

RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF PLANT INDUSTRY

New Jersey Hemp Program

Readoption with Amendments: N.J.A.C. 2:25

Proposed: December 20, 2021, at 53 N.J.R. 2125(a).

Adopted: March 23, 2022, by the State Board of Agriculture and Douglas H. Fisher, Secretary, Department of Agriculture.

Filed: April 20, 2022, as R.2022.d.060, **without change**.

Authority: P.L. 2019, c. 238.

Effective Dates: April 20, 2022, Readoption;
May 16, 2022, Amendments.

Expiration Date: April 20, 2029.

Summary of Public Comment and Agency Response:
No comments were received.

Federal Standards Statement

The readoption of N.J.A.C. 2:25 with amendments is authorized by the New Jersey Hemp Farming Act and comply with the 2018 Farm Bill, Pub.L. 115-334, and its implementing rules at 7 CFR Part 990. The 2018 Farm Bill now makes hemp legal to grow anywhere in the United States, as long as it is grown under the auspices of a state-run program or under the United States Department of Agriculture's (USDA) program. The 2018 Farm Bill anticipates and allows state-run programs to be more restrictive than the Federal standards.

The USDA published its interim final rules for domestic hemp production on October 31, 2019. The USDA's final rules became effective on March 22, 2021. New Jersey was one of the first three states to receive approval from the USDA prior to implementing the hemp program.

Some provisions of the New Jersey Department of Agriculture's ("Department" or "NJDA") new rules exceed the Federal standards. N.J.A.C. 2:25-2.2 requires a site modification fee any time a growing site is altered or added to an existing license. This is necessary to ensure that the Department can submit accurate records to the USDA, which must be kept apprised of the status of all hemp producers and have accurate legal descriptions of all land being used to produce hemp.

N.J.A.C. 2:25-2.2 prohibits direct and unsupervised public access to hemp, such as hemp mazes or any other recreational activity. The Department deems these measures necessary to prevent members of the public from having unauthorized access to plants and seeds that could be used to cultivate hemp in violation of this chapter.

N.J.A.C. 2:25-3.2 allows the Department to prohibit any hemp, seeds, plantlets, or propagules for use in the Program for any reason. If the Department determines that any particular strain or source for hemp is unreliable, the strain or source may be prohibited in order to protect the integrity of the Program. Hemp farmers will suffer financial losses for every non-compliant field they must destroy, so it is more efficient to prevent non-compliant hemp from being planted. If non-compliant hemp is processed into foodstuffs, it could result in Statewide or nationwide recalls.

While the rules regarding violations generally match the Federal standards, the Department includes additional negligent violations, such as the failure to submit timely reports and unresponsiveness to Departmental requests. Negligent violations and corrective action plans are described in detail at N.J.A.C. 2:25-6. Negligent violations include producing *Cannabis sativa L.* with a post-decarboxylation delta-9 THC concentration of more than 1.0 percent on a dry weight basis, failing to provide a legal description of the land on which hemp is produced, and failing to obtain necessary authorizations pursuant to the Program. Hemp producers who have committed a negligent violation are required to adhere to a Corrective Action Plan, which includes requirements to set a reasonable date by which the hemp producer shall correct the negligent

violation, and to submit reports detailing compliance measures for a period of two years. If the Department finds that other infractions are serious enough, a hemp producer may still be placed on a Corrective Action Plan. If three separate negligent violations occur within a five-year period, a license shall be revoked, and the hemp producer will be ineligible to work in the program for a period of five years from the date of the third violation. However, the Department may also issue warnings that do not count toward the Federally mandated limit of three violations. Any person who materially falsifies any information in an application will be ineligible to participate in the Program.

The readoption of N.J.A.C. 2:25 with amendments otherwise matches Federal standards, including those related to maintenance of information, provision of required information to USDA, a procedure for testing for THC, disposal of noncompliant hemp, imposition of violations, and the conduct of annual inspections.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 2:25.

Full text of the adopted amendments follows:

SUBCHAPTER 1. GENERAL PROVISIONS

2:25-1.2 Definitions

As used in this chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

...
 "Decarboxylated" means the completion of the chemical reaction that converts THC-acid (THC-A) into delta-9 THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9 THC and seven-tenths percent (.877) of THC-acid.

...
 "Federally defined THC level for hemp" or "acceptable hemp THC level" means a post-decarboxylation delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis for hemp or in a hemp product, or any other limit established by Federal law, rules, or regulations. Hemp will satisfy the standard of "Federally defined THC level for hemp" or "acceptable hemp THC level" if laboratory testing confirms a result within a measurement of uncertainty that includes the THC concentration level of 0.3 percent. For example, if the reported total potential delta-9 THC content concentration in a sample is 0.35 percent, and the measurement of uncertainty is +/- 0.099 percent, the hemp would be compliant, because 0.3 percent falls within the distribution range between .251 percent and .449 percent.

...
 "Growing area" means any outdoor or indoor area used for cultivation in a natural, rural, or non-densely populated suburban area that is a minimum of 1.0 contiguous acre (outdoor) or a minimum .25 acre (indoor) actively being used in hemp production. Indoor growing areas will not be allowed in residential structures, commercial storage units, or community gardens.

...
 "Hemp" means the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a post-decarboxylation delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent, or the current Federally acceptable hemp THC level, on a dry weight basis. Hemp and hemp-derived cannabinoids, including cannabidiol, shall be considered an agricultural commodity and not a controlled substance due to the presence of hemp or hemp-derived cannabinoids.

...
 "Hemp product" means a finished product with a post-decarboxylation delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent that is derived from or made by processing a hemp plant or plant part and prepared in a form available for commercial sale. The term includes cosmetics, personal care products, food intended for human or animal

consumption, cloth, cordage, fiber, fuel, paint, paper, particleboard, plastics, and any product containing one or more hemp-derived cannabinoids, such as cannabidiol. Hemp products shall not be considered controlled substances due to the presence of hemp or hemp-derived cannabinoids. All synthetically derived tetrahydrocannabinols remain Schedule I Controlled Substances pursuant to U.S. Drug Enforcement Agency rules and are not allowable for production.

... “Post-decarboxylation,” in the context of testing methodologies for THC concentration levels in hemp, means a value determined after the process of decarboxylation that determines the total potential delta-9 tetrahydrocannabinol content derived from the sum of the THC and THC-A content and reported on a dry weight basis. The post-decarboxylation value of THC can be calculated by using a chromatograph technique using heat and gas chromatography, through which THC-A is converted from its acid form to its neutral form, THC. Thus, this test calculates the total potential THC in a given sample. The post-decarboxylation value of THC can also be calculated by using a high-performance liquid chromatograph technique, which keeps the THC-A intact, and requires a conversion calculation of the THC-A to calculate total THC in a given sample.

... “THC” means tetrahydrocannabinol, which is a psychoactive component in cannabis plants.

“Total potential delta-9 THC” means the total potential delta-9 THC concentration levels in hemp, determined after the process of decarboxylation. It is derived from the sum of the (delta-9 THC) + (THCA * 0.877) and reported on a dry weight basis.

2:25-1.3 Records designated as confidential

In addition to records designated as confidential pursuant to the provisions of the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq., and any other law, rule, or Executive Order; the license application, supporting documentation, filed hemp producer reports, or any testing results shall not be considered government records subject to public access pursuant to OPRA. The only information that shall be considered public shall be the hemp producer’s name, email address, and mailing address.

SUBCHAPTER 2. ANNUAL APPLICATION FOR LICENSE

2:25-2.2 Terms and conditions of licensure

- (a)-(k) (No change.)
- (l) Licenses shall not be assigned or transferred to any other individual, business, or company under any circumstances.
- (m) No hemp plant shall be moved to, or grown, in an area other than the licensed growing area, without prior Departmental approval, and subject to a site modification fee pursuant to (r) below. All varieties must be separated and clearly marked.
- (n)-(w) (No change.)

SUBCHAPTER 5. INSPECTION, SAMPLING, AND TESTING

2:25-5.2 Inspection, sampling, and testing procedures

- (a) (No change.)
- (b) Test procedures shall be as follows:
 - 1.-2. (No change.)
 - 3. Test results must confirm that the final product batch contains no more than 0.3 percent total potential delta-9 THC on a dry weight basis using a measurement of uncertainty; and all such testing results must be retained by the participant and made available to the Department upon demand for a minimum of three years. Any material having more than the Federally defined THC level for hemp is prohibited. Possession or distribution of such products may be subject to Federal, State, and local law enforcement action;
 - 4.-5. (No change.)
 - 6. A sample test result with a total potential delta-9 THC concentration on a dry weight basis greater than the Federally defined THC level for hemp shall be conclusive evidence that the lot represented by the sample contains a total potential delta-9THC concentration on a dry weight basis of more than 0.3 percent and that the hemp producer is therefore not in

compliance with this chapter. Upon receipt of a failing test result, the Department may request resampling and retesting of the varieties in question. Upon subsequent retesting failure, the Department shall determine whether the failure constitutes a negligent violation or a violation with a culpable mental state greater than negligence and take appropriate action pursuant to N.J.A.C. 2:25-6;

7.-10. (No change.)

2:25-5.3 Labeling of hemp products by New Jersey processors

- (a)-(b) (No change.)
- (c) New Jersey floral processors shall submit a current Certificate of Analysis (COA) and receive program approval for out-of-State-sourced material prior to importation and acceptance to verify compliance with the Federally acceptable hemp THC level.

2:25-5.4 Third-party laboratory compliance

- (a)-(b) (No change.)
- (c) Third-party laboratories shall:
 - 1.-3. (No change.)
 - 4. Transmit laboratory results directly to their client and to the Department for all licensed New Jersey processors and growers submitting regulatory samples, in order to receive final Departmental approval;
 - 5. Submit to random quality assurance testing by the Department to validate the accuracy of testing results; and
 - 6. Take and pass an annual performance test, if requested by the Department, to ensure the accuracy of their testing methods.
- (d) (No change.)

SUBCHAPTER 6. VIOLATIONS, PENALTIES, AND APPEALS

2:25-6.1 Negligent violations

- (a) (No change.)
- (b) Negligent violations may include, but are not limited to:
 - 1.-2. (No change.)
 - 3. Producing *Cannabis sativa L.* with a delta-9 THC concentration of more than 1.0 percent on a dry weight basis or any revised limit established at 7 CFR Part 990, or failing to make reasonable efforts to grow compliant hemp; and/or
 - 4. (No change.)
 - (c)-(g) (No change.)

(a)

DIVISION OF MARKETING AND DEVELOPMENT
Notice of Readoption
Bonding Requirements of Commission Merchants,
Dealers, Brokers, and Agents
Readoption: N.J.A.C. 2:72

Authority: N.J.S.A. 4:1-11.1 and 4:11-15 et seq., specifically 4:11-33.1.

Authorized By: The State Board of Agriculture and Douglas H. Fisher, Secretary, Department of Agriculture.

Effective Date: April 21, 2022.

New Expiration Date: April 21, 2029.

Take notice that pursuant to N.J.S.A. 52:14B-5.1.c, the rules at N.J.A.C. 2:72 were scheduled to expire on June 21, 2022. N.J.A.C. 2:72 protects New Jersey growers of perishable agricultural commodities by insuring that the buyers of perishable farm products doing business with New Jersey farmers have on deposit with the Department of Agriculture (Department) sufficient security bond to cover their purchases.

The rules provide New Jersey farmers with a method of recovering monies owed to them by licensed agricultural commission merchants (any person engaged in the business of soliciting or receiving any perishable agricultural commodity for sale on commission on behalf of the grower thereof), brokers, agents, and commodity dealers, in the event of bankruptcy or default by enabling the farmer to file a verified claim