low THC seed that has been approved by the Department and listed on the Department's Low THC Seed List.
12. "**Low THC seed**" means industrial hemp seed having no more than three-tenths of one percent (0.3%) delta-9 tetrahydrocannabinol concentration on a dry-weight basis.
13. "**Processing Area**" means any physical location in which entire harvested plants are altered by any manner of mechanical, chemical, or other processing techniques. The processing area need not be located on or near the contiguous field or building in which industrial hemp is cultivated but shall be considered as part of the cultivation site.
14. "**Storage Area**" means any physical location in which harvested plants or plant parts are stored. The storage area need not be located on or near the contiguous field or building in which industrial hemp is cultivated but shall be considered as part of the cultivation site.
15. "**Subcontractor**" means a person or business entity that has contracted with an institutional licensee and provides supplies, labor, land, or expertise related to the institutional licensee's participation in the Oklahoma Industrial Hemp Agricultural Pilot Program.

### **35:30-24-3. Application**

(a) Any institutional licensee with a plant science curriculum may participate in in the Oklahoma Industrial Hemp Agricultural Pilot Program by filing an application with the Department for a license:

- (1) Not less than thirty (30) days prior to the planting or cultivation of any industrial hemp crop; or
- (2) No later than December 1 if a subsequent license is required to harvest industrial hemp crops planted before December 31 but scheduled for harvest after December 31.

(b) An institutional licensee shall submit a separate application, pay separate application and inspection fees, and obtain a separate license for each cultivation site licensed by the institutional licensee.

(c) The application shall be on a form provided by the Department and shall, at a minimum, contain the following information:

- (1) The name and address of the institution of higher education;
- (2) The contact information, including but not limited to, names, phone numbers, and email addresses, for any officials or employees of the institution of higher education responsible for oversight of the Oklahoma Industrial Hemp Agricultural Pilot Program and communications with the Department relating to the cultivation of industrial hemp;
- (3) If the institutional licensee intends to utilize subcontractors, the correct legal name of the subcontractors along with all aliases or trade names of the subcontractors;
- (4) If the institutional licensee intends to utilize subcontractors, the address for the subcontractors' primary business locations and any satellite business offices located in Oklahoma;
- (5) If the institutional licensee intends to utilize subcontractors, the contact information, including but not limited to, names, phone numbers, and email addresses, for any officials or employees of the subcontractor responsible for oversight of the Oklahoma Industrial Hemp Agricultural Pilot Program and communications with the Department relating to the cultivation of industrial hemp;
- (6) Proof of ownership for the cultivation site and the following information if the cultivation site is not wholly owned by the institutional licensee:
  - (A) The name, address, and contact information for all persons or entities having any ownership interest in the cultivation site; and
  - (B) An original signed, dated, and notarized letter of acknowledgement from each person having any ownership interest in the cultivation site indicating approval for the cultivation of industrial hemp at the cultivation site;
  - (C) If applicable, a copy of the property lease for the entire duration of the license;
- (7) If the application identifies a contiguous field as the cultivation site:
  - (A) A legal description (Section, Township, Range) of the contiguous field;
  - (B) The global positioning location coordinates at the approximate center of the contiguous field; and
  - (C) An annotated map or aerial photograph with sufficient detail and clarity to define the boundaries and dimensions of the contiguous field in acres, and, if applicable, the locations, boundaries, and dimensions of different growing areas

within the contiguous field along with a description of the variety of industrial hemp corresponding to each growing area;

- (8) If the application identifies a building as the cultivation site:
  - (A) The physical address of the building;
  - (B) The global positioning location coordinates of the building; and
  - (C) An annotated map or blueprint with sufficient detail and clarity to show the boundaries and dimensions of the building and growing area in square feet, and, if applicable, the locations, boundaries, and dimensions of different growing areas within the building along with a description of the variety of industrial hemp corresponding to each growing area;
- (9) A description of any areas used to store or process plants or plant parts, including but not limited to:
  - (A) The physical address or location of any storage areas or processing areas;
  - (B) The global positioning location coordinates of any storage areas or processing areas; and
  - (C) An annotated map or blueprint with sufficient detail and clarity to show the location, boundaries and dimensions of any storage areas or processing areas in square feet;
- (10) A schedule identifying the intended dates of planting and intended dates of harvesting any industrial hemp crop or crops;
- (11) A statement of intended use and disposition for the industrial hemp harvested from the cultivation site or any plant parts thereof;
- (12) A notarized and sworn statement from an official or employee of the institutional licensee and from an official or employee of any associated subcontractor that only certified seed will be planted at the cultivation site; and
- (13) Acknowledgement and agreement with the following terms and conditions:
  - (A) Any information provided by the institutional licensee or subcontractors is subject to public disclosure under the Open Records Act;
  - (B) Any information provided by the institutional licensee or subcontractors may be released by the Department to law enforcement agencies without notice to the institutional licensee or its subcontractors;

(C) The institutional licensee and subcontractors shall fully cooperate with the Department, grant the Department physical access to any part of the cultivation site and allow inspection and sampling that the Department deems necessary; and

(D) The institutional licensee and subcontractors shall submit all required reports by the dates specified by the Department.

(e) A subcontractor may submit applications, pay associated fees, and file reports required by the Department on the institutional licensee's behalf if authorized by the institutional licensee to do so. The institutional licensee's approval for the subcontractor to submit applications, pay fees, pay fines, and file reports shall be evidenced by an original, dated, signed, and notarized authorization letter from an official or employee of the institutional licensee identified in subsection (c)(2) of this section submitted with the application for a license. A unique original, dated, signed, and notarized authorization letter shall be required for each new application, for each subsequent application, or renewal of an existing license.

(f) Incomplete applications shall not be processed by the Department and any associated application fees shall be retained by the Department.

(g) Applications that are denied by the Department may be resubmitted within twelve (12) months of the original filing. The Department may waive application fees for resubmitted applications.

#### **35:30-24-4. Grounds for denial of application**

(a) The Department may consider a number of factors when deciding to grant or deny a license

including, but not limited to, the location of the cultivation site; the criminal history of the institutional licensee, subcontractor, or employees thereof; and prior administrative actions taken by the Department against the institutional licensee, subcontractors, or employees thereof.

(b) The Department's denial of a license may be contested in the manner provided by this subchapter.

#### **35:30-24-5. License**

(a) A separate license shall be required for each cultivation site operated by the institutional licensee.

(b) All licenses expire on December 31 of the year in which the license was issued. Any industrial hemp that is not harvested on or before December 31 must be declared for inclusion in a subsequent license or destroyed by the institutional licensee.

(c) Every license issued by the Department shall remain the property of the Department. Possession of a license does not confer any property right or exemption from criminal liability



under the Uniform Controlled Dangerous Substances Act to the institutional licensee, subcontractor, or officials or employees thereof that is not expressly described in this subchapter. (d) The Department may restrict, limit, or impose conditions on any license that are not similarly imposed on other institutional licensees or cultivation sites.

(e) Licenses shall not be assigned or transferred.

(f) Unless the context expressly indicates otherwise, a subcontractor's compliance with the Oklahoma Industrial Hemp Agricultural Pilot Program and the rules of this subchapter shall be sufficient to satisfy the obligations of the institutional licensee to comply with the Oklahoma Industrial Hemp Agricultural Pilot Program and the rules of this subchapter.

### **35:30-24-6. Continuing obligation to provide information**

(a) Every institutional licensee shall have a continuing obligation to provide current information to the Department. The institutional licensee shall provide updated information if there is any material change to the information provided in the application within ten (10) days of the material change unless otherwise specified herein, including but not limited to, changes in personnel or contact information.

(b) The institutional licensee shall file an amendment to the institutional licensee's application not less than thirty (30) days prior to making any alteration to boundaries, dimensions, or growing areas of a cultivation site or a change in the variety of industrial hemp cultivated.

(c) The institutional licensee shall immediately notify the Department of any change to the planting and harvesting schedule exceeding five (5) days from the planting and harvesting schedule listed in the application.

(d) The employment of a new subcontractor or replacement of an existing subcontractor associated with a license for a particular cultivation site shall require the submission of a new application and the payment of new application and inspection fees by the institutional licensee.

### **35:30-24-7. Fees**

(a) Each new, subsequent, or renewed application for a license to cultivate industrial hemp at a particular cultivation site shall require the payment of a nonrefundable application fee at the rate of Five Hundred Dollars (\$500.00).

(b) Each new, subsequent, or renewed application for a license cultivate industrial hemp at a particular cultivation site shall require the payment of a site inspection fee calculated at the rate of Five Dollars (\$5.00) per acre on a contiguous field or Thirty Three Cents (\$0.33) per square foot in a building.

(c) An hourly inspection rate consisting of Thirty Five Dollars (\$35.00) per hour per inspector for actual time devoted to the inspection of a cultivation site shall be charged

following routine or unannounced inspections. The calculation of the hourly inspection rate shall include the inspectors' travel time from the inspectors' duty station to the cultivation site, the time devoted to inspection of the cultivation site, and the inspectors' travel time returning from the cultivation to the inspectors' duty station.

(d) Application amendments or notifications of material change to the information provided in an application shall not require the payment of additional application fees but may, at the discretion of the Department, require additional inspections and the payment of additional site inspection fees and fees assessed at the hourly inspection rate at the same rate charged for a new application.

(e) An annual nonrefundable registration fee of One Hundred Dollars (\$100.00) shall be paid for listing certified seed on the certified seed program list. A separate annual registration fee shall be required from each vendor for each variety of certified seed included on the certified seed program list.

### **35:30-24-8. Certified seed program**

(a) An institutional licensee shall only plant, sell, or purchase certified seed listed on the certified seed program list.

(b) Institutional licensees may retain seeds cultivated from prior harvests for replanting without offering the retained seed for sale to third parties, however, seed retained in this manner shall be designated as certified seed and listed by the Department on the certified seed program list as specified herein prior to replanting.

(c) The Department shall approve certified seed for sale and use in Oklahoma by listing certified seed on the certified seed program list.

(d) The Department may rely on the legally constituted certification officials of a state, foreign country, or the United States to approve certified seed imported into Oklahoma.

(e) The Department may approve varieties of industrial hemp seed produced in Oklahoma as certified seed for planting, replanting, sale, or purchase. The Department shall rely on the Agricultural Experiment Station and the Agricultural Extension Service of Oklahoma State University, Division of Agricultural Sciences and Natural Resources, or by another appropriate state agency to designate seed produced in Oklahoma as certified seed. Designation of certified seed shall comply with the general requirements of state and federal law for certification of seed. (f) The Department shall compile and publish on the Department's website an approved list of certified seed for the certified seed program. The certified seed program list shall identify vendors, varieties of certified seed, and a notation indicating whether the certified seed is commercially available for purchase or is retained for private use and replanting, as follows:

- (1) The Department shall accept informational submissions and payment of annual registration fees by vendors or institutional licensees seeking to include varieties of certified seed on the certified seed program list; and

(2) Each variety of certified seed registered by a vendor or institutional licensee shall be registered and listed separately and shall require the payment of a separate registration fee. (3) Each vendor selling certified seed or retaining certified seed for private use shall register each variety of certified seed that the vendor intends to sell or replant regardless of whether another vendor has registered the same variety of certified seed.

(e) Listings on certified seed program list shall expire on December 31 of each year. Vendors or institutional licensees may request that listings of certified seed be renewed by submitting a request for relisting on or before December 1 along with the payment of any necessary annual registration fees. Requests for relisting shall not require supplementary informational submissions unless requested by the Department.

### **35:30-24-9. Harvest reports**

(a) Not less than thirty (30) day prior to harvest, the institutional licensee shall file a harvest report on a form provided by the Department and shall, at a minimum, contain the following information:

- (1) The name of the institutional licensee and any associated subcontractors;
- (2) The location of the cultivation site or parts thereof wherever situated;
- (3) A description of each variety of industrial hemp growing at the cultivation site;
- (4) The expected date or dates of harvest for each variety of industrial hemp growing at the cultivation site;
- (5) The expected yield for each variety of industrial hemp planted at the cultivation site along with a description of the growing area in which each variety was planted sufficient to calculate the growing area in acres for outdoor cultivation or square feet for indoor cultivation;
- (6) A description of the intended use and disposition of the industrial hemp product, including but not limited to:
  - (A) Whether the whole plant will be sold or otherwise transferred to a third party with sufficient additional information for the Department to identify the price for a specific quantity of industrial hemp;
  - (B) Whether individual plant parts rather than the whole plant will be sold or otherwise transferred to a third party with sufficient additional information for the Department identify the price for a specific quantity of plant parts along with a description of the plant parts sold or transferred;

- (C) A general description of any mechanical, chemical, or other processing techniques applied to the whole plant before sale or transfer to a third party;
- (E) The name and contact information of the person or business entity to which the whole plant or plant parts will be sold or transferred; and
- (D) Whether the whole plant or any part thereof will be destroyed after harvest;

- (7) A description of fertilizers, pesticides, or other chemicals applied to each variety of industrial hemp planted at the cultivation site;
- (8) A description of irrigation or water management practices applied to each variety of industrial hemp planted at the cultivation site;
- (9) A description of tillage or ground preparation practices applied to each variety of industrial hemp planted at the cultivation site; and
- (10) A description of the environmental impacts and viability of each variety of industrial hemp planted along with any supporting documentation.

(b) Not less than thirty (30) days following the harvest, the institutional licensee shall supplement the harvest report and declare the actual yield for each variety of industrial hemp planted at the cultivation site and any material change to the information supplied in the harvest report.

**35:30-24-10. Records**

- (a) The institutional licensee shall retain the following records for no less than five (5) years from the date the record is obtained or generated:
  - (1) All records relating to information supplied in the application for a license;
  - (2) All records relating to the use and disposition of industrial hemp harvested or any plant parts thereof;
  - (3) All records relating to the storage or processing of industrial hemp or any plant parts thereof;
  - (4) All records relating to the destruction of industrial hemp harvested or any plant parts thereof, including but not limited to, any affidavits, notifications, and electronic records required by this subchapter.
- (b) The institutional licensee shall produce or allow inspection of records at the request of the Department.
- (c) The institutional licensee's obligation to retain and produce records shall be satisfied if the subcontractor retains or produces records.

### **35:30-24-11. Inspection and testing**

- (a) The Department shall develop an evidence gathering methodology for the inspection of cultivation sites and the collection of industrial hemp test samples.
- (b) The Department may develop laboratory testing methodologies to verify the concentration of delta-9 tetrahydrocannabinol in industrial hemp test samples or the Department may contract with another laboratory to conduct such testing using laboratory protocols approved by the Department.
- (c) The Department may inspect and take samples from any cultivation site and mature *Cannabis sativa L.* plants located thereon, as follows:
  - (1) The Department shall send written notification of routine inspections to the institutional licensee and subcontractor, if applicable, describing the date, time, scope, and process of routine testing.
  - (2) The Department may conduct unannounced inspections and collect samples from any cultivation site during regular business hours without advance notice.
- (d) Industrial hemp test samples collected by the Department during routine or unannounced inspections shall be tested to verify that the delta-9 tetrahydrocannabinol concentration of industrial hemp does not exceed 0.3% on dry weight basis.
- (e) The institutional licensee shall pay the hourly inspection fees and laboratory analysis costs for any routine and unannounced inspections within thirty (30) days after receiving an invoice from the Department.
- (f) The Department shall waive all hourly inspection fees and laboratory analysis costs for an unannounced inspection if no violations or inconsistencies are identified by the Department.

### **35:30-24-12. Violations**

- (a) The Department may deny, suspend, or revoke a license or fine an institutional licensee upon a finding by the Department that that the institutional licensee has violated the Oklahoma Industrial Hemp Agricultural Pilot Program and the rules of this subchapter.
- (b) Violations committed by subcontractors or officials and employees thereof shall be considered violations of the institutional licensee.
- (c) The fine for violating the Oklahoma Industrial Hemp Agricultural Pilot Program and the rules of this subchapter shall not exceed Ten Thousand Dollars (\$10,000) per violation per day or occurrence.

(d) Nothing in this subchapter shall restrict the institutional licensee from contractually obligating subcontractors to indemnify and hold the institutional licensee harmless from fines issued by the Department for violations occurring at a cultivation site operated by the subcontractor. The institutional licensee may require a bond or surety to guarantee the contractual obligations of the subcontractor for the payment of fines. However, the institutional licensee shall be financially responsible for any fines issued by the Department.

(e) The following conduct shall be considered a violation of the Oklahoma Industrial Hemp Agricultural Pilot Program and the rules of this subchapter:

- (1) Providing false, misleading, or incorrect information or otherwise engaging in fraud or deception to secure or retain a license;
- (2) Failure to timely, accurately, and truthfully complete and submit any application, report, or request for information from the Department;
- (3) Failure to retain records required by this subchapter or produce such records at the request of the Department;
- (4) Interference with the inspection process, including but not limited to, refusal to grant unrestricted access to a cultivation site; impeding the sampling of plants; or refusal or failure to fully cooperate with the Department's inspections;
- (5) Failure to timely pay any fee or invoice issued by the Department;
- (6) Planting, growing, harvesting, storing, or processing the plant, *Cannabis sativa* L., in locations other than the cultivation site described in the application for license or amendments thereto;
- (7) Refusal or failure to comply with orders of the Department or the rules of this subchapter requiring the destruction of industrial hemp, the plant, *Cannabis sativa* L., with a delta-9 tetrahydrocannabinol concentration of exceeding three-tenths of one percent (0.3%) on a dry weight basis, or any plant parts thereof;
- (8) Planting, growing, or harvesting the plant, *Cannabis sativa* L., with a delta-9 tetrahydrocannabinol concentration of exceeding three-tenths of one percent (0.3%) on a dry weight basis, as follows:
  - (A) The Department shall calculate an average from the results from all test samples collected from a growing area during an inspection in accordance with the Department's evidence gathering methodology to determine whether a violation occurred. A calculated average of delta-9 tetrahydrocannabinol concentrations exceeding three-tenths of one percent (0.3%) on a dry weight basis derived from test samples collected in the growing area shall be prima facie evidence that a violation occurred. The institutional licensee shall have the burden of proof to contradict such evidence.

(B) If the calculated average of delta-9 tetrahydrocannabinol concentrations in test samples collected from a growing area exceeds three-tenths of one percent (0.3%) but is equal to or less than one percent (1%) on a dry weight basis, the institutional licensee shall destroy all Cannabis sativa L. plants and plant parts from the growing area in question. Upon the destruction of the crop, the institutional licensee shall be subject to no additional fines or penalties.

(C) If the calculated average of delta-9 tetrahydrocannabinol concentrations in test samples collected from a growing area exceeds one percent (1%) on a dry weight basis, the institutional licensee shall destroy all plants and plant parts planted, grown, or harvested from the growing area in question. The Department may impose additional fines or penalties including the denial, suspension or revocation of a license by the Department.

(f) Failure to disclose different varieties of the plant, Cannabis sativa L., in a single growing area shall be a violation. A difference of delta-9 tetrahydrocannabinol concentrations exceeding two percent (2%) on a dry weight basis between test samples collected from different sections of the same growing area shall be prima facie evidence that more than one variety of the plant, Cannabis sativa L., was planted in a single growing area and that a violation occurred. The institutional licensee shall have the burden of proof to contradict such evidence.

### **35:30-24-13. Destruction**

(a) The institutional licensee shall destroy all Cannabis sativa L. plants or plant parts if required by the rules of this subchapter or by order of the Department.

(b) Incineration is the only acceptable method of destruction unless the Department provides the institutional licensee written authorization for an alternate method of destruction.

(c) The institutional licensee shall document the destruction of Cannabis sativa L. plants or plant parts, as follows:

(1) The institutional licensee shall submit a notification of intended destruction to the Department not less than ten days prior to the date that the institutional licensee undertakes the destruction of the Cannabis sativa L. plants or plant parts, communicate the time and date of the destruction, and allow Department inspectors to be present during the destruction;

(2) The institutional licensee shall make and retain a date-stamped electronic video recording the collection, ignition, and incineration of the Cannabis sativa L. plants or plant parts. The video recording shall be retained as a record relating to the destruction of industrial hemp for not less than five (5) years. The date stamp need not be displayed on the video recording but shall, at a minimum, appear in the electronic file name. The

electronic video recording shall consist of sufficient duration and detail to verify that the destruction occurred and was completed;

(3) An officer or employee of the institutional licensee or subcontractor responsible for oversight of the Oklahoma Industrial Hemp Agricultural Pilot Program and communications with the Department relating to the cultivation of industrial hemp shall submit an affidavit to the Department affirming the destruction not more than ten (10) days following the destruction.

(d) Destruction shall be conducted safely and shall not be conducted in a manner consistent with the requirements for prescribed burning at 2 O.S. §16-28.2. The institutional licensee shall delay the destruction required by this subchapter or by order of the Department until the risk of starting a wildfire is minimal.

### **35:30-24-14. Hearings and contests**

(a) All administrative actions brought by the Department seeking the imposition of a penalty for the violation of this subchapter and all contests brought by an institutional licensee or subcontractor shall be considered individual proceedings and shall comply with the Administrative Procedures Act, 75 O.S. § 250 et seq., and the rules of the Department.

(b) The Department shall grant subcontractors legal standing to participate in individual proceedings if the subcontractor is authorized to do so by the institutional licensee that is the subject of the individual proceeding.

(c) The Department shall initiate an individual proceeding by serving a notice of violation on the institutional licensee and any associated subcontractor listed in the Department's records for the cultivation site in question. An individual proceeding initiated by the Department shall be required for the Department to suspend or revoke a license or impose a fine. The Department shall not be required to initiate an individual proceeding for the denial of an application for a license or to enforce the rules of this subchapter, including but not limited to, ordering the destruction of *Cannabis sativa L.* plants as specified herein.

(d) An institutional licensee or authorized subcontractor may initiate an individual proceeding contesting the denial of an application, conditions or limitations placed on a license, or order of destruction by filing a petition with the Department. The petition shall state with particularity the factual grounds, arguments, and citation of legal authorities for the contest.

(e) All individual proceedings shall be heard by an administrative law judge. All evidence and legal arguments shall be offered to the administrative law judge consistent with the regular practices and rules of the Department. The findings and recommendation of the administrative law judge shall be presented to the State Board of Agriculture for a final decision. No new evidence or arguments shall be presented to the State Board of Agriculture.