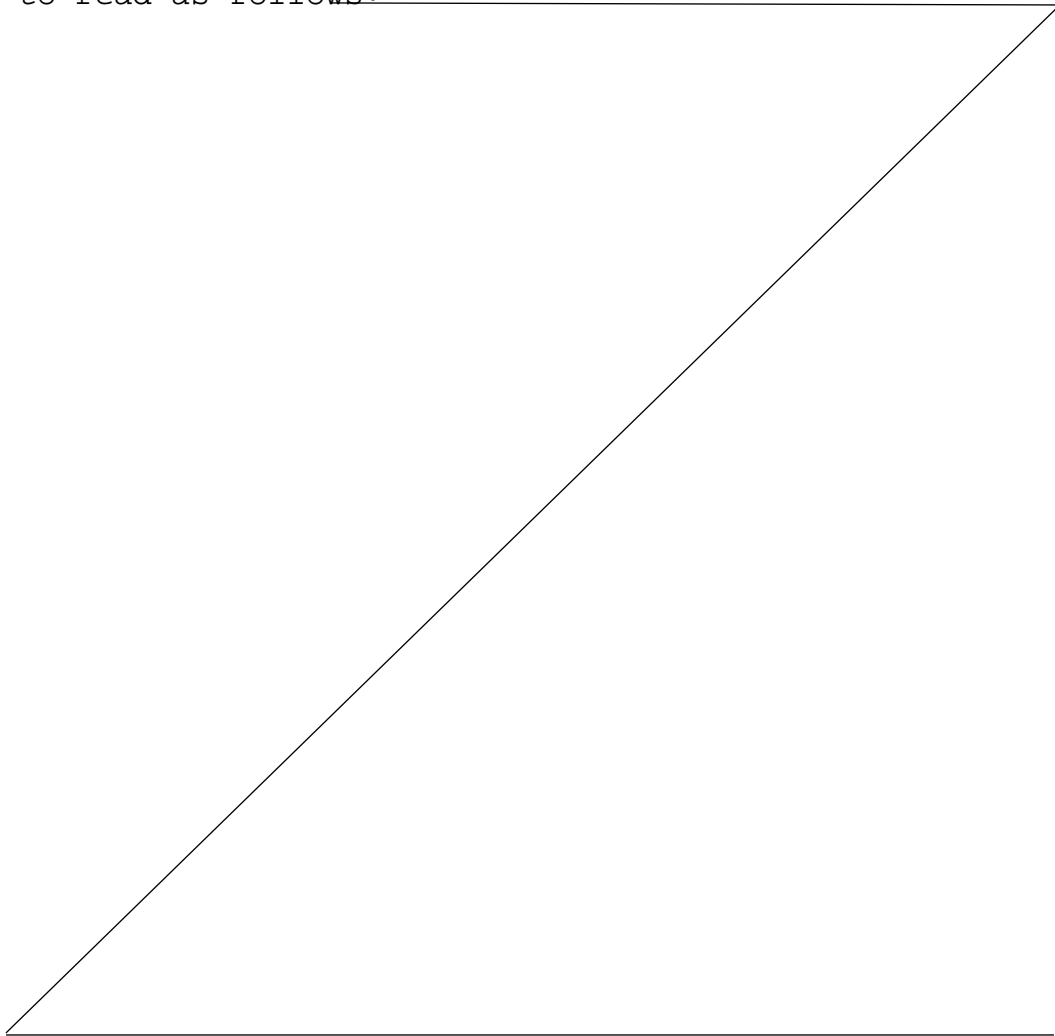


DEPARTMENT OF AGRICULTURE

Adoption of Chapter 4-161
Hawaii Administrative Rules

September 22, 2020

1. Chapter 4-161, Hawaii Administrative Rules, entitled "HEMP PRODUCTION INTERIM RULES," is adopted to read as follows:



HAWAII ADMINISTRATIVE RULES

TITLE 4

DEPARTMENT OF AGRICULTURE

SUBTITLE 7

QUALITY ASSURANCE DIVISION

CHAPTER 161

HEMP PRODUCTION INTERIM RULES

§4-161-1	Definitions
§4-161-2	Transportation
§4-161-3	Nuisance
§4-161-4	Inspection
§4-161-5	Violations/Penalties

§4-161-1 Definitions. As used in this chapter:

"Board" means the board of agriculture or the board's designee.

"Cannabis" means the genus of flowering plants in the family Cannabaceae. For the purposes of this chapter, cannabis means any form of the plant where the delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.

"Chairperson" means the chairperson of the Hawaii Board of Agriculture.

"Decarboxylated" means the completion of the chemical reaction that converts delta-9 tetrahydrocannabinol's acids (THCA) into delta-9 tetrahydrocannabinol. The decarboxylated value may be calculated using a conversion formula that sums delta-9 tetrahydrocannabinol and eighty-seven and seven tenths (87.7) per cent of THCA.

"Delta-9 tetrahydrocannabinol" or "THC" is the primary psychoactive component of cannabis.

"Department" means the department of agriculture.

"Dry weight basis" means the method of determining the percentage of a chemical in a

substance after removing the moisture from the substance.

"Dwelling unit" means a structure which is intended to be used primarily as a place of residence, meets all applicable zoning and building code requirements, and which is one among several individual residences within a single larger structure which has a solid base, exterior walls that encircle the entire structure on all sides, and a roof that protects the interior units from the elements of the weather.

"Entity" means a firm, corporation, foundation, organization, business trust, estate, limited liability company, licensed corporation, trust, partnership, limited liability partnership, association, or other form of legal business entity, as well as a state or local government entity.

"Export" means shipment to any point outside of the State.

"Grow area" means the area authorized to be utilized for hemp production under a license issued by the Secretary of the United States Department of Agriculture pursuant to title 7 United States Code section 1639q.

"Harvest" means the termination of the cultivation process at a grow area for usage rather than disposal.

"Hemp" means cannabis 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 delta-9-tetrahydrocannabinol concentration of not more than 0.3 per cent on a dry weight basis, as measured post-decarboxylation or by other similarly reliable method. "Hemp" as used in this chapter does not include hemp products.

"Hemp product" shall have the same meaning as in chapter 328, Hawaii Revised Statutes.

"House" means a structure intended to be used primarily as a place of residence and which meets all applicable zoning and building code requirements. It must have a solid floor, rigid exterior walls that

encircle the entire structure on all sides, and a roof that protects the interior from the elements of the weather.

"Licensee" means a person or entity that has obtained a license to produce hemp in the state of Hawaii, issued by the Secretary of the United States Department of Agriculture pursuant to title 7 United States Code section 1639g.

"Law enforcement" means any federal, state, or local law enforcement agency or drug suppression unit.

"Person" means an individual.

"Playground" means any public outdoor facility, including any parking lot appurtenant thereto, that is intended for recreation, with any portion thereof containing three or more separate apparatus intended for the recreation of children, including but not limited to sliding boards, swing sets, and teeterboards.

"Post-decarboxylation" means testing methodologies for THC concentration levels in hemp, where the total potential delta-9-tetrahydrocannabinol content, derived from the sum of the THC and THCA content, is determined and reported on a dry weight basis.

"Processor" means a person or entity with a valid certificate of registration issued by the department of health allowing them to legally process hemp to manufacture a hemp product in the state.

"Produce" or "production" refers to the propagation or cultivation of hemp.

"Residential structure" means a structure that contains one or more individual dwelling units intended for usage as a residence, and which meets all applicable zoning and building code requirements. Residential apartment shall have the same meaning as residential structure.

"School" means any public or private preschool, kindergarten, elementary, intermediate, middle, secondary, high school, or university.

"State" means the State of Hawaii.

"USDA" means the United States Department of Agriculture.

§4-161-2 Transportation. (a) The reporting requirements of this section apply to:

- (1) Harvested hemp flowers and leaves in their raw botanical form, whether wet or dried, which were produced in state by a licensee; and
- (2) Living hemp plants or plant parts which can be used to propagate a new plant, and viable hemp seeds which were produced in state by a licensee.

(b) The reporting requirements of this section do not apply to:

- (1) Mature stalks or mature stalk material if the stalk material has been stripped of leaves and flowers with only a de minimus amount of leaves and floral material remaining attached;
- (2) Sterilized hemp seed incapable of germination;
- (3) Rhetted hemp fiber; or
- (4) Hemp products.

(c) Hemp in the forms specified in subsection (a) shall not be transported outside of a licensed grow area except by a person or entity that holds a license to produce hemp issued by the USDA.

(d) A person or entity that has a license to produce hemp issued by the USDA may transport hemp in the forms specified in subsection (a) outside of a licensed grow area, provided that:

- (1) The hemp is transported to an authorized processor within the state;
- (2) The hemp is transported to a licensed grow area within the state; or
- (3) The hemp is exported.

(e) Any hemp to be transported shall have passed all compliance testing required by the USDA and comply with all other applicable state or federal laws or regulations, including those found in chapter 4-72, Hawaii Administrative Rules.

(f) Any hemp to be exported shall comply with all applicable state or federal laws and regulations

relating to exportation, including the laws of the state or country that the hemp is being exported to.

(g) No hemp in the forms specified in subsection (a) shall be transported outside of a licensed grow area unless a licensee files a transportation report with the department at least three business days prior to the intended transportation date.

(h) The transportation report shall be in a form and submitted in a manner prescribed by the department and shall contain the following:

- (1) The licensee's name and USDA hemp producer license number;
- (2) Date of transportation;
- (3) Method of transportation;
- (4) Identification of the person transporting the hemp;
- (5) Address of the grow area that the hemp is to be removed from;
- (6) Address the hemp is to be transported to with contact information for recipient;
- (7) Kind and quantity of packages, or if in bulk the total quantity of hemp to be transported;
- (8) Documentation confirming the specific hemp to be transported has passed all compliance testing required by the USDA; and
- (9) Any additional information or documentation required by the department or law enforcement.

(i) During any transportation of hemp, the licensee or employee of the licensee shall carry with them a copy of the transportation report, the licensee's USDA hemp production license, and any other documentation required to be included with the transportation report by the department or law enforcement.

(j) Licensees shall complete and submit to the department all required reports and statements relative to the licensee's transportation of hemp at least three business days prior to the intended transportation date. A failure to timely complete and

submit any required report may result in the penalties set forth in section 4-161-5.

(k) Licensees shall allow the department or law enforcement to inspect and sample harvested hemp cargoes prior to and during transport, including at ports of origin or arrival.

(l) Licensees shall comply with any direction of the chairperson with respect to the transportation of hemp when the circumstances require.[Eff: Upon approval] (Auth: Act 014 SLH 2020)

§4-161-3 Nuisance. (a) Hemp shall not be grown within 500 feet of a preexisting playground, childcare facility, or school; provided that this restriction shall not apply to a person or entity:

- (1) That was licensed to grow hemp under the state industrial hemp pilot program prior to August 27, 2020;
- (2) Whose licensed area to grow hemp under the state industrial hemp pilot program is within 500 feet of a preexisting playground, childcare facility, or school; and
- (3) Who is growing hemp under a license to produce hemp issued by the USDA in the same area approved under their industrial hemp pilot program license that is within 500 feet of real property with a preexisting playground, childcare facility, or school.

(b) Hemp shall not be grown within 500 feet of any pre-existing house, dwelling unit, residential apartment, or other residential structure that is not owned or controlled by the licensee; provided that this restriction shall not apply to a person or entity:

- (1) That was licensed to grow hemp under the state industrial hemp pilot program prior to August 27, 2020;
- (2) Whose licensed area to grow hemp under the State industrial hemp pilot program is within 500 feet of any pre-existing house, dwelling unit, residential apartment, or

- other residential structure that is not owned or controlled by the license; and
- (3) Who is growing hemp under a license to produce hemp issued by the USDA in the same area approved under their industrial hemp pilot program license that is within 500 feet of any pre-existing house, dwelling unit, residential apartment, or other residential structure that is not owned or controlled by the license.

(c) Hemp shall not be grown in any house, dwelling unit, residential apartment, or other residential structure.

(d) Hemp shall not be grown outside of a state agricultural district.

(e) Licensees shall comply with all applicable regulations, including nuisance regulations, environmental regulations, and county land usage ordinances.

(f) Upon notice from the regulatory agency with primary enforcement authority over nuisance, environmental, or land usage regulations, as applicable, that a licensee who was previously licensed to grow hemp under the state industrial hemp pilot program is not in compliance with nuisance, environmental, or land usage regulations, the department may issue a notice of violation and assess fines for the violation in accordance with section 4-161-5.[Eff: Upon approval] (Auth: Act 014 SLH 2020)

§4-161-4 Inspection. (a) All licensees shall allow federal, state, and county law enforcement authorities to inspect the records, growing area, equipment, facilities, and areas incident to the production or transportation of hemp to verify compliance with the requirements of this chapter.

(b) The department, law enforcement, and third party agents authorized by the department may enter during business hours upon any growing area or place of business associated with a licensee to inspect the records, growing area, equipment, facilities, and areas incident to the production and transportation of

hemp to ensure compliance with the requirements of this chapter.

(c) An authorized representative of the licensee or the licensee shall be present during the inspection.

(d) Licensees shall pay the department or third-parties authorized by the department a fee of \$50 an hour plus mileage for the performance of inspections to ensure compliance with section 3 of Act 14, Session Laws of Hawaii 2020, and the purposes of this chapter. [Eff: Upon approval] (Auth: Act 014 SLH 2020)

§4-161-5 Violations and Penalties. (a) For any violation of this chapter or section 3 of Act 14, Session Laws of Hawaii 2020, the department may impose civil penalties up to \$10,000.00 and disciplinary sanctions, including denying or suspending any transportation, and issuing cease and desist orders.

(b) In addition to other violations of this chapter or section 3 of Act 14, Session Laws of Hawaii 2020. The following acts and omissions by any licensee or authorized representative thereof constitute violations:

- (1) Refusal or failure by a licensee or authorized representative to fully cooperate with the department or law enforcement regarding any inspection or sampling;
- (2) Failure to provide any information required or requested by the department for the purposes of this chapter; or
- (3) Providing false, misleading, or incorrect information to the department by any means, including but not limited to information provided in any form, report, record, or inspection required or maintained pursuant to this chapter.[Eff: Upon approval] (Auth: Act 014 SLH 2020)

2. The adoption of chapter 4-161, Hawaii Administrative Rules, shall take effect upon board approval.