



## Industrial Hemp Plan



## SOUTH DAKOTA DEPARTMENT OF AGRICULTURE

### AGRICULTURAL SERVICES DIVISION

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October 9, 2020

United States Department of Agriculture  
Agricultural Marketing Service, Specialty Crops Program/Hemp Branch  
470 L'Enfant Plaza S.W.  
Post Office Box 23192  
Washington D.C. 20026

RE: South Dakota Industrial Hemp Plan – FINAL REVISED SUBMISSION

The South Dakota Department of Agriculture (SDDA) respectfully submits the Final Revised South Dakota Industrial Hemp Plan (plan) to regulate industrial hemp production in South Dakota. As authorized by Section 297(B)(a)(3)(B) of the Agricultural Improvement Act of 2018 (2018 Farm Bill), the plan incorporates SDCL 38-35 which provides the legal authority to regulate the growth and processing of industrial hemp in South Dakota.

The United States Department of Agriculture (USDA) recommended several edits to the original plan submitted August 11, 2020. SDDA has made the revisions to the extent SDDA has the authority to do so and has incorporated the revisions into the plan.

SDDA understands USDA has recommended changes to SDCL 38-35-10, 38-35-13, and 38-35-14 to comply with the IFR. Every effort will be made to bring these recommendations before the state legislature during the next legislative session.

Lastly, SDDA has addressed concerns raised by USDA regarding outreach to tribes and other states to ensure compliance with South Dakota permitting and transportation requirements. SDDA plans to work closely with the South Dakota Industrial Hemp Association to provide information for growers, processors, and transporters within the state. SDDA has also gathered contact information for tribes with approved industrial hemp plans to ensure they have access to all current state industrial hemp transportation requirements. Finally, SDDA intends to work closely with other state agencies such as the Department of Public Safety and Department of Tribal Relations as well as communicate through partners such as NASDA, Industrial Hemp Regulators groups to share information related to the industrial hemp program and state transportation requirements.

Sincerely,

A handwritten signature in purple ink that reads "Taya Runyan". The signature is fluid and cursive, with the first and last names being the most prominent.

Taya Runyan  
Agricultural Services Director

# South Dakota State Hemp Plan

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The State of South Dakota respectfully submits our plan to regulate industrial hemp production and processing in the state of South Dakota. Enclosed in this plan you will find the following:

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## SOUTH DAKOTA DEPARTMENT OF AGRICULTURE

### REVISED INDUSTRIAL HEMP PLAN

As required by SDCL 38-35, the South Dakota Department of Agriculture (SDDA) is responsible for the administration and oversight of the industrial hemp program in the state of South Dakota. The following state plan will be effective and in place upon approval by the USDA. State law and regulations along with this state plan will provide for administration and enforcement of the South Dakota Industrial Hemp Program. The state plan also includes forms and reports to be utilized by the SDDA.

#### **1. Plan to Maintain Licensee Information and Land Information**

Any person or legal business entity in South Dakota shall obtain a license from SDDA to purchase, receive, or obtain industrial hemp, other than industrial hemp product\* for planting, storing, propagating, or processing industrial hemp.

\* Industrial hemp product is defined as a finished manufactured product or consumer product containing cannabidiol that is packaged for individual sale, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent, derived from or made by processing industrial hemp.

#### Application Process

Under South Dakota law, growers, and processors must apply to the secretary for a license. The SDDA will require and collect the following information from applicant:

- name; address; telephone number; email address, if available;
- legal description and geospatial coordinates of the area where industrial hemp will be located.
- If the applicant is a business entity, the applicant must include the full name of the business; address of the principal business location; and identify which key participants have authority on behalf of the business entity
- full name and title of the key participants; email address, if available; and EIN number of the business entity.
- a state and federal background check conducted by the South Dakota Division of Criminal Investigation (DCI) and the Federal Bureau of Investigation (FBI) for applicant, key participant and landowner
- The planned harvest use (seed/grain, floral, or fiber)

The SDDA will collect this information via an application process and maintain information on a secure database. The SDDA will report to USDA the license number, the status of licensees and any amendments thereof within 30 days after receipt of the information via USDA form AMS 23.

## Licenses

There will be a 60 -day period in which license applications will be accepted, along with a non-refundable application fee. No application to plant, grow, or produce industrial hemp may be for less than five contiguous outdoor acres. The licenses shall be valid for 15 months from date of issue.

Upon approval, licensee will be assigned grower license numbers using the South Dakota code (46) as indicated in the American Standards Institute (ANSI) Code for States, the District of Columbia, Puerto Rico, and the Insular Areas of the United States. South Dakota licenses will start with 46\_0001, be sequential, and not duplicated or reused by different licensees. Licensees will retain the same grower license number for all subsequent licenses issued. Licenses are non-transferable.

Licensees will be notified via email when application has been approved or denied. Upon receipt of payment of license fee, the industrial hemp licenses will be mailed via US Mail.

License is not required for employees of the State of South Dakota when performing official duties.

## License Amendments

Any changes to the information on an approved license requires a licensee to submit a License Amendment Form within 2 days of the change.

## License Denial or Revocation

The SDDA may deny, suspend, or revoke a license if an applicant or licensee fails to meet or maintain the license requirements. A licensee that negligently violates their license 3 times in a 5-year period shall be subject to revocation and ineligible for a license to produce industrial hemp for a period of 5 years from the last violation.

## Records

Licensees are required to provide their industrial hemp license number and certify industrial hemp acreage planted for all growing location(s) with their County office of the USDA Farm Service Agency (FSA). Licensees must keep the following information order to document and report to USDA, FSA, and SDDA as required.

- All license number information and authorization number
- Street address
- Geospatial location(s) of each lot where hemp will be produced
- Industrial hemp crop acreage
- Total acreage of industrial hemp planted, harvested, and disposed
- Record of all processors sold to and quantities sold to each processor.
- Variety/strain for each grow site.

- Copies of all notifications of THC test results for each grow site.
- All records, documents, forms regarding the disposal of cannabis production in violation of the USDA guidelines.
- All records, documents, forms regarding the disposal of cannabis for any reason other than cannabis production in violation of the USDA guidelines.
- Copies of all records, forms, and reports submitted to SDDA, DPS, law enforcement officers and to the USDA Farm Service Agency.
- All records that support, document, or verify the information submitted to SDDA, DPS, law enforcement officers, and the USDA Farm Service Agency.

All license information and records will be retained by the SDDA for 5 years from the date the application is received.

## **2. Plan for Crop Sampling and Testing for Delta-9 Tetrahydrocannabinol Procedures**

Every lot shall be inspected, and samples collected no more than 15 days before the industrial hemp is harvested. The licensee must contact Department of Public Safety (DPS) prior to harvest in order to schedule inspection and licensee must be present during the inspection. If the licensee fails to be present at the scheduled inspection, a second request for inspection must be made by contacting DPS.

The SDDA and DPS has complete and unrestricted access during business hours and may enter on any land or other property where industrial hemp is grown produced, stored, or processed for the purpose of inspections, sample collection, testing, or investigation.

Samples will represent a homogenous composition of the lot. South Dakota Agricultural Laboratories, an analytical chemistry laboratory, has applied for DEA registered status and expects to obtain approval. The USDA has delayed enforcement of the requirement for a DEA registered laboratory. South Dakota Agricultural Laboratories is working with the DEA to be compliant with the registration requirement before this period of delayed enforcement expires which is October 31, 2021 or the Final Rule is published, whichever comes first. The laboratory will determine Delta-9-Tetrahydrocannabinol ( $\Delta 9$ -THC) and Delta-9-Tetrahydrocannabinolic Acid ( $\Delta 9$ -THCA) concentration in industrial hemp by using liquid chromatography-electrospray/mass spectrometry. The laboratory must report the Delta-9-Tetrahydrocannabinol content concentration level on dry weight basis and the measure of uncertainty. The acceptable 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 that includes 0.3% or less. South Dakota Agricultural Laboratories will report measurement of uncertainty (MU) as required by USDA.

The industrial hemp may only be harvested after the sample is collected. All harvested material must remain in the dominion of control of the licensee and may not be comingled until the licensee receives a laboratory result from the SDDA that confirms compliance.

Sample collection protocols and procedures shall be in accordance with established USDA Sample Collection Procedures. Collection methods will ensure samples represent a homogeneous composition of the industrial hemp lot. Each sample will be sealed in a collection bag and identified by: inspector, licensee name, license number, date, and lot ID as provided by the USDA Farm Service Agency.

Laboratory results will be provided to the SDDA. The SDDA will provide individual test results to licensees via email and report the test results to the USDA using the Laboratory Test Results Report (AMS 22) and attaching a copy of the final laboratory test results.

No handling, processing, or entering the stream of commerce of any industrial hemp lot grown in a lot where the acceptable THC level is noncompliant will be permitted. The acceptable 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 that includes 0.3% or less. This designated laboratory will also report the MU, and 0.3% must fall within the reported MU.

### **3. Plan for Disposal of Non-Compliant Plants**

Any industrial hemp plants that do not meet the requirements of the plan or are in violation of the law, will be confiscated and disposed of at the direction of DPS using destruction methods that render the lot non-retrievable, non-ingestible, and unfit to enter the stream of commerce. All disposal of industrial hemp shall comply with USDA guidelines.

The SDDA will notify USDA of any non-compliant plants and the disposal thereof with submission of the State and Tribal Hemp Disposal Report (AMS 24) including laboratory test results and proper documentation and verification of disposal.

### **4. Plan for Inspection Procedures & Annual Inspection**

In addition to planting verification and pre-harvest sampling and testing, licensee may be subject to random inspections at any time. Inspections shall be conducted by DPS pursuant to established guidelines for sampling and testing.

#### Planting Verification Inspection

Within 30 days of planting, each 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 will be scheduled. This inspection will verify the GPS coordinates of the growing sites and legal description, address, acreage, location ID, and that those are the actual sites and acreage planted. The licensee must be present at the inspection.

### Pre-harvest inspection

DPS shall conduct inspections and sampling of each lot not more than 15 days before the hemp is harvested. No harvested lot of industrial hemp shall be comingled with another harvested lot of industrial hemp or other material except with documented prior written permission by the SDDA. No industrial hemp may leave the dominion of control of the licensee until the licensee receives a laboratory result from the SDDA confirming that the lot complies with the law. The licensee must be present at the inspection.

### Disposal Inspections

Disposal is required for failed THC tests. These lots must be disposed of under the direction of and documented by DPS. 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 natural disaster or weather event such as a flood or hail. These lots must be chemically or mechanically destroyed and rendered non-retrievable, non-ingestible, and unfit to enter the stream of commerce using USDA approved guidelines.

The disposal verification inspection will verify that the lots are disposed of in a manner that renders the lot non-retrievable, non-ingestible, and unfit to enter the stream of commerce. The licensee must be present at the inspection.

## **5. Plan for Information Collection and Sharing**

The SDDA to report to USDA as required. The SDDA will use AMS 22, AMS 23, AMS 24, and AMS 25 to report information to USDA or Agricultural Marketing Service (AMS) including: (1) hemp crop acreage; 2) reporting total acreage of hemp planted, harvested, and disposed; 3) license or authorization number; 4) street address; 5) geospatial location(s) of each lot where hemp will be produced. 6) N/A no greenhouse or indoor square footage is permitted in South Dakota.

Reports shall be submitted to USDA not more than 30 days after the date on which the information is received.

## **6. Plan for Enforcement**

If any industrial hemp inspection results in the discovery of a negligent violation, the SDDA will institute a corrective action plan with the licensee.

### Negligent Violations

- Failure to provide legal description of land where industrial hemp is produced
- Failure to obtain a license
- Produces cannabis with THC exceeding the acceptable industrial hemp THC level

### Corrective Action Plan



A licensee shall comply with a corrective action plan established by the SDDA to correct negligent violations including:

- A reasonable date to correct the negligent violation
- A requirement to periodically report to the SDDA regarding compliance with the corrective action plan for a period of not less than the next 2 calendar years.
- As a result of a negligent violation, a licensee shall not be subject to any criminal enforcement action
- Three negligent violations in a 5-year period results in a grower being ineligible to produce industrial hemp for a period of 5 years from the date of the last violation.
- Division of Criminal Investigation is notified of all corrective action plans and shall conduct inspections to determine if corrective action plans have been implemented.

#### Non-negligent violations

In the case of violations with a culpable mental state greater than negligence as determined by the SDDA, including growing 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 USDA, the SDDA shall immediately report the violation and the industrial hemp grower to the United States Attorney General and the South Dakota Attorney General. The DCI may detain, seize and/or destroy the crop and may initiate a criminal case for any violation of this act or the South Dakota law.

The SDDA may deem ineligible and deny any application or, revoke, or suspend a license if any applicant, licensee, key participant as defined by SDCL 38-35-1(3), or landowner for any of the following:

- violated state law or USDA rules regarding industrial hemp;
- provides false or misleading information in connection with any application;
- 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 hemp pilot program authorized under the 2014 Agricultural Act before December 20, 2018;
- 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;

All enforcement actions will be conducted with due process as provided by SDCL 1-26.

\*South Dakota does not have any pilot programs authorized under the 2014 Agricultural Act.

## **7. Certification of Resources**

An appropriation was made by the 2020 South Dakota Legislature to allocate one-time funds to the SDDA to start the program. Additionally, an appropriation for ongoing funds was made to fund the program until such time as it could be supported by fees. South Dakota law and rules allow the SDDA to establish fees for licenses, inspection, and sampling as needed to pay for costs incurred, subject to statutory limits. The SDDA plans to have two full-time employees in the program and utilize additional department staff throughout the year. The SDDA certifies that it can perform the duties outlined in this plan and as required by the 2018 Farm Bill.

**South Dakota State Industrial Hemp Plan**  
**Appendix**

South Dakota Codified Law (SDCL) 38-35 Industrial Hemp Act

Industrial Hemp License Application

Industrial Hemp License Amendment Application

Sampling Guidelines for Industrial Hemp

Testing Guidelines for Industrial Hemp

State Producer Report Form

State Hemp Disposal Form

Annual Report Form



Industrial Hemp Act

SDCL 38-35

**SOUTH DAKOTA CODIFIED LAW**  
**CHAPTER 38-35**  
**INDUSTRIAL HEMP**

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**38-35-1. Definitions.**

Terms used in this chapter mean:

- (1) "Department," the Department of Agriculture;
- (2) "Hemp" or "industrial hemp," 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 delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis;
- (3) "Key participant," a sole proprietor, a partner in a partnership, or a person with executive managerial control in a corporation or limited liability company;
- (4) "Industrial hemp product," a finished manufactured product, or consumer product containing cannabidiol that is packaged for individual sale, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent, derived from or made by processing industrial hemp;
- (5) "Lot," a contiguous area in a field containing the same variety or strain of hemp throughout the area;
- (6) "Process" or "processing," to convert or converting industrial hemp into industrial hemp product;
- (7) "Processor," a person who processes industrial hemp;

- (8) "Produce" or "producing," to grow or growing hemp plants in the field for processing;
- (9) "Secretary," the secretary of the Department of Agriculture; and
- (10) "Transporter," any person transporting, hauling, or delivering hemp, but not industrial hemp product or sterilized seeds that are incapable of beginning germination.

Source: SL 2020, ch 176, § 1, eff. Mar. 27, 2020.

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**38-35-2. Purchasing, receiving, or obtaining industrial hemp--License required--Violation as misdemeanor.**

No person may purchase, receive, or obtain industrial hemp, other than industrial hemp product, for planting, storing, propagating, producing, or processing unless the person has a license as provided by this chapter or is working under contract with or under the direction of a licensee. The licensee is responsible, either civilly or criminally, for any person working under contract with or under the direction of a licensee for all sections of this chapter.

It shall be a Class 2 misdemeanor to purchase, receive, or obtain industrial hemp, other than industrial hemp product, for planting, storing, propagating, producing, or processing without a license. No unlicensed person is subject to criminal penalties for possession or distribution of hemp seed.

A person, whether or not licensed, who possesses or distributes a product determined to meet the definition of marijuana is subject to prosecution and penalties for possession or distribution of marijuana under chapter 22-42.

Source: SL 2020, ch 176, § 2, eff. Mar. 27, 2020.

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**38-35-3. Application for grower license.**

After the department receives approval by the United States Secretary of Agriculture for the state plan submitted pursuant to § 38-35-15, any person seeking to purchase, receive, or obtain industrial hemp, other than industrial hemp product, for planting, storing, propagating, or producing shall apply to the secretary for a grower license on an application form prescribed by the department and submit a nonrefundable annual application fee. The department shall establish a sixty-day period in which an application must be received. The secretary shall deposit fees collected under this chapter in the hemp regulatory program fund.

No application for licensure to plant, grow, or produce industrial hemp may be for less than five contiguous outdoor acres.

Source: SL 2020, ch 176, § 3, eff. Mar. 27, 2020.

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**38-35-4. Application for processor license--Fee--Location notice.**

After the department receives approval by the United States Secretary of Agriculture for the state plan submitted pursuant to § 38-35-15, any person seeking to purchase, receive, or obtain industrial hemp, other than industrial hemp product, for processing shall apply to the secretary for a processor license on an application form prescribed by the department and submit a nonrefundable annual application fee. The applicant may submit an application form for a processor license at any time. The secretary shall deposit fees collected under this chapter in the hemp regulatory program fund.

The applicant shall provide to the department the street address, legal description, and global positioning system coordinates for any location where hemp will be processed under the processor's license and certify that any location where hemp is to be processed is under the control of the applicant. A processor licensee shall provide notice of any change in ownership or location to the department within two days of a change. A change of ownership or location automatically invalidates the license, and a new license must be obtained.

**Source:** SL 2020, ch 176, § 4, eff. Mar. 27, 2020.

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**38-35-5. Criminal background check--Denial of license for conviction--Licensure exemption.**

Each applicant for any license under this chapter, key participant, and landowner, if the applicant is the lessee, shall submit to a state and federal criminal background investigation by means of fingerprint checks by the Division of Criminal Investigation and the Federal Bureau of Investigation. Upon application for a license, the department shall submit the completed fingerprint cards to the division. Upon completion of the criminal background check, the division shall forward to the department all information obtained as a result of the criminal background check. This information shall be obtained prior to licensure of the applicant. All costs or fees associated with the criminal background checks are the responsibility of the applicant. Information provided to the department under this section is confidential, is not public record, and is exempt from the provisions of chapter 1-27. However, the department may share this information with law enforcement and the Department of Public Safety. Failure to submit to or cooperate with a criminal background check is grounds for denial or revocation of a license. The secretary may deny licensure if any applicant, key participant, or landowner has been convicted of a misdemeanor or felony relating to a controlled substance or marijuana under state or federal law within the previous ten years. Licensure under this chapter is not required for employees of the state of South Dakota when performing official duties.

**Source:** SL 2020, ch 176, § 5, eff. Mar. 27, 2020.

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**38-35-6. Hemp regulatory program fund--Purpose--Expenditures.**

There is hereby created within the state treasury the hemp regulatory program fund, into which all application fees, license fees, inspection fees, and other fees or revenue paid to the state from the operation of the hemp regulatory program shall be deposited. All moneys in the fund created in this section shall be used for the purpose of administering the hemp regulatory program. Interest earned on money in the fund shall be deposited into the fund. Expenditures from the fund shall be appropriated through the normal budget process.

**Source:** SL 2020, ch 176, § 6, eff. Mar. 27, 2020.

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**38-35-7. License issuance--Denial, revocation, or suspension--Contested case.**

If the applicant has completed the application to the satisfaction of the secretary, paid the application fee, returned a criminal background check compliant with § 38-35-5, and is eligible for a license under this chapter, the secretary shall issue the license upon receipt of an annual license fee and upon the licensee's agreement and affirmance that as a continuing

condition of licensure, the department shall have unlimited access to all lots or licensed locations processing hemp without prior notice to the licensee or the need to obtain a search warrant or court order for access to enforce the provisions of this chapter.

A grower license issued under this chapter is valid for fifteen months from the date of issuance. A processor license issued under this chapter expires on December thirty-first in the calendar year for which it was issued.

The department may deny, revoke, or suspend a license of any person who:

- (1) Violates any provision of this chapter or administrative rule promulgated under the authority of this chapter;
- (2) Violates any rule set forth by the United States Department of Agriculture regarding industrial hemp;
- (3) Provides false or misleading information in connection with any application required by this chapter;
- (4) Has been convicted of a misdemeanor or felony relating to a controlled substance or marijuana under state or federal law within the previous ten years; or
- (5) Has been charged with or convicted of a misdemeanor or felony relating to a controlled substance or marijuana under state or federal law since the most recent criminal background check.

Any person whose license is denied, revoked, or suspended under this section may request a hearing pursuant to chapter 1-26.

**Source:** SL 2020, ch 176, § 7, eff. Mar. 27, 2020.

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#### **38-35-8. Planting--Documentation to be filed--Contents.**

Within thirty days of planting, each grower licensee under this chapter shall file with the department documentation as required by the secretary in order to identify the type and variety of each hemp seed planted with its corresponding lot. Any documentation provided under this section is not an open record pursuant to chapter 1-27 and may not be disclosed except to the Department of Public Safety or law enforcement. The department may make publicly available a list of all types and varieties of planted hemp seed submitted to the department.

**Source:** SL 2020, ch 176, § 8, eff. Mar. 27, 2020.

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#### **38-35-9. Entrance by department--Consent--Fee--Inspection, confiscation, and disposal--Costs--Liability for destruction--Records.**

The secretary shall contract with the Department of Public Safety to conduct inspections and sampling of each lot and any processor location. The department and the Department of Public Safety may enter on any land or other property where hemp is grown, produced, stored, or processed for the purpose of inspections, sample collection, testing, or investigation while enforcing this chapter. Any person who holds a license under this chapter is deemed to have given consent to the reasonable search and seizure of any hemp without a warrant to determine the lawful amount of delta-9 tetrahydrocannabinol concentration and for enforcement of the provisions of this chapter.

The secretary shall assess a grower inspection fee per lot for grower licensees and shall assess a processor inspection fee per location for processor licensees.



Any substance found to be in violation of this chapter is subject to confiscation and disposal at the direction of the Department of Public Safety. Any costs arising from the destruction, confiscation, or disposal are the responsibility of the grower, producer, processor, or owner of the substance. The state is not liable for any confiscation, seizure, disposal, or destruction of any substance carried out under this chapter. Any testing, inspection, and investigation results shall be provided to the licensee. Notice of any violation shall be provided to the licensee in writing. Inspection and investigation records are not open records pursuant to chapter 1-27.

**Source:** SL 2020, ch 176, § 9, eff. Mar. 27, 2020.

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**38-35-10. Inspection timing and procedure--Disclose information.**

Every lot of a grower licensee shall be inspected and samples collected no more than fifteen days before the hemp is harvested. The grower licensee shall contact the Department of Public Safety prior to harvest in order to ensure a reasonable amount of time to schedule an inspection. The grower licensee shall be present during the inspection. No harvested lot of hemp shall be commingled with another harvested lot of hemp or other material except with documented prior written permission by the department or the United States Department of Agriculture. No hemp may leave the dominion of control of the grower licensee until the grower licensee receives a laboratory result from the department that confirms each lot 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.

Any location of the processor licensee may be subject to random inspection. The processor licensee shall be present during the inspection.

**Source:** SL 2020, ch 176, § 10, eff. Mar. 27, 2020.

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**38-35-11. Promulgation of rules--Fees.**

The department shall promulgate rules, pursuant to chapter 1-26, to:

- (1) Establish application, application form, licensure, and renewal procedures;
- (2) Establish requirements to prevent the spread of hemp and hemp seeds from licensed land areas and provide for the assessment of costs for the remediation thereof;
- (3) Establish criteria and procedures for denial, revocation, or suspension of a license under this chapter;
- (4) Make any modification or addition to the hemp regulatory program in order to comply with any federal statutes or any rules and regulations regarding hemp enacted or implemented by the United States Department of Agriculture;
- (5) Establish a nonrefundable annual license application fee not to exceed fifty dollars, an annual grower license fee not to exceed five hundred dollars, and an annual processor license fee not to exceed two thousand dollars;
- (6) Establish procedures for the collection of planting and harvest data for each lot;
- (7) Establish labeling requirements for hemp; and
- (8) Establish rules for corrective action for negligent and culpable violations of this chapter.

**Source:** SL 2020, ch 176, § 11, eff. Mar. 27, 2020.

**38-35-12. Department of Health--Promulgation of rules.**

The Department of Health shall promulgate rules, pursuant to chapter 1-26, to:

- (1) Make any modification or addition to the hemp regulatory program in order to comply with any federal statutes or any rules and regulations regarding hemp enacted or implemented by the United States Department of Agriculture; and
- (2) Establish testing procedures to determine the lawful amount of delta-9 tetrahydrocannabinol concentration in hemp and certifying results.

**Source:** SL 2020, ch 176, § 12, eff. Mar. 27, 2020.

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**38-35-13. Department of Public Safety--Promulgation of rules.**

The Department of Public Safety shall promulgate rules, pursuant to chapter 1-26, to:

- (1) Make any modification or addition to the hemp regulatory program in order to comply with any federal statutes or any rules and regulations regarding hemp enacted or implemented by the United States Department of Agriculture;
- (2) Establish inspection procedures and requirements, a grower inspection fee per lot not to exceed two hundred fifty dollars, and a processor inspection fee per any processor location not to exceed five hundred dollars;
- (3) Establish transportation and permit requirements including assessment of a permit fee not to exceed twenty-five dollars;
- (4) Establish sampling and testing procedures to determine the lawful amount of delta-9 tetrahydrocannabinol concentration in hemp; and
- (5) Establish rules for corrective action for negligent and culpable violations of this chapter.

**Source:** SL 2020, ch 176, § 13, eff. Mar. 27, 2020.

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**38-35-14. Testing samples--Exceeding concentration--Destruction of lot.**

All testing shall be conducted by a laboratory approved by the Drug Enforcement Administration. If a test reveals a delta-9 tetrahydrocannabinol concentration of more than three-tenths of one percent but not more than five-tenths of one percent, the licensee may request a retest at the licensee's expense. If, upon the retesting, the delta-9 tetrahydrocannabinol concentration exceeds three-tenths of one percent, the entire lot from which the noncompliant sample was collected shall be destroyed as provided by § 38-35-9.

**Source:** SL 2020, ch 176, § 14, eff. Mar. 27, 2020.

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**38-35-15. State hemp production plan--Submission to United States Department of Agriculture--Establishment of program.**

The department shall work with the attorney general to develop a state hemp production plan and submit the plan to the United States Department of Agriculture for approval of a program to license the growth, production, storage, processing, and transportation of industrial hemp in South Dakota. The department shall establish a program once approval is received by the United States Department of Agriculture.

**Source:** SL 2020, ch 176, § 15, eff. Mar. 27, 2020.

**38-35-16. Transportation--Consent to search and seizure--Inspection by law enforcement--Penalty.**

Any transporter is deemed to have given consent to the reasonable search and seizure by law enforcement of any hemp without a warrant to determine the lawful amount of delta-9 tetrahydrocannabinol concentration. Any law enforcement officer may require any transporter to stop for the purposes of inspection. During a stop, a law enforcement officer may collect a sample of any hemp for the purpose of testing for any concentration of delta-9 tetrahydrocannabinol that exceeds three-tenths of one percent on a dry weight basis. Each sample collected by law enforcement may not exceed eight ounces.

It is a Class 2 misdemeanor to transport industrial hemp, but not industrial hemp product, without appropriate documentation demonstrating compliance with an industrial hemp program of a federal, state, or tribal authority, in addition to any permit or documentation required by § 38-35-17.

**Source:** SL 2020, ch 176, § 16, eff. Mar. 27, 2020.

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**38-35-17. Transportation permit requirements--Two types of transportation permits--Required documentation.**

An industrial hemp transportation permit is required for any transporter traveling within or through the state. No person shall transport hemp in this state concurrently with any other plant material that is not hemp. During transportation, a transporter shall have the permit in the transporter's physical possession. The Department of Public Safety shall assess an industrial hemp transportation permit fee and the fee shall be deposited in the state highway fund. A transporter shall apply for an industrial hemp transportation permit on a form provided by the Department of Public Safety. The Department of Public Safety shall make available two types of an industrial hemp transportation permit.

Grower licensees pursuant to § 38-35-3 may apply for the grower licensee transportation permit that shall be exclusively for the transportation of the grower licensee's industrial hemp from the land as described in the licensee's application to the storage location as described in the licensee's application. The grower licensee shall exercise dominion of control over the means of transportation and the storage location at all times. The grower licensee transportation permit is valid for the length of the grower license. During transportation pursuant to the grower licensee transportation permit, the transporter may only be the grower licensee, a key participant, or a person working under contract with or under the direction of the grower licensee. The transporter shall have in the transporter's physical possession 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: the specific name and address of the transporter, the specific lot from which the hemp was harvested, the destination storage location for the hemp, and the type of vehicle being used.

All other transporters shall obtain the general hemp transportation permit. During transportation pursuant to the general hemp transportation permit, the transporter shall have in the transporter's physical possession the following documentation:

- (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 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.

A transporter, applying for either type of permit, shall submit a permit form to the Department of Public Safety at least five business days before the trip. A transporter who falsifies any information contained on a permit form submitted to the Department of Public Safety shall be reported to the hemp program under which the industrial hemp being transported was grown, in addition to any other sanction or criminal charge allowed under this chapter or title 22. Failure to physically possess an appropriate permit and all proper documentation is probable cause to believe that the substance being transported is subject to the provisions of § 38-35-9 and is probable cause to believe that the transporter is subject to the provisions of chapter 22-42. No political subdivision, agency, law enforcement officer, or the state is liable for the seizure, spoilage, or destruction of any hemp shipment that does not meet the requirements of this chapter, regardless of whether the shipment is later established to be industrial hemp.

**Source:** SL 2020, ch 176, § 17, eff. Mar. 27, 2020.

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#### **38-35-18. Rules of United States Department of Agriculture.**

Each applicant, licensee, key participant, and transporter of industrial hemp, other than industrial hemp product, shall abide by any rules set forth by the United States Department of Agriculture.

**Source:** SL 2020, ch 176, § 18, eff. Mar. 27, 2020.

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#### **38-35-19. Reporting to attorney general.**

The attorney general shall annually collect and compile information, statistical and otherwise, which will, as far as practicable, present an accurate survey and may be useful in the study of the effect legalizing industrial hemp has had on controlled substance and marijuana prosecutions in this state, including the extent and character of alleged crimes not prosecuted or dismissed, the operations of police in drug investigations, the charging discretion of prosecuting attorneys, and the administration of criminal justice due to the legalization of industrial hemp. All information collected under this section shall be reported annually to the Governor and Legislature by December first each year.

**Source:** SL 2020, ch 176, § 19, eff. Mar. 27, 2020.

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#### **38-35-20. Coordination with other government entities.**

The department, Department of Health, and Department of Public Safety may provide to another state, local, tribal, or federal government entity, any specific licensee or permittee information as may be necessary to verify the legality or compliance of any licensee or permittee under this chapter. Application for, and receipt of, a license or permit under this

chapter serves as the applicant's consent to provide information without prior notice or disclosure to the applicant that the information will be or has been shared.

**Source:** SL 2020, ch 176, § 20, eff. Mar. 27, 2020.

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**38-35-21. Industrial hemp for smoking prohibited--Violation as misdemeanor.**

The sale or use of industrial hemp for smoking or inhaling is prohibited. A violation of this section is a Class 1 misdemeanor.

**Source:** SL 2020, ch 176, § 21, eff. Mar. 27, 2020.

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## Industrial Hemp Forms



**SOUTH DAKOTA DEPARTMENT OF AGRICULTURE**

**AGRICULTURAL SERVICES DIVISION**

523 East Capitol Avenue

Pierre, SD 57501

Phone: 605.773.4432 Fax: 605.773.3481

sdda.sd.gov

**INDUSTRIAL HEMP LICENSE APPLICATION**

**Individual Information**

Name \_\_\_\_\_ DOB \_\_\_\_\_  
Last First Mi

Home Address \_\_\_\_\_  
Street City State Zip

Mailing Address \_\_\_\_\_  
Street City State Zip

Phone Number \_\_\_\_\_ Alternate Number \_\_\_\_\_

Email Address \_\_\_\_\_

**Business Information**

Please Indicate: Producer  Processor  Both

Business Name \_\_\_\_\_

Contact Name \_\_\_\_\_ DOB \_\_\_\_\_  
Last First Mi

Street Address \_\_\_\_\_  
Street City Zip

Mailing Address \_\_\_\_\_  
Street City State Zip

Phone Number \_\_\_\_\_ Alternate Number \_\_\_\_\_

Email Address \_\_\_\_\_

Type of Business: Corporation  LLC  Partnership  Other \_\_\_\_\_

EIN # \_\_\_\_\_

PLEASE ATTACH SOUTH DAKOTA SECRETARY OF STATE CERTIFICATE OF GOOD STANDING  
ALONG WITH BACKGROUND CHECK BY SOUTH DAKOTA DIVISION OF CRIMINAL INVESTIGATION

**OFFICE USE ONLY**

Date Application Rec'd \_\_\_\_\_ License # \_\_\_\_\_ Processed Date \_\_\_\_\_

Payment Type:  Cash  Check # \_\_\_\_\_ Amount \$ \_\_\_\_\_

## HEMP LICENSE APPLICATION (Continued)

### 38-35-1. INDUSTRIAL HEMP DEFINED

**For the purposes of this chapter, industrial hemp or hemp, is 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 delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis.**

Authorized to act on behalf of business entity (check all that apply)

<input type="checkbox"/>	Name _____	Last	First	Mi	Title _____
<input type="checkbox"/>	Name _____	Last	First	Mi	Title _____
<input type="checkbox"/>	Name _____	Last	First	Mi	Title _____
<input type="checkbox"/>	Name _____	Last	First	Mi	Title _____
<input type="checkbox"/>	Name _____	Last	First	Mi	Title _____
<input type="checkbox"/>	Name _____	Last	First	Mi	Title _____
<input type="checkbox"/>	Name _____	Last	First	Mi	Title _____
<input type="checkbox"/>	Name _____	Last	First	Mi	Title _____
<input type="checkbox"/>	Name _____	Last	First	Mi	Title _____
<input type="checkbox"/>	Name _____	Last	First	Mi	Title _____



## HEMP LICENSE APPLICATION (Continued)

### LICENSED PRODUCING AREA(S)

Multiple production areas can be attached to a single application. Please make additional copies of this page as necessary. Please name and number each licensed area lot. GPS coordinates must be included and obtained from the approximate center of each licensed area lot. Each field is considered a licensed area lot.

Licensed Area Lot _____ Field Name _____
Legal Description _____ <div style="display: flex; justify-content: space-between; width: 80%; margin: 0 auto;"> <span>Section</span> <span>Township</span> <span>Range</span> </div>
GPS Latitude _____ GPS Longitude _____
Licensed Lot Size _____ Acreage _____
Ownership Owned <input type="checkbox"/> Leased <input type="checkbox"/> If leased, please complete page 5 for each leased field
Planned harvest use Seed/Grain <input type="checkbox"/> Floral <input type="checkbox"/> Floral <input type="checkbox"/> Fiber <input type="checkbox"/> Other _____ <input type="checkbox"/>
Licensed Area Lot _____ Field Name _____
Legal Description _____ <div style="display: flex; justify-content: space-between; width: 80%; margin: 0 auto;"> <span>Section</span> <span>Township</span> <span>Range</span> </div>
GPS Latitude _____ GPS Longitude _____
Licensed Lot Size _____ Acreage _____
Ownership Owned <input type="checkbox"/> Leased <input type="checkbox"/> If leased, please complete page 5 for each leased field
Planned harvest use Seed/Grain <input type="checkbox"/> Floral <input type="checkbox"/> Floral <input type="checkbox"/> Fiber <input type="checkbox"/> Other _____ <input type="checkbox"/>
Licensed Area Lot _____ Field Name _____
Legal Description _____ <div style="display: flex; justify-content: space-between; width: 80%; margin: 0 auto;"> <span>Section</span> <span>Township</span> <span>Range</span> </div>
GPS Latitude _____ GPS Longitude _____
Licensed Lot Size _____ Acreage _____
Ownership Owned <input type="checkbox"/> Leased <input type="checkbox"/> If leased, please complete page 5 for each leased field
Planned harvest use Seed/Grain <input type="checkbox"/> Floral <input type="checkbox"/> Floral <input type="checkbox"/> Fiber <input type="checkbox"/> Other _____ <input type="checkbox"/>





**HEMP LICENSE APPLICATION  
(Continued)**

**SECTION 5: AKNOWLEDGEMENT**

Please affirm the applications agreement to the following terms and conditions for a hemp license.

I, \_\_\_\_\_ (print name), have the legal authority to bind the applicant to the terms and conditions of this application for a industrial hemp license, hereby acknowledge those regulations governing the production and processing of hemp under federal law, South Dakota law, and the rules of the SDDA. I further acknowledge, understand and agree to each of the following terms and conditions of a license from SDDA to produce and/or process industrial hemp.

1. Any information provided to the SDDA may be publicly disclosed in accordance with the South Dakota open records law SDCL 1-27 and may be provided to law enforcement agencies without further notice to the license applicant or licensee. License and harvest information will also be shared with the appropriate sections of the United States Department of Agriculture or other federal agencies.
2. I agree to allow any inspection or sampling that SDDA seems necessary pursuant to South Dakota law during reasonable business hours.
3. In accordance with South Dakota law, I agree to pay all fees for inspection, sampling, and analysis.
4. I agree to submit all reports or records requested by SDDA pertaining to this license application, hemp production, and hemp processing by the applicable due dates specified by SDDA.
5. I agree to produce or process hemp only in a licensed area.
6. I affirm that I have not been convicted of or pled nolo contendere to a controlled substance felony within the past 10 years.
7. If the applicant is a business entity, I affirm that no key participant of the applicant has been convicted of or pled nolo contendere to a controlled substance felony within the past 10 years.
8. I affirm that all documents and information in support of this application for a industrial help license are correct and complete.
9. I affirm that I have read and understand South Dakota Industrial Hemp Law SDCL 38-35 available at: <https://sdlegislature.gov>

Applicant Name (please print) \_\_\_\_\_ Date \_\_\_\_\_

Applicant Signature \_\_\_\_\_



**SOUTH DAKOTA DEPARTMENT OF AGRICULTURE**

**AGRICULTURAL SERVICES DIVISION**

523 East Capitol Avenue

Pierre, SD 57501

Phone: 605.773.4432 Fax: 605.773.3481

sdda.sd.gov

**INDUSTRIAL HEMP LICENSE AMENDMENT**

**Individual Information**

(Only complete this section if there was a name change. Business entities proceed to section 2.)

Name \_\_\_\_\_ **DOB** \_\_\_\_\_  
Last First Mi

Home Address \_\_\_\_\_  
Street City State Zip

Mailing Address \_\_\_\_\_  
Street City State Zip

Phone Number \_\_\_\_\_ Alternate Number \_\_\_\_\_

Email Address \_\_\_\_\_

**Business Information**

Please Indicate: Producer  Processor  Both

Business Name \_\_\_\_\_

Contact Name \_\_\_\_\_ **DOB** \_\_\_\_\_  
Last First Mi

Street Address \_\_\_\_\_  
Street City Zip

Mailing Address \_\_\_\_\_  
Street City State Zip

Phone Number \_\_\_\_\_ Alternate Number \_\_\_\_\_

Email Address \_\_\_\_\_

Type of Business: Corporation  LLC  Partnership  Other \_\_\_\_\_

EIN # \_\_\_\_\_

PLEASE ATTACH SOUTH DAKOTA SECRETARY OF STATE CERTIFICATE OF GOOD STANDING  
ALONG WITH BACKGROUND CHECK BY SOUTH DAKOTA DIVISION OF CRIMINAL INVESTIGATION

**OFFICE USE ONLY**

Initial Application Date Rec'd \_\_\_\_\_

Amendment Process Date \_\_\_\_\_



**HEMP LICENSE AMENDMENT  
(Continued)**

**LICENSED PRODUCING AREA(S)**

Multiple production areas can be attached to a single application. Please make additional copies of this page as necessary. Please name and number each licensed area lot. GPS coordinates must be included and obtained from the approximate center of each licensed area lot. Each field is considered a licensed area lot.

**ORIGINAL AREA LOT**

Licensed Area Lot _____	Field Name _____				
Legal Description _____					
Section	Township	Range			
GPS Latitude _____	GPS Longitude _____				
Licensed Lot Size _____	Acreage _____				
Ownership	Owned <input type="checkbox"/>	Leased <input type="checkbox"/>	If leased, please complete page 5 for each leased field		
Planned harvest use	Seed/Grain <input type="checkbox"/>	Floral <input type="checkbox"/>	Floral <input type="checkbox"/>	Fiber <input type="checkbox"/>	Other _____ <input type="checkbox"/>

**AMENDED AREA LOT**

Licensed Area Lot _____	Field Name _____				
Legal Description _____					
Section	Township	Range			
GPS Latitude _____	GPS Longitude _____				
Licensed Lot Size _____	Acreage _____				
Ownership	Owned <input type="checkbox"/>	Leased <input type="checkbox"/>	If leased, please complete page 5 for each leased field		
Planned harvest use	Seed/Grain <input type="checkbox"/>	Floral <input type="checkbox"/>	Floral <input type="checkbox"/>	Fiber <input type="checkbox"/>	Other _____ <input type="checkbox"/>

**HEMP LICENSE AMENDMENT  
(Continued)**

**LICENSED PROCESSING AREA(S)**  
Multiple production areas can be attached to a single application. Please make additional copies of this page as necessary. Please name and number each licensed area lot. GPS coordinates must be included and obtained from the approximate center of each licensed area lot. Each field is considered a licensed area lot.

**ORIGINAL LICENSED PROCESSING AREA**

Licensed Area Lot _____	Building Name _____
Legal Description _____	Range _____
Section _____	Township _____
GPS Latitude _____	GPS Longitude _____
Processing Area _____	Sq/ft or acreage _____
Ownership    Owned <input type="checkbox"/>	Leased <input type="checkbox"/>

**AMENDED LICENSED PROCESSING AREA**

Licensed Area Lot _____	Building Name _____
Legal Description _____	Range _____
Section _____	Township _____
GPS Latitude _____	GPS Longitude _____
Processing Area _____	Sq/ft or acreage _____
Ownership    Owned <input type="checkbox"/>	Leased <input type="checkbox"/>



**HEMP LICENSE AMENDMENT  
(Continued)**

**Landowner Agreement**

**This Section is to be completed if you are leasing the licensed area from another real property owner.  
Please make additional copies of this form as necessary.**

I, \_\_\_\_\_ (print name), the undersigned, am the lawful owner of real property located the referenced licensed area number \_\_\_\_\_ in Section 3 of this application, and I hereby consent to the use of such property for the purpose of production/processing of industrial hemp consistent with and for all purposes allowed under federal law, South Dakota law, and the rules of the South Dakota Department of Agriculture (SDDA). I produce/process on said property.

1. Any information obtained by the SDDA with respect to this application and the production/processing industrial hemp on my property may be disclosed to the public and/or provided to law enforcement agencies without further notice to me or my representative(s).
2. I agree to allow any inspection or sampling of my property at the referenced licensed area number \_\_\_\_\_ in Section 3 of this application that SDDA deems necessary relative to this application for a hemp production/processing license.
3. I agree to allow SDDA to use any right of way or another entry point to access the field for inspection.

Landowner's Signature \_\_\_\_\_ Date \_\_\_\_\_

**Landowners Contact Information: (Please print)**

Name \_\_\_\_\_  
Last First Mi

Phone Number \_\_\_\_\_ Alternate Number \_\_\_\_\_

Email Address \_\_\_\_\_

**Please attach background check as required by SDCL 35-35-5**

**HEMP LICENSE AMENDMENT  
(Continued)**

**SECTION 5: AKNOWLEDGEMENT**

Please affirm the applications agreement to the following terms and conditions for a hemp license.

I, \_\_\_\_\_ (print name), have the legal authority to bind the applicant to the terms and conditions of this application for a industrial hemp license, hereby acknowledge those regulations governing the production and processing of hemp under federal law, South Dakota law, and the rules of the SDDA. I further acknowledge, understand and agree to each of the following terms and conditions of a license from SDDA to produce and/or process industrial hemp.

1. Any information provided to the SDDA may be publicly disclosed in accordance with the South Dakota open records law SDCL 1-27 and may be provided to law enforcement agencies without further notice to the license applicant or licensee. License and harvest information will also be shared with the appropriate sections of the United States Department of Agriculture or other federal agencies.
2. I agree to allow any inspection or sampling that SDDA seems necessary pursuant to South Dakota law during reasonable business hours.
3. In accordance with South Dakota law, I agree to pay all fees for inspection, sampling, and analysis.
4. I agree to submit all reports or records requested by SDDA pertaining to this license application, hemp production, and hemp processing by the applicable due dates specified by SDDA.
5. I agree to produce or process hemp only in a licensed area.
6. I affirm that I have not been convicted of or pled nolo contendere to a controlled substance felony within the past 10 years.
7. If the applicant is a business entity, I affirm that no key participant of the applicant has been convicted of or pled nolo contendere to a controlled substance felony within the past 10 years.
8. I affirm that all documents and information in support of this application for a industrial help license are correct and complete.
9. I affirm that I have read and understand South Dakota Industrial Hemp Law SDCL 38-35 available at: <https://sdlegislature.gov>

Applicant Name (please print) \_\_\_\_\_ Date \_\_\_\_\_

Applicant Signature \_\_\_\_\_



## Sampling Guidelines

## **Sampling guidelines for hemp growing facilities**

### **Purpose:**

1. Standard sampling guidelines are specified for field and greenhouse sampling of hemp.
2. Samples are taken to obtain specimens for the measurement of tetrahydrocannabinol (THC) content, which determine whether the specimens are hemp or marijuana. The measurements are intended to be representative of the THC content in a "lot" of hemp crop acreage as identified by the producer. Hemp producers may not harvest hemp prior to the hemp being sampled and tested for THC concentration. Testing procedures are provided in a separate document.

### **Scope:**

1. Samples collected under this procedure are acceptable for submission to a qualified, DEA-registered laboratory for determination of THC in hemp.
2. Since the THC content of hemp generally peaks as the plant ripens, the timing of when sampling occurs is important to accurately measure THC concentration and monitor compliance with the USDA hemp production program.
3. Samples must be collected by a USDA approved sampling agent, or a Federal, State or Tribal law enforcement agent authorized by USDA to collect samples. It is the responsibility of the licensed producer to pay any fees associated with sampling.

### **Summary of Practice:**

1. This practice provides procedures for entering a growing area and collecting the minimum number of plant specimens necessary to represent a homogeneous composition of the "lot" that is to be sampled. An authorized representative enters a growing area, strategically examines the growing area, establishes an approach for navigating the growing area, and collects individual specimens of plants in order to obtain a representative sample of hemp in the designated lot.
2. Cuttings from each "lot" of hemp crop acreage, as identified by the producer, and submitted to and uniquely identified by the Farm Service Agency per the requirements of the USDA hemp production program, shall be organized as composite samples. For the purposes of these procedures, a "lot" is a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout. In addition, "lot" refers to the batch of contiguous, homogeneous whole of a product being sold to a single buyer at a single time. "Lot" is to be defined by the producer in terms of farm location, field acreage, and to be reported as such to the FSA.

### **Equipment and Supplies:**

1. Garden pruners/shears (Cleaned prior to and following each composite sample. Some examples of appropriate cleaning agents and supplies to use on garden pruners/shears are bleach, rubbing alcohol, steel wool, and/or sandpaper.)
2. Sample bags, paper.
  - 2.1. The size of the bags will depend upon the number of clippings collected per lot.
  - 2.2. The bags should be made from material known to be free from THC.
3. Security tape
4. Permanent markers
5. Sample collection forms
6. GPS Unit
7. Disposable gloves – Nitrile

### **Sampling Guidelines:**

1. The licensee or designated employee shall accompany the sampling agent throughout the sampling process.
2. Surveillance of the growing area.
  - 2.1. The inspector shall verify the GPS coordinates of the growing area as compared with the GPS coordinates submitted by the licensee to USDA.
  - 2.2. The inspector shall estimate the average height, appearance, approximate density, condition of the plants, and degree of maturity of the flowering material, meaning inflorescences (flowers/buds).
  - 2.3. The inspector shall visually establish the homogeneity of the stand to establish that the growing area is of like variety.
3. Time of Sampling:
  - 3.1. Within 15 days prior to the anticipated harvest of cannabis plants, an approved Federal, State, local, or Tribal law enforcement agency or other State or Tribal designated person shall collect representative samples from such cannabis plants for THC concentration level testing.
4. Field Sampling:
  - 4.1. For purposes of determining the number of individual plants to select for sampling, the size of the growing area shall be considered. For sampling purposes, samples from separate “lots” must be kept separate and not be comingled.
  - 4.2. For lots of less than one acre, including greenhouses, select a minimum of 1 plant, then take a cutting from the plant to form a sample. For lots of 2 to 10 acres, including greenhouses, select a minimum of one plant per acre, then take cuttings of each plant, then combine to form a composite sample.
  - 4.3. For growing areas larger than ten (10) acres, including greenhouses, the number of plants that will be selected to form a composite sample is based upon the Codex Alimentarius Recommended Methods of Sampling for the Determination of Pesticide Residues for Compliance with MRLS CAC/GL 33-1999.
    - 4.3.1. The sample size is estimated in a two-step process. The first step is to estimate the number of primary plants to be sampled. The second step is to adjust the estimate of primary plants by the acreage under cultivation.
    - 4.3.2. The initial number of primary plants is estimated using

$$n_o = \frac{\ln(1-p)}{\ln(1-i)}$$

where p is the confidence level to detect hemp plants having THC content greater than the acceptable hemp THC level and i is the proportion of hemp plants having THC content greater than the acceptable hemp THC level. The values for i are based on past experience in the same or similar growing areas.

4.3.3. The initial primary plants estimate is adjusted by the number of acres to calculate the minimum number of primary plants for composting as follows:

$$n = \frac{n_o}{1 + \frac{(n_o - 1)}{N}}$$

where n is the minimum number of primary plants to be selected for forming a composite sample,  $n_o$  is the initial number of primary plants, and N is the number of acres under cultivation.

4.3.4. Example 1 : The initial primary plant sample size is 299 with a confidence level of 95% to detect hemp plants having THC content greater than the acceptable hemp THC level and a proportion of hemp plants having THC content of greater than the acceptable hemp THC level equal to 0.01 is considered appropriate. The adjusted primary plant sample sizes for fields from 11 to 173 acres in size are shown in the following table:

Number of acres	Sample Size "n"	Number of acres	Sample Size "n"	Number of acres	Sample Size "n"	Number of acres	Sample Size "n"
11	11	40	36	75-76	61	119-120	86
12	12	41-42	37	77	62	121-122	87
13	13	43	38	78-79	63	123-124	88
14	14	44	39	80-81	64	125-126	89
15	15	45-46	40	82	65	127-128	90
16	16	47	41	83-84	66	129-130	91
17	17	48	42	85-86	67	131-132	92
18-19	18	49-50	43	87	68	133-134	93
20	19	51	44	88-89	69	135-136	94
21	20	52	45	90-91	70	137-138	95
22	21	53-54	46	92	71	139-140	96
23	22	55	47	93-94	72	141-143	97
24	23	56	48	95-96	73	144-145	98
25-26	24	57-58	49	97-98	74	146-147	99
27	25	59	50	99	75	148-149	100
28	26	60-61	51	100-101	76	150-152	101
29	27	62	52	102-103	77	153-154	102
30	28	63-64	53	104-105	78	155-156	103
31-32	29	65	54	106-107	79	157-157	104
33	30	66-67	55	108	80	159-161	105
34	31	68	56	109-110	81	162-163	106
35	32	69-70	57	111-112	82	164-166	107
36	33	71	58	113-114	83	167-168	108
37-38	34	72-73	59	115-116	84	169-170	109
39	35	74	60	117-118	85	171-173	110

Example 2: The adjusted primary plant sample sizes for fields from less than 1 to 10 acres in size are shown in the following table:

Number of Acres "N"	Sample Size "n"
Less than 1	1
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10

6. Collecting Samples from each lot:

6.1. Sampling agents shall always walk at right angles to the rows of plants, beginning at one point of the lot and walking towards another point on the opposite side of the lot.

6.2. While walking through the growing area, the inspector shall cut at least "n" flowering material, meaning inflorescences (the flower or bud of a plant) at random but convenient distances. Avoid collecting too many specimens from the borders of the field/greenhouse.

6.3. The cut shall be made just underneath a flowering material, meaning inflorescence (the flower or bud of a plant), located at the top one-third  $\{1/3\}$  of the plant. (See figure below.) The sample size must be of adequate volume to accommodate laboratory tests.





6.4. Utilize a paper sample bag for collecting sample cuttings. Ensure that each bag has the minimum number of cuttings, n, as calculated by 4.3.3, or in the Example Tables 1 and 2.

6.5. Seal each bag and record the sample number.

7. Sample identification:

7.1 The inspector shall seal each bag and record the sample identification number. The sample shall also be identified with the following information:

(1) The sample ID shall include: Sampling agent contact information ; name and contact information of the producer; producer hemp license or authorization number ; date of sample; and "lot" ID as provided by the USDA Farm Service Agency; any other information that may be required by States, Tribes, Law Enforcement Authorities, mail delivery services, customers or groups of customers.



## Testing Guidelines

## **Testing guidelines for Identifying Delta-9 Tetrahydrocannabinol (THC) Concentration in Hemp**

### **Purpose:**

1. Standard testing procedures are specified for samples taken in accordance with the Sampling Procedures for the USDA Hemp Program to measure the delta-9 tetrahydrocannabinol (THC) concentration levels of those samples on a dry weight basis. Hemp testing laboratories are not required to be ISO accredited, although USDA strongly encourages adherence to the ISO 17025 standard.
2. The results are intended to measure the THC content of composite hemp samples collected from a designated "lot" of hemp crop acreage designated by a hemp producer and as reported to the USDA Farm Service Agency as required under the USDA hemp production program. The purpose of the measurements are to determine whether the THC concentration of the tested material is within the acceptable hemp THC level.
3. As required under USDA hemp production program regulation, laboratories conducting testing of hemp must conduct analytical testing for purposes of detecting the concentration levels of delta-9 tetrahydrocannabinol THC and shall meet the following standards:
  - (a) Laboratory quality assurance must ensure the validity and reliability of test results;
  - (b) Analytical method selection, validation, and verification must ensure that the testing method used is appropriate (fit for purpose) and that the laboratory can successfully perform the testing;
  - (c) The demonstration of testing validity must ensure consistent, accurate analytical performance; and
  - (d) Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this part.
  - (e) At a minimum, analytical testing of samples for delta-9 tetrahydrocannabinol concentration levels must use post-decarboxylation or other similarly reliable methods approved by the Secretary. The testing methodology must consider the potential conversion of delta-9 tetrahydrocannabinolic acid (THCA) in hemp into delta-9 tetrahydrocannabinol (THC) and the test result reflect the total available THC derived from the sum of the THC and THC-A content. Testing methodologies meeting these requirements include, but are not limited to, gas chromatography and high-performance liquid chromatography.
  - (f) The total delta-9 tetrahydrocannabinol concentration level shall be determined and reported on a dry weight basis.
  - (g) Any sample test result showing with at least 95% confidence that the THC content of the sample is higher than the acceptable hemp THC level shall be conclusive evidence that the lot represented by the sample is not in compliance with this part.

4. Laboratories approved for THC testing must also be registered with DEA to handle controlled substances under the Controlled Substances Act (CSA), 21 CFR part 1301.13.

5. In order to provide flexibility to States and Tribes in administering their own hemp production programs, alternative testing protocols will be considered if they are comparable and similarly reliable to the baseline mandated by section 297B(a)(2)(ii) of the Agricultural Marketing Act of 1946 and established under the USDA plan and procedures. Alternative testing protocols must be requested of USDA in writing and approved in writing by USDA, provided they meet the requirements of this guidance.

**General Sample Preparation and Testing Procedures are as follows:**

1. Laboratory receives sample.
2. Dry sample to remove the majority of water.
3. Mill and "manicure" sample through a wire screen no larger than 1.5 x 1.5mm to discard mature seeds and larger twigs and stems.
4. Separate sample into a test and retain specimens.
  - a. Test specimen: go to step 5
  - b. Retain specimen: package and store until needed. When needed go to step 5.
5. Determine moisture content or dry to a consistent weight (meeting criteria).
6. Perform chemical analysis.
7. Calculate total THC on a dry weight basis. Test results should be determined and reported on a dry weight basis.

(A) Samples shall be received and prepared for testing in a DEA registered laboratory as follows:

(1) Once the composite sample is received by the laboratory, the laboratory shall dry all of the leaf and flower (not obvious stem and seeds) of the composite sample until brittle in a manner that maintains the THC level of sample. Samples are to be dried to a consistent loss (typically 5-12% moisture content) so that the test can be performed on a dry weight basis, meaning the percentage of THC, by weight, in a cannabis sample, after excluding moisture from the sample. The moisture content is expressed as the ratio of the amount of moisture in the sample to the amount of dry solid in the sample.

(2) The laboratory shall mill and manicure samples through a wire screen no larger than 1.5 x 1.5mm to discard mature seeds and larger twigs and stems.

(3) The laboratory shall form sieve a "Test Specimen" and a "Retain Specimen." One sample part shall be selected for analysis and labeled "Test Specimen". The other sample part shall be marked "Retain Specimen" and shall be packaged and stored in a secured place.

(4) The laboratory shall then determine moisture content or dry to a consistent weight.

(5) The laboratory will then perform chemical analysis on the sample using post-decarboxylation or other similarly reliable methods where the total THC concentration level considers the potential to convert delta-9-tetrahydrocannabinolic acid (THCA) into THC.

Testing methodologies meeting these requirements include those using gas chromatography and high-pressure liquid chromatography. *High-performance liquid chromatography*. High-performance liquid chromatography (HPLC) or (LC) is a scientific method (specifically, a type of chromatography) used in analytical chemistry used to separate, identify, and quantify each

component in a mixture. It relies on pumps to pass a pressurized liquid solvent containing the sample mixture through a column filled with a solid adsorbent material to separate and analyze compounds. Under the terms of this part, HPLC is one of the valid methods by which laboratories may test for THC concentration levels. Ultra-Performance Liquid Chromatography (UPLC) is an additional method that may also be used as well as other liquid or gas chromatography with detection.

(6) The laboratory will then calculate total THC on a dry weight basis.

References:

E. Small and H. D. Beckstead. 1973. Common Cannabinoid Phenotypes in 350 stocks of Cannabis. *J. of Natural Products*. 36(2): 144-165.

*United Nations Office on Drugs and Crime: Recommended Methods for the Identification and Analysis of Cannabis and Cannabis Products. ISBN 978-92-1-148242-3.*

**(B) Testing Methods** The total available THC, derived from the sum of the THC and THCA content, shall be determined and reported on a dry weight basis. Alternative testing protocols will be considered if they are comparable to the baseline mandated by the 2018 Farm Bill and established under the USDA plan and procedures. Alternative sampling and testing procedures must be requested in writing and approved in writing by USDA.

Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty. Laboratories shall meet the AOAC International standard method performance requirements (SMPR) for selecting an appropriate method. The range of estimated uncertainty is reported as a  $\pm$  value and is the same unit as the hemp THC threshold (0.3% THC), following best practices for significant figures and rounding.

There are resources available for defining, guiding, and calculating measurement uncertainty. They include the GUM, ISO, and Eurachem. It is necessary for the laboratory to determine the uncertainty of accuracy ( $u_{bias}$ ), repeatability ( $u_r$ ), and reproducibility ( $u_R$ ) for each validated method. Once the expanded measurement uncertainty ( $U$ ) is determined, then the confidence interval can be calculated around a designated threshold such as the hemp THC threshold (0.3% THC).

Based on the aforementioned resources, the following equation is recommended:

Equation:

$$U = k \times u_c$$

Where,

$$u_c = \sqrt{u_r^2 + u_R^2 + u_{bias}^2}$$

And:

$u$  = standard uncertainty (standard deviation)

$u_r$  = uncertainty due to repeatability

$u_R$  = uncertainty due to reproducibility

$u_{bias}$  = uncertainty due to accuracy (bias)

$u_c$  = combined standard uncertainty

$U$  = Expanded uncertainty =  $\frac{u}{Mean} * k_{95\% \text{ confidence level}}$ ,  $k = 2$

$k$  = coverage factor, use 2 for a 95% confidence level

References:

ISO 17025. General requirements for the complete testing and calibration laboratories.

Food and Drug Administration, Office of Regulatory Affairs, *ORA Laboratory Manual Volume III Section 4*, Basic Statistics and Data Presentation (current version).

AOAC Standard Method Performance Requirements (draft) AOAC SMPR 2019.XXX; Title: Quantitation of cannabinoids in plant materials of hemp (low THC varieties 4 *Cannabis* spp.).

JCGM 100:2008, Evaluation of measurement data – Guide to the expression of uncertainty in measurement (GUM).

ISO/IEC Guide 98, Expression of Uncertainty in Measurement.

EURACHEM/CITAC Guide “Quantifying Uncertainty in Analytical Measurement” Second edition (2000). A Williams, S L R Ellison, M Roeslein (eds.) ISBN 0 948926 15 5. Available from the Eurachem Secretariate.

**(C) Test results exceeding 0.3% THC.** Any sample test result showing with at least 95% confidence that the THC content of the sample is higher than the acceptable hemp THC level shall be conclusive evidence that one or more cannabis plants or plant products from the lot represented by the sample contain a THC concentration in excess of that allowed under the Act. If the results of a test conclude that the THC levels of a sample are conclusively higher than the acceptable hemp THC level, the laboratory will promptly notify the producer and USDA or its authorized agent.

**(D) Retest Procedures.** Any hemp program licensee may request that the laboratory retest samples if it is believed the original THC concentration level test results were in error. If this occurs, the laboratory shall follow the same procedures as described in paragraphs (A)-(C) above that were followed to conduct the initial test. The licensee requesting the retest of the second sample will pay the cost of the test. The retest results shall be issued to the licensee requesting the retest and a copy shall be provided to USDA or its agent.

**(E) Information Sharing with USDA.** Laboratories performing THC testing for hemp produced under this program are required to share test results with the licensed producer and USDA. USDA will provide instructions to all approved labs on how to electronically submit test results to USDA. Laboratories may provide test results to licensed producers in whatever manner best aligns with their business practices, but producers must be able to produce a copy of test results. For this reason, providing test results to producers through a web portal or through electronic mail, so the producer will have ready access to print the results when needed, is preferred.



State Producer Report Form



UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
USDA DOMESTIC HEMP PRODUCTION PROGRAM  
STATE AND TRIBAL HEMP PRODUCER REPORT

Reporting Period: \_\_\_\_\_ to \_\_\_\_\_

State or Tribe Name: \_\_\_\_\_ Date Submitted: \_\_\_\_\_

The USDA Domestic Hemp Production Program requires states and tribes with approved plans to submit contact information and the status of the license for each producer under their plan.

**Instructions:**

This information must be submitted to the U.S. Department of Agriculture (USDA) on the 1<sup>st</sup> day of each month. If this date falls on a holiday or weekend, the reports are due the next business day. Each monthly report is for new producers and changes to existing producer information only.

Producers: Report all required information for each producer licensed under the Plan.

Changes to Producer Information: Report any changes to reported information for producers that were included in previous reports. These changes include but are not limited to; a change of license status, an address change, a change in the key participant of a business or an updated phone number.

This report should be submitted to USDA using a digital format compatible with USDA's information sharing systems, whenever possible. If this is not possible, please submit report to:

By Mail:  
USDA/AMS/Specialty Crops Program  
Hemp Branch  
470 L'Enfant Plaza S.W.  
Post Office Box 23192  
Washington, D.C. 20026

Or via Email at:  
[FarmBill.Hemp@usda.gov](mailto:FarmBill.Hemp@usda.gov)

Or via Fax at:  
(202) 720-8938

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. § 552a) and the Paperwork Reduction Act of 1995. The authority for requesting this information to be supplied on this form is the 7 CFR Part 990 Domestic Hemp Program (Program). The purpose of collecting this information is for USDA to administer the Program and the information provided on this form will be used to monitor Program participants. Failure to provide the information requested on this form may result in ineligibility to participate in the Program.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB 0581-NEW. The time required to complete this information collection is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.



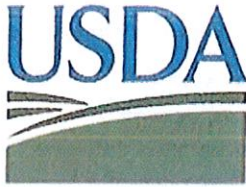


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State Hemp Disposal Form



UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
USDA DOMESTIC HEMP PRODUCTION PROGRAM  
STATE AND TRIBAL HEMP DISPOSAL REPORT

If a producer has produced cannabis that tested above the acceptable delta-9 tetrahydrocannabinol (THC) level, the material must be disposed of in accordance with the Controlled Substances Act (CSA) and U.S. Drug Enforcement Administration (DEA) regulations because such material constitutes marijuana, a schedule I controlled substance under the CSA. Consequently, the material must be collected for destruction by a person authorized under the CSA to handle marijuana, such as a DEA-registered reverse distributor, or a duly authorized Federal, State, or local law enforcement officer. This form is used to document the disposal process.

States and Tribes must submit this form and each corresponding disposition certificate to the U.S. Department of Agriculture (USDA) on the 1<sup>st</sup> day of each month. If this date falls on a holiday or weekend, the report is due the next business day. If no disposals occurred during the reporting cycle, check the box indicating there were no changes during the current reporting cycle. This report should be submitted to USDA using a digital format compatible with USDA's information sharing systems, whenever possible. If this is not possible, please submit report to.

By Mail:  
USDA/AMS/Specialty Crops Program  
Hemp Branch  
470 L'Enfant Plaza S.W.  
Post Office Box 23192  
Washington, D.C. 20026

Or via Email at:  
[FarmBill.Hemp@usda.gov](mailto:FarmBill.Hemp@usda.gov)

Or via Fax at:  
(202) 720-8938

**The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. § 552a) and the Paperwork Reduction Act of 1995. The authority for requesting this information to be supplied on this form is the 7 CFR Part 990 Domestic Hemp Program (Program). The purpose of collecting this information is for USDA to administer the Program and the information provided on this form will be used to monitor Program participants. Failure to provide the information requested on this form may result in ineligibility to participate in the Program.**

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB 0581-NE5W. The time required to complete this information collection is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English. To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail, U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email, [program.intake@usda.gov](mailto:program.intake@usda.gov). USDA is an equal opportunity provider, employer, and lender.



State Annual Report Form

Reporting Period: \_\_\_\_\_ to \_\_\_\_\_

State or Tribe Plan: \_\_\_\_\_ Date Submitted: \_\_\_\_\_

List all licensees and locations where a disposal took place during this reporting cycle.

Producer or Entity Name	Producer/Entity Address	License or Authorization identifier	Lot #	Location Type <i>(Greenhouse, Indoor, Field)</i>	Geospatial Location <i>(or other valid land descriptor)</i>	Total Acreage	Date of Disposal	Disposal Agent Name and Organization

(Add additional pages if needed)

OR

No disposals during this reporting cycle