

Texas Department of Agriculture

Texas Hemp Program Update

Thank you for the opportunity to provide information for the review of the Texas Hemp Program administered by the Texas Department of Agriculture (TDA). It is important to recognize the hard work by the staff at TDA. Their efforts took a program to full implementation in short amount of time. There are challenges and needs to make the program better, and we appreciate the opportunity to offer some insight on these matters. I also want to thank program partners in the state for their work and input including the Department of Public Safety and the Department of State Health Services.

As of today, we have issued over 1,400 hemp related licenses in Texas. These include producer, sampler, handler, and other required registrations. We currently have over 5,300 acres permitted, and 11,339,085 square feet of greenhouse production.

Background

The 2018 US Farm Bill legalized the commercial production of hemp and authorized states to submit state plans to administer hemp programs. On June 10, 2019, House Bill (HB) 1325, was signed into law by Governor Greg Abbott. The bill authorizes the production, manufacture, retail sale, and inspection of industrial hemp crops and products in Texas. This also includes products for consumable hemp products which contain cannabidiol (CBD), as well as other edible parts of the hemp plant.

With the authority to implement the Texas Hemp Program, TDA began to prepare to submit the required plan to the U.S. Department of Agriculture (USDA). Once the federal government issued the new hemp rules, TDA submitted a plan that mirrored the Texas law while adjusting to required provisions by USDA. The Texas Hemp Plan was approved by USDA on January 27, 2020, and the program was opened for applications on March 16, 2020.

Rulemaking

To ensure the quickest timeline to get the program running, TDA submitted program rules for public comment in tandem with the application to USDA. TDA's legal staff began drafting rules in August 2019, holding regularly scheduled meetings with regulatory staff to discuss hemp issues and the development of forms and policies. These meetings involved legal, program and information technology (IT). Input from the public, the Department of Public Safety (DPS), and

Department of State Health Services (DSHS) was appreciated. Program rules were filed with the Secretary of State for publication in the Texas Register on December 2, 2019.

After internal discussions and attending the DSHS public hearing on their hemp rules, TDA staff made more changes to the program rules and resubmitted them to the Texas Register on December 27, 2019. In January 2020, TDA hosted a public hearing on the proposed program rules in Waco, Texas. TDA received over 100 public comments, both verbal and written. TDA staff reviewed all comments and rules were adopted in February 2020.

Virtual Application and Program Creation

With the creation of this program, TDA was given the opportunity to have a completely virtual application process. Staff began internal meetings after HB 1325 was signed into law to discuss the needs of a virtual application. Coordination between TDA program and IT staff occurred over the following months to create a complete application for both licenses and permits.

There are several things a producer must do in order to grow hemp, including passing a criminal history background check. All the information required to participate in the Texas Hemp program was posted online, along with a Frequently Asked Questions (FAQ) document, and a required informational video. A “license” grants an applicant the authority to produce and handle hemp in Texas. At the time of the initial license application, applicants must register at least one “facility” where hemp will be produced or handled. A “lot permit” authorizes a license holder to plant one hemp crop, of an approved single variety, on one area in Texas. There are separate fees for a license, facility registration and lot permit. This means the least a hemp producer must do to grow one crop, or lot, of hemp is to obtain a producer’s license, facility license, and a lot permit. This system allows the tracking of each lot of hemp produced and gives each lot produced a specific identification number.

For example, if a hemp producer has a license, has one facility registered under that license, and decides to plant hemp in two different locations within the facility at the same time during the year, then the producer needs to acquire two lot permits. The producer then plants both hemp lots, and harvests both lots. After harvesting, the producer now decides to plant another three lots of hemp in the same facility so they must acquire another three lot permits.

TDA had existing systems for taking online Hemp applications (eApply) and processing them through the Bringing Resources, Information, and Data together for Greater Efficiency (BRIDGE) System. Notifications, currently sent electronically, are performed via our State Historical Invoice Printing (SHIP) application. The TDA core systems mentioned (eApply, BRIDGE, SHIP) are used to process other license types issued by TDA. Application enhancements were needed, and continue to be needed, to allow all TDA applications to process Hemp requests for licenses, registrations and transport manifests. Please note, BRIDGE is over 15 years old and

requires significant support to enhance, modify and/or support these applications. The application process and program were built without the availability of funding. Since this is a fee-based program, no revenue could be collected until after stakeholders began to apply for licenses and permits.

Another virtual aspect of the program is the introductory and orientation video created for the application process. The introductory video, entitled "Growing Industrial Hemp in Texas," was created for release at the Hemp Public Hearing held in January. It is a 5-minute video hosted by Commissioner Miller and contains a mix of in-house video, purchased stock footage, stock photos and graphics. It was scripted, shot and edited entirely by the TDA Office of Communications. It is currently posted on the agency YouTube page and is also linked on the TDA Hemp landing page.

The TDA Communications Team also created an orientation video, as required by law, to provide basic information about the Texas Industrial Hemp Program for those interested in applying for a hemp license. This video was created in the first several months of 2020 and was premiered on the TDA YouTube page and TDA Hemp landing page when the agency began accepting applications in March. It is approximately 24 minutes in length and consists of in-house video, acquired and purchased stock footage, in-house created and stock graphics. The script was written entirely by Communications staff in co-operation with Hemp program personnel. Communications contracted with third-party voice talent through Voices.com to provide narration for the video. The following link will provide access to the orientation video: <https://www.texasagriculture.gov/RegulatoryPrograms/Hemp/OrientationVideo.aspx>.

Other Agency Coordination

A unique aspect of the Texas Hemp Program is the interagency coordination required to make a successful program. House Bill 1325 gave DSHS the regulatory authority over consumable hemp products. Furthermore, the USDA rules clearly state that a plant exceeding the 0.3 percent tetrahydrocannabinol (THC) level will classify the plant as marijuana. This reclassification requires the crop to be destroyed. We are working with the DPS and local law enforcement on this action. (To put the 0.3 percent THC level in perspective, the average marijuana traded illegally would contain thirty-five times greater concentration of THC than industrial hemp does.)

TDA began meeting with DSHS and DPS at the end of February 2020 to further discuss the adopted rules and the program's impact on each agency. Meetings with each agency continued through virtual platforms with the state moving to telework during the COVID-19 pandemic. An ongoing discussion between TDA and DPS is the best way to provide program data regarding licenses, location of hemp lots, and transport manifests. TDA is aware of the challenges law

enforcement faces to distinguish between legal industrial hemp and illegal marijuana. The details of such challenges can be better described through DPS input.

Program Challenges and Improvements

Some of the challenges facing the Texas hemp program can be addressed by legislative or rule changes to the Texas law. However, many of the issues facing the program, producers, and other stakeholders will require action by the U.S. Congress, or USDA, and other related agencies with oversight over hemp production, processing and consumption. Despite these challenges, the program has been successfully implemented.

A funding challenge has been the requirement that all Other Direct and Indirect Costs (ODIC) be paid first based on a projected amount of revenue. Due to COVID-19 and a large drop in CBD oil prices in fiscal year (FY) 2020 total revenue was far below the projected amount, but the full ODIC had to be paid before funding could be applied to program costs. The fees collected for the 2020 crop year were approximately \$354,000, and over \$268,000 was paid to the Comptroller first for ODIC. Over two-thirds of the revenue collected from farmers, labs, handlers, and stakeholders did not go to covering the cost of the program. Since ODIC is mainly for salary fringe costs, it makes no sense to pay so much fringe when very little in salaries was charged. Like almost all cost-recovery programs, the ODIC should be prorated and paid on actual revenue and expenses. This problem is going to occur in fiscal year 2021 also. TDA needs some help with the next supplemental budget bill to resolve this issue.

Another issue is the need for a nationwide consistency on documentation and manifests for transportation. Every state has a different transport manifest, and confusion is created because of the inconsistent documentation. There needs to be a standardized nationwide transport manifest that can be accessed by law enforcement on a 24/7 basis. Note, there is currently no funding provided in Texas to TDA or DPS to develop or maintain a complex data base.

The original federal rules did not allow for remediation, unlike the Texas statute. This is an item that will have to be addressed by the federal government. Also, there is a need for continued flexibility on destruction of a "hot" crop (a hemp crop having greater than 0.3% tetrahydrocannabinol (THC) limit) to efficiently dispose of the hot crop.

Computer software system upgrades are needed if the crop acreage and production expand. TDA put together the entire program with a dated technology system, and upgrades will be needed to continue program maintenance, improvements, security, and our ability to work with law enforcement and appropriate oversight. All upgrades are tedious within the current system.

We received numerous comments about increasing the allowed THC levels. However, this is dictated by the federal statute and rules that we must comply with to participate in the program. There is also a need for the federal government to address the use of hemp grain as an animal feed. State and federal law is currently lacking in the area of processing hemp for consumable or non-consumable products. TDA does not currently license hemp processors but registers non-consumable hemp processors.

TDA provided the ability for third party, private industry, sampling and testing. However, TDA oversight capability in these areas is very limited. This is caused by funding challenges and staff availability. There is concern that this will cause testing and sampling shopping based on non-monetary reasons.

The updated FAQ document on the TDA website provides program insight into the statutes and rules that regulate the program. This addresses many of the questions we have received since the passage of the legislation. This link provides access to that document:

https://www.texasagriculture.gov/Portals/0/forms/COMM/Hemp/TDA_Hemp_FAQ_04-01-20.pdf.

Thank you for the opportunity to address the successes and some of challenges of the Texas Hemp Program.