



September 15, 2021

*By email*

Mr. Bill Richmond  
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Dear Mr. Richmond:

Today I am pleased to submit Kentucky's State Plan for USDA's review in advance of the implementation date of January 1, 2022, consistent with the state-plan option for domestic hemp production that Congress authorized in the 2018 Farm Bill, specifically in 7 U.S.C. § 1639p(a)(1).

The Farm Bill provides that a state plan may include a reference to state law regulating the production of hemp. Accordingly, Kentucky's State Plan consists of the statutory and regulatory framework for Kentucky's hemp program, specifically KRS 260.850 to 260.869<sup>1</sup> and the following seven administrative regulations, copies of which are enclosed with this letter:<sup>2</sup>

- 302 KAR 50:021 (Policies and procedures for hemp growers)
- 302 KAR 50:031 (Policies and procedures for hemp processors and handlers)
- 302 KAR 50:045 (Department's reports to USDA; records retention for three years)
- 302 KAR 50:056 (Sampling and THC testing; post-testing actions; disposal of noncompliant harvests)
- 302 KAR 50:060 (Fees for the Hemp Licensing Program)
- 302 KAR 50:070 (Prohibited products)
- 302 KAR 50:080 (Materials incorporated by reference)

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<sup>1</sup> Electronic copies of these statutes are available at the Legislative Research Commission's website. See <http://www.lrc.ky.gov/statutes/chapter.aspx?id=38484>.

<sup>2</sup> This month the Department will file amendments to Kentucky's existing hemp regulations that conform to the versions enclosed with this letter. That filing will trigger the notice-and-comment process mandated by the Kentucky Administrative Procedures Act, KRS Chapter 13A.





**KENTUCKY**  
**DEPARTMENT OF**  
**AGRICULTURE**

Dr. Ryan F. Quarles, Commissioner

As you know, the 2018 Farm Bill expressly preserved the ability for State and Tribal hemp production plans to establish additional provisions stricter than the baseline regulations. Consistent with this premise, KDA's post-harvest retest options include an option for the license holder to request a retest of intact harvested plants instead of incurring the additional expenses associated with remediation. KDA's post-harvest sampling of intact plants selects only the top 20 centimeters from the primary stem of female flower. Given that cannabinoids are concentrated in this part of the hemp plant, KDA's post-harvest sampling is, in its effect, stricter than an approach that requires the whole plant to be milled and homogenized. In the past four years, approximately 7% (46 out of 622) of Kentucky's post-harvest retest samples were collected from intact plants; this was done at the request of licensed growers who wished to avoid the additional expenses associated with remediation. KDA's records show that 65 percent of those samples were compliant.

7 U.S.C. § 1639p also includes, as a requirement for state plan approval, that Kentucky "must certify that the State . . . has the resources and personnel to carry out the practices and procedures" described in that statute. To that end, I certify that the Kentucky Department of Agriculture has the resources and personnel that are needed to carry out the practices and procedures required by federal law and the laws of Kentucky. The outstanding work of KDA's Hemp Staff over the past eight years proves that we in Kentucky have the resources—and, more importantly, the expertise—to run a hemp program that is a nationally recognized model of excellence.

I believe that this letter, with its enclosures, provides all of the information that is necessary for your office to approve Kentucky's State Plan. If you have any questions or would like to request additional information about KDA's hemp program, please do not hesitate to contact KDA's general counsel, Joe Bilby, at [joe.bilby@ky.gov](mailto:joe.bilby@ky.gov) or 502-782-9259.

Respectfully,

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Dr. Ryan F. Quarles  
Commissioner

Enclosures



**GENERAL GOVERNMENT**  
**Department of Agriculture**  
**Office of the Agricultural Marketing**

**302 KAR 50:021. Procedures and policies for hemp growers.**

**RELATES TO:** KRS Chapter 217B, 260.850-260.869; 7 U.S.C. 1739p, , 7 CFR Part 990

**STATUTORY AUTHORITY:** KRS 260.862; 7 U.S.C. 1739p

**NECESSITY, FUNCTION, AND CONFORMITY:** KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations for a Hemp Licensing Program in the Commonwealth of Kentucky. KRS 260.862(1)(c) authorizes the department to license persons who wish to participate in a Hemp Licensing Program by cultivating, handling, processing, or marketing hemp. This administrative regulation establishes procedures and requirements for licensing persons who wish to grow or cultivate hemp as a participant in the department's Hemp Licensing Program.

**Section 1. Definitions.**

- (1) "Agent" means a person who is employed by or working under contract for a license holder, and who does not have any ownership interest in the hemp.
- (2) "Applicant" means a person, who submits an application on his or her behalf or on behalf of a business entity to participate in the Hemp Licensing Program.
- (3) "Broker" means to engage or participate in the marketing of hemp by acting as an intermediary or negotiator between prospective buyers and sellers.
- (4) "Cannabis":
  - (a) Means the plant that, depending on its THC concentration level, is either "hemp" or "marijuana." Cannabis is a genus of flowering plants in the family Cannabaceae of which Cannabis sativa is a species, and Cannabis indica and Cannabis ruderalis or subspecies thereof. Cannabis includes all parts of the plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts; and
  - (b) Does not mean a "publicly marketable hemp product," as defined by subsection (37) of this section.
- (5) "CBD" means cannabidiol.
- (6) "Commissioner" is defined by KRS 260.850(1).
- (7) "Commonwealth" means the Commonwealth of Kentucky.
- (8) "Conviction"
  - (a) Means an adjudication or finding of guilt; it also includes a plea of guilty or nolo contendere; and

- (b) Does not mean a conviction subsequently overturned on appeal, pardoned, or expunged.
- (9) "Corrective action plan" is a document set forth by the department for a licensee to correct a negligent violation of, or non-compliance with, KRS 260.850-260.869 or a requirement of 302 KAR Chapter 50.
- (10) "Culpable mental state greater than negligence" means to act intentionally, knowingly, willfully, or with criminal negligence.
- (11) "Decarboxylation" means the completion of the chemical reaction that converts the delta-9-THC-acid into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven tenths (87.7) percent of delta-9-THC-acid.
- (12) "delta-9-THC" means delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of cannabis). For compliance purposes, all delta-9-THC concentrations must be measured post-decarboxylation (result commonly referred to as total THC).
- (13) "Department" or "KDA" is defined by KRS 260.850(3).
- (14) "Geospatial location" means a location designated through a GPS or other global system of navigational satellites used to determine the precise ground position of a place or object.
- (15) "GPS" means Global Positioning System.
- (16) "Handling" is defined by KRS 260.850(4).
- (17) "Hemp" or "industrial hemp" is defined by KRS 260.850(5).
- (18) "Hemp Grower License" means a document issued by the department authorizing the person to grow, handle, market, and store hemp in the Commonwealth under the terms established in the document, KRS 260.850 through 260.869, and this administrative regulation.
- (19) "Hemp Processor/Handler License" means a document issued by the department authorizing the person to process, handle, market, and store hemp in the Commonwealth under the terms established in the document, KRS 260.850 through 260.869, and 302 KAR 50:031.
- (20) "Hemp product" or "industrial hemp product" is defined by KRS 260.850(6).
- (21) "Key participant"
- (a) Means a person who has a direct or indirect financial interest in the entity producing hemp, such as an owner or a partner in a partnership and includes an entity's chief executive officer, chief operating officer, and chief financial officer; and
- (b) Does not mean farm managers, field manager, or shift managers.
- (22) "Law enforcement agency" means the Kentucky State Police, DEA, or other federal, state, or local law enforcement agency or drug suppression unit.
- (23) "Licensed grower" means a person authorized in the Commonwealth by the

department to grow, handle, store, and market hemp under the terms established in a hemp grower license, KRS 260.850 through 260.859, and this administrative regulation.

- (24) "Licensed processor" means a person in the Commonwealth authorized by the department to process, handle, store, and market hemp under the terms established in a hemp processor/handler license KRS 260.850 through 260.869, and 302 KAR 50:031.
- (25) "Location ID" means the unique identifier established by the applicant for each unique set of GPS coordinates where hemp will be grown, handled, stored, or processed, which can include a field name or building name.
- (26) "Lot" means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of hemp throughout.
- (27) "Negligence" means failure to exercise the level of care that a reasonably prudent person would exercise in complying with an administrative regulation, rule, or instruction.
- (28) "Nonviable seed" means a seed that has been crushed, dehulled, or otherwise rendered to have a zero percent germination rate.
- (29) "Person" means an individual or business entity.
- (30) "Pesticide" means any substance or mixture of substances intended to:
  - (a) Prevent, destroy, control, repel, attract, or mitigate any pest;
  - (b) Be used as a plant regulator, defoliant, or desiccant; or
  - (c) Be used as a spray adjuvant, once mixed with a U.S. Environmental Protection Agency registered product.
- (31) "Post-harvest sample" means a sample taken from the harvested hemp from a particular lot's harvest in accordance with the procedures as established in 302 KAR 50:056. The entire lot's harvest is in the same form (for example, intact-plant, flowers, ground materials), homogenous, and not mixed with non-hemp materials or hemp from another lot.
- (32) "Pre-harvest sample" means a composite, representative portion from living plants in a hemp lot collected in accordance with the procedures as established in 302 KAR 50:056.
- (33) "Prohibited variety" means a variety or strain of cannabis excluded from the Kentucky Hemp Licensing Program.
- (34) "Processing" is defined by KRS 260.850(9).
- (35) "Program" means the department's Hemp Licensing Program.
- (36) "Propagule" means a plant or plant part that can be utilized to grow a new plant.
- (37) "Publicly marketable hemp product" means a hemp product that meets one (1) or more of the following descriptions:
  - (a) The product:
    - (i) Does not include any living hemp plants, viable seeds, leaf materials, floral materials, or delta-9-THC content above zero and three-tenths (0.3) percent; and

- (ii) Does include, without limitation, the following products: bare stalks, bast fiber, hurd fiber, nonviable roots, nonviable seeds, seed oils, and plant extracts (excluding products containing delta-9-THC above zero and three-tenths (0.3) percent);
  - (b) The product is CBD that was derived from "hemp", as defined by this by subsection (17) of this section; or
  - (c) The product is CBD that is approved as a prescription medication by the United States Food and Drug Administration.
- (38) "Secondary pre-harvest sample" means a pre-harvest sample that is taken:
- (a) In a given lot after the first pre-harvest sample is taken; and
  - (b) On a different day than the initial pre-harvest sample.
- (39) "Signing authority" means an officer or agent of the organization with written authorization to commit the legal entity to a binding agreement.
- (40) "Strain" means a group of hemp with presumed common ancestry and identified physiological distinctions. A strain does not meet the uniformity, stability or distinction requirements to be considered a variety.
- (41) "University" means an accredited institution of higher learning located in the Commonwealth.
- (42) "Variety" means a subdivision of a species that is:
- (a) Uniform, in that the variations in essential and distinctive characteristics are describable;
  - (b) Stable, in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity if reproduced or reconstituted as required by the different categories of varieties; and
  - (c) Distinct, in the sense that the variety can be differentiated by one (1) or more identifiable morphological, physiological, other characteristics from all other publically known varieties, or other characteristics from all other publicly known varieties.
- (43) "Variety of concern" means any variety of hemp that tests above 0.3000 percent delta-9-THC in one (1) or more pre-harvest samples. A hemp variety designated as a "variety of concern" could be subject to restrictions and additional testing.
- (44) "Volunteer cannabis plant" means any cannabis plant that:
- (a) Grows of its own accord from seeds or roots in the years following an intentionally planted cannabis crop; and
  - (b) Is not intentionally planted.

## **Section 2. Grower License Application.**

- (1) Any person who wishes to grow hemp at any location in the Commonwealth shall submit to the department a completed Hemp Grower License Application, or annual license renewal, incorporated by reference as part of the Grower Licensing Application

Packet in 302 KAR 50:080.

- (2) Existing grower license holders shall annually complete the department's requirements for license renewal by March 15.
- (3) A person who does not hold a license from the department shall not:
  - (a) Grow, cultivate, handle, or process; or
  - (b) Broker, store, or market hemp or other cannabis that does not fall within the definition of a "publicly marketable hemp product" at any location within the Commonwealth.
- (4) A person under the age of eighteen (18) years of age shall not apply for or hold a grower license.
- (5) Completed Hemp Grower License Applications shall be received by the department by the end of the application period established in the application.
- (6) Completed Hemp Grower License Application forms shall be delivered to KDA Hemp Licensing Program, 111 Corporate Drive, Frankfort, Kentucky 40601.
- (7) The department shall deny any Hemp Grower License Application that fails to meet the deadline established in the application.
- (8) Each applicant shall pay a grower application fee in the amount established in 302 KAR 50:060.
- (9) Application fees shall not cover or include the cost of the criminal background checks required by KRS 260.862(2)(d) and Section 3 of this administrative regulation. Applicants and license holders shall pay criminal background check fees.
- (10) The department shall deny any Hemp Grower License Application that is received without the application fee established in 302 KAR 50:060.
- (11) With the Hemp Grower License Application form the applicant shall submit, at a minimum:
  - (a) If the applicant is an individual, the individual's full name, residential address, telephone number, and email address (if available);
  - (b) If the applicant is a business entity:
    - (i) the entity's name, Employer Identification Number, business location address in Kentucky, and principal business location;
    - (ii) for the individual who will have signing authority on the entity's behalf, his or her full name, title within the entity, business address, telephone number, and email address (if available); and
    - (iii) for each key participant, his or her full name, title within the entity, business address, telephone number, and email address (if available);
  - (c) The proposed acreage or greenhouse or indoor square footage to be planted;
  - (d) Street address, location ID, and GPS coordinates for each field, greenhouse, building, or site where hemp will be grown, handled, or stored;
  - (e) Maps depicting each site where hemp will be grown, handled, or stored, with appropriate designations for field boundaries, and Location IDs corresponding

to the GPS coordinates; and

- (f) Agreement to all terms and conditions established in the hemp grower application.

(12) Any Grower License Application that is missing required information shall be subject to denial.

(13) The terms and conditions established in the hemp grower application shall include, at a minimum:

- (a) Acknowledgement that licensed growers shall comply with all administrative regulations in 302 KAR 50;
- (b) Agreement to pay a licensing fee in the amount established in 302 KAR 50:060;
- (c) Acknowledgement that licensed growers shall comply with instructions from representatives of the department and law enforcement agencies;
- (d) A consent to entry onto, and inspection of, all premises where hemp or other cannabis plants or materials are located or licensed to be located, by representatives of the Department and law enforcement agencies, with or without cause, with or without advance notice;
- (e) A consent to forfeiture and destruction, without compensation, of:
  - (i) Material found to have a measured delta-9-THC content in excess of zero and three tenths (0.3) percent on a dry weight basis;
  - (ii) Plants located in an area that is not licensed by the department; and
  - (iii) Plants not accounted for in required reporting to the department;
- (f) Agreement to apply for licensing of all growing, handling, and storage locations, including GPS coordinates, and receive department approval for those locations prior to having hemp on those premises;
- (g) Acknowledgement that licensed growers shall:
  - (i) Submit a Site Modification Request, incorporated by reference in 302 KAR 50:080;
  - (ii) Submit the appropriate fees based on the requested changes; and
  - (iii) Obtain prior written approval from a representative of the department before implementing any change to the licensed sites stated in the hemp grower license and an acknowledgement that growing site changes shall be subject to a site modification surcharge in the amount established in 302 KAR 50:060 for a new set of GPS coordinates;
- (h) Acknowledgement that anyone applying pesticides to hemp shall hold a pesticide license and apply pesticides in accordance with Section 16 of this administrative regulation;
- (i) Acknowledgement that the risk of financial or other loss shall be borne solely by the licensed grower;
- (j) Acknowledgement that licensed growers shall comply with restrictions established by the department limiting the movement of hemp plants and plant



- parts;
- (k) Agreement that any time hemp is in transit, a copy of the hemp grower license shall be available for inspection upon the request of a representative of the department or a law enforcement agency;
  - (l) Agreement that, upon request from a representative of the department or a law enforcement agency, a licensed grower shall immediately produce a copy of his or her hemp grower license for inspection;
  - (m) Agreement to submit Planting Reports and Harvest Reports incorporated by reference in 302 KAR 50:080, and other reports required by the department to which the grower has agreed, on or before the deadlines established in this administrative regulation;
  - (n) Agreement to scout and monitor unlicensed fields for volunteer cannabis plants and to destroy those volunteer cannabis plants for three (3) years past the last date of planting reported to the department;
  - (o) Agreement not to employ or rent land to cultivate hemp from any person whose hemp license was terminated or who was denied admission to the Hemp Licensing Program for:
    - (i) Failure to obtain an acceptable criminal background check;
    - (ii) Failure to comply with an order from a representative of the department;
    - or
    - (iii) Both; and
  - (p) Agreement to abide by all land use restrictions for licensed growers established in Section 5 of this administrative regulation.

### **Section 3. Criminal Background Check.**

- (1) Each licensed grower, applicant, or key participant within an entity that is a grower or applicant, shall undergo and pay for an annual criminal background check from the Department of Kentucky State Police as required by KRS 260.862(2)(d).
- (2) A licensed grower, applicant, or key participant within an entity that is a grower or applicant, shall, following completion of the background check, ensure delivery of the report to the department with the licensing application or renewal.
- (3) The department shall not accept a report from a criminal background check that occurred more than sixty (60) days prior to the date of the application.
- (4) Failure to submit the background check with the application shall be grounds for license denial.
- (5) Substitution of a signing authority shall require approval from the department and the submission of a current criminal background check on the substitute signing authority.

### **Section 4. Application for Hemp Grower License; Criteria and Procedure for Evaluation.**

- (1) The department shall apply the criteria established in paragraphs (a) through (m) of

this subsection in evaluating an application for the grower license.

- (a) In accordance with Section 2 of this administrative regulation, the applicant shall submit a complete application with all required components and attachments.
- (b) For an applicant who has been a Hemp Licensing Program participant previously, the applicant shall comply with the responsibility to submit:
  - (i) Field Planting Report and Greenhouse/Indoor Planting Report, incorporated by reference in 302 KAR 50:080;
  - (ii) Harvest Report, incorporated by reference in 302 KAR 50:080;
  - (iii) Any other reports deemed necessary by the department to which the applicant has agreed.
- (c) The applicant's growing sites, handling sites and storage sites shall be located in the Commonwealth of Kentucky.
- (d) The applicant's primary residence shall be located in Commonwealth of Kentucky or within 50 miles of at least one of the applicant's Kentucky growing sites.
- (e) The applicant shall affirm that the applicant resides at the primary residence listed on the Grower License Application form from May 1 to September 30.
- (f) The criminal background check report indicates that, within ten (10) years from the date when the background check was issued, the applicant shall not have:
  - (i) A felony conviction; or
  - (ii) A drug-related misdemeanor conviction or violation;
- (g) A person who has been convicted of any felony or any drug-related misdemeanor or violation in the previous ten (10) years from the date of application shall not be eligible to obtain a license.
  - (i) A person who was growing hemp lawfully with a license, registration, or authorization under a pilot program authorized by Section 7606 of the Agricultural Act of 2014 (7 U.S.C. 5940) shall be eligible to obtain a license; and
  - (ii) A person who was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018 and was convicted prior to December 20, 2018 shall be eligible to obtain a license.
- (h) Including those times when the applicant was not a participant in the department's Hemp Licensing Program, the applicant shall have demonstrated a willingness to comply with the department's rules, instructions from department staff, and instructions from representatives of Kentucky State Police and other law enforcement agencies.
- (i) The applicant shall not be delinquent in making any required reports or payments to the department in connection with the applicant's participation in the Hemp Licensing Program or other programs within the department.

- (j) The applicant shall not have any unpaid fees, fines or civil penalties owed to the department.
  - (k) The applicant shall not have and shall not make any false statements or representations to a representative of the department or a law enforcement agency. Any person who materially falsifies any information contained in an application shall be ineligible to obtain a license from the department.
  - (l) The applicant's proposed growing sites shall comply with the land use restrictions established in Section 5 of this administrative regulation. Denial of all proposed growing sites shall constitute grounds for denial of the application.
  - (m) The applicant shall not have had a hemp license revoked within 5 years previous to the date of this application.
- (2) The department shall conditionally approve an application for a hemp grower license if the application complies with this administrative regulation.
  - (3) The department shall notify applicants by letter or email whether the application has been denied or conditionally approved. A person shall not be a participant in the Hemp Licensing Program until the applicant has received a hemp grower license from the department.
  - (4) Applicants shall pay licensing fees prior to receiving a hemp grower license.
  - (5) Applicants shall complete a mandatory orientation session at a location designated by the department. The department shall not allow any person to complete orientation in lieu of the applicant.
  - (6) After the date of issuance for a license, the applicant shall no longer be conditionally approved; he, she, or it shall be fully approved as a participant in the Hemp Licensing Program.

### **Section 5. Land Use Restrictions for Licensed Growers.**

- (1) A licensed grower shall not plant or grow any cannabis that is not hemp.
- (2) A licensed grower shall not plant or grow hemp or other cannabis on any site not licensed.
- (3) A licensed grower shall not grow hemp or other cannabis in or within 100 feet of any structure that is used for residential purposes without first obtaining written permission from the department.
- (4) A licensed grower shall not handle or store leaf or floral material from hemp or other cannabis in or adjacent to any structure that is used for residential purposes.
- (5) Hemp shall be physically segregated from other crops unless prior approval is obtained in writing from the department.
- (6) A licensed grower shall plant a minimum of 1,000 plants in each growing site unless prior approval is received in writing from the department.
- (7) A licensed grower shall plant a minimum of one-quarter (0.25) acre in each outdoor growing site unless prior approval is received in writing from the department.

- (8) Except as established in subsection (9) of this section, a licensed grower shall not grow hemp or other cannabis in any outdoor field that is located within 1,000 feet of a school or a public recreational area.
- (9) Notwithstanding the prohibition in subsection 5(8) of this administrative regulation, hemp may be grown within 1,000 feet of a school, provided that:
  - (a) The applicant has been designated by a school district superintendent,
  - (b) The applicant is a vocational agriculture instructor, agriculture teacher, or other qualified person who is employed by a school district; and
  - (c) The school district's board has voted to approve the applicant's proposal.
- (10) An applicant or licensed grower shall not include any property on his or her application or Site Modification Request, incorporated by reference in 302 KAR 50:080, to grow, cultivate, or store hemp that is not owned or completely controlled by the applicant or licensed grower, as evidenced by a written lease or other document that shall be provided to the department upon request.
- (11) A licensed grower shall not grow, handle, or store hemp or other cannabis on property owned by, leased from, or previously submitted in a license application by any person who is ineligible or whose hemp license was terminated, or who was denied admission to the Hemp Licensing Program for:
  - (a) Failure to obtain an acceptable criminal background check;
  - (b) Failure to comply with an order from a representative of the department; or
  - (c) Both.
- (12) Licensed growers shall post signage at each greenhouse, indoor growing location, storage building, and lot of one (1) acre or less. The signage shall include the:
  - (a) Agency title, "Kentucky Department of Agriculture Hemp Licensing Program";
  - (b) License holder's name;
  - (c) License holder's license number; and
  - (d) Department's telephone number.

## **Section 6. Administrative Appeal from Denial of Application.**

- (1) An applicant wishing to appeal the department's denial or partial denial of an application shall submit a written request for a hearing postmarked within fifteen (15) days of the date of the department's notification letter or email.
- (2) An appealing applicant shall mail a hearing request letter to KDA Hemp Licensing Program, 111 Corporate Drive, Frankfort, Kentucky 40601.
- (3) Appeals shall be heard by a three (3) person administrative panel whose members shall be designated by the commissioner. The panel shall include at least one (1) person who is a department employee and at least one (1) person who is not a department employee and not involved or invested in any hemp projects in Kentucky.
- (4) The members of the administrative panel shall not be required to accept or consider information or documents that were not compliant with application deadlines

established in this administrative regulation.

- (5) The members of the administrative panel shall apply the same standards established in this administrative regulation to determine if the department's action in denying the application was arbitrary or capricious.
- (6) Hearings on appeals shall be open to the public and occur at a time and date and location designated by the commissioner.
- (7) An appealing applicant shall appear in person at the assigned hearing time. Failure to appear on time shall constitute grounds for dismissal of the appeal.
- (8) The three (3) members of the administrative panel shall rule on the appeal by a majority vote.

### **Section 7. Hemp Grower Licenses.**

- (1) An applicant shall not be a participant in the Hemp Licensing Program until the department has issued a hemp grower license following the applicant's completion of the department's mandatory orientation session and payment of licensing fees.
- (2) The grower license application shall establish the terms and conditions, pursuant to KRS Chapter 260 and 302 KAR Chapter 50, governing participation in the Hemp Licensing Program.
- (3) Failure to agree or comply with terms and conditions established in the hemp grower license application or this administrative regulation shall constitute grounds for appropriate departmental action, up to and including termination of the grower license and expulsion from the Hemp Licensing Program.
- (4) A Hemp Grower License will remain in force as long as the license holder meets annual renewal requirements by March 15 of each year.
- (5) A Hemp Grower License may be terminated by the license holder or the department upon thirty (30) days prior written notice.
- (6) A Hemp Grower License authorizes the license holder to grow hemp; handle his or her own hemp, including drying, grinding, separating foliage from stem, storing and packaging; and market his or her own hemp. A Hemp Grower License shall not authorize the grower to process hemp, handle other person's hemp, or market another person's hemp.
- (7) The department shall issue grower's license numbers in accordance with this format: "21\_0001" through "21\_9999."

### **Section 8. Licensing Fees; Secondary Pre-Harvest Sample Fees.**

- (1) Licensing fee.
  - (a) The conditionally approved applicant or license holder shall pay a licensing fee prior to the issuance of a new license or an annual license renewal.
  - (b) The licensing fee for each growing address shall be in the amount established in 302 KAR 50:060.

- (2) Secondary Pre-Harvest Sample fee.
  - (a) If a licensed grower fails to complete the harvest within thirty (30) days after the department collects the pre-harvest sample, the licensed grower shall submit a new Harvest Report and may be required to pay a secondary pre-harvest sample fee.
  - (b) If four (4) or more samples are taken from the same address, then the licensed grower shall be required to pay a secondary pre-harvest sample fee for each sample taken from that address in excess of three (3).
  - (c) The secondary Pre-Harvest sample fee shall be paid to the department within fifteen (15) days of invoice by the department. The secondary pre-harvest sample fee shall be as established in 302 KAR 50:060.
  - (d) The licensed grower shall not harvest the remaining crop until the department collects a secondary pre-harvest sample if one is required as established in paragraph (a) or (b) of this subsection.

### **Section 9. Site Modifications and Site Modification Surcharge Fees.**

- (1) A licensed grower who elects to grow hemp in a new growing location or store or handle at a site other than the sites specified by the GPS coordinates listed on the hemp grower license, shall submit a Site Modification Request, incorporated by reference in 302 KAR 50:080, and obtain written approval from a representative of the department, prior to planting or storing at the proposed location.
- (2) Any request for a new growing location shall comply with the land use restrictions established in Section 5 of this administrative regulation.
- (3) The department shall charge a site modification surcharge fee for each new Location ID, (specifically, a GPS coordinate for each new individual field or greenhouse or indoor structure) where hemp will be grown. The amount of the site modification surcharge fee shall be as established in 302 KAR 50:060.
- (4) The department shall not approve a site modification request for a new growing location until the department has received the site modification surcharge fee.
- (5) The department shall not assess a site modification surcharge for changes to storage only locations.

### **Section 10. Seed and Propagule Acquisition**

- (1) A license holder intending to acquire seeds or propagules first shall determine whether or not the variety or strain intended for purchase is listed on the department's current Summary of Varieties List, which is posted on the department's website..
  - (a) If the variety or strain is listed on the Summary of Varieties List, no pre-approval from the department is required.
  - (b) If the variety or strain is not listed on the Summary of Varieties List, the license

holder shall submit a New Hemp Variety or Strain Request Form along with a certificate of analysis for that strain or variety, showing that mature plants grown from that seed variety or strain have a floral material delta-9-THC (must be measured post-decarboxylation, also referred to as total THC) content of not more than 0.300% on a dry weight basis from an independent third-party laboratory.

- (2) A license holder who develops a new hemp variety or strain shall submit the New Hemp Variety or Strain Request form, prior to its use in crop production.
- (3) The department shall not approve a New Hemp Variety or Strain Request unless the licensed grower affirms in writing that the requested seed acquisition plan does not infringe on the intellectual property rights of any person and that the seed or propagule source is a current legal hemp operation.
- (4) The department shall not approve a New Hemp Variety or Strain Request if a representative of the department has information supporting a belief that the variety or strain will produce plants with delta-9-THC (must be measured post-decarboxylation, also referred to as total THC) content of more than 0.300% on a dry weight basis.
- (5) A license holder shall not buy, sell, possess, or transfer seeds or propagules of any variety or strain designated as a Prohibited Variety on the department's published Summary of Varieties list.
- (6) Upon request from a representative of the department, a licensed grower or licensed processor shall provide a distribution list showing locations where and to whom the hemp seeds or propagules were distributed.
- (7) Any person engaging in the distribution of hemp seeds shall adhere to the applicable Kentucky seed laws (KRS 250.010 to KRS 250.990) and administrative regulations (12 KAR 1:116 to 12 KAR 1:175).
- (8) Any person who intends to move transplants or other living plants from a location in Kentucky to a location outside Kentucky shall obtain a Class A Nursery License from the Kentucky Office of the State Entomologist.

### **Section 11. Seeds of Wild, Landrace, or Unknown Origin.**

- (1) A person shall not acquire or grow hemp or cannabis seeds or propagules of wild, landrace, or unknown origin without first obtaining written approval from a representative of the department.
- (2) The department shall not permit hemp or cannabis seeds or propagules of wild, landrace, or unknown origin to be planted, cultivated, or replicated by any person without the department first arranging for replication and THC testing of mature plants grown from the seeds or propagules by the department or its designee.
- (3) Any licensed grower or licensed processor found to have saved seed, propagules, or cuttings, or cultivated seeds, propagules, or cuttings from a cannabis plant of wild,

landrace, or unknown origin, without advance written permission from the department shall be subject to suspension or revocation of his or her license and forfeiture without compensation of his or her materials.

### **Section 12. Planting Reports to USDA's Farm Service Agency (FSA).**

- (1) Prior to the submission of Planting Reports, a licensed grower shall report hemp crop acreage to USDA's Farm Service Agency (FSA) including, at a minimum, the:
  - (a) Street address and, to the extent practicable, geospatial location for each lot or greenhouse where hemp will be produced.
  - (b) Location as identified by the FSA Office: Farm Serial Number, Tract Number, Field Number, and Sub-Field Number.
  - (c) Acreage (or square footage, in the case of a greenhouse or other indoor growing facility) dedicated to the growing of each variety or strain of hemp;
  - (d) Grower's name and license number; and
  - (e) The farm serial number, tract number, field number, and sub-field number for each lot must be recorded by the license holder and submitted on all hemp planting and harvest reports to the department.
- (2) The department shall collect and retain, for a period of at least three (3) calendar years, location ID information for every site or location where the department has approved hemp to be grown.

### **Section 13. Planting Reports for Outdoor Plantings.**

- (1) A licensed grower shall submit to the department a complete and current Field Planting Report, within fifteen (15) days after every planting, including complete replanting, of seeds or propagules in an outdoor location.
- (2) Each Field Planting Report shall identify the:
  - (a) Correct variety or strain name;
  - (b) Address and Field location ID as listed on the hemp grower's license;
  - (c) The farm number, tract number, field number, and sub-field number (lot number) provided by the USDA FSA Office; and
  - (d) Amount planted and the primary intended use of the harvest.
- (3) A licensed grower who does not plant hemp in an approved outdoor site listed in the hemp grower license shall submit a Field Planting Report, on or before July 31, stating that hemp has not been planted and will not be planted at that site.

### **Section 14. Planting Reports for Indoor Plantings.**

- (1) A licensed grower shall submit to the department a complete and current Greenhouse/Indoor Planting Report within fifteen (15) days after establishing plants at an indoor location.
- (2) Each Greenhouse/Indoor Planting Report shall identify the:



- (a) Correct variety or strain name;
  - (b) Address and Greenhouse or indoor growing location ID as listed in the hemp grower license;
  - (c) The farm serial number, tract number, field number, and sub-field number (lot number) provided by the USDA FSA Office; and
  - (d) Amount planted and the primary intended use of the harvest or of the hemp plants.
- (3) In addition to the initial Greenhouse/Indoor Planting Report, a licensed grower with an approved greenhouse or indoor growing site shall submit quarterly reports, which are incorporated by reference in 302 KAR 50:080, for each location ID to the department. Greenhouse/Indoor Planting Reports shall be due no later than March 31, June 30, September 30, and December 31.

### **Section 15. Site Access for Representatives of the Department and Law Enforcement Agencies.**

- (1) The department shall provide information about approved growing, handling, and storage site locations to representatives of the Kentucky State Police, USDA, DEA, and other law enforcement agencies whose representatives request licensed site information, including GPS coordinates.
- (2) Licensed growers shall have no reasonable expectation of privacy with respect to premises where hemp or other cannabis seeds, plants, or materials are located, and any premises listed in the hemp grower license.
- (3) A licensed grower, whether present or not, shall permit a representative of the department or a law enforcement agency to enter into premises where hemp or other cannabis seeds, plants, or materials are located, and any premises listed in the hemp grower's license, with or without cause and with or without advanced notice.

### **Section 16. Pesticide Use.**

- (1) A licensed grower who uses a pesticide on hemp shall first be certified to apply pesticides by the department pursuant to KRS Chapter 217B.
- (2) A licensed grower who is certified to apply pesticides by the department pursuant to KRS Chapter 217B shall not use, or be eligible to use, a Category 10 license to apply pesticides to hemp in violation of the product label.
- (3) A licensed grower shall not use any pesticide in violation of the product label.
- (4) A licensed grower who uses a pesticide on a site where hemp will be planted shall comply with the longest of any planting restriction interval on the product label prior to planting the hemp.
- (5) The department may perform pesticide testing on a random basis or if representatives of the department have reason to believe that a pesticide may have been applied to hemp in violation of the product label.

- (6) Hemp seeds, plants, and materials bearing pesticide residue in violation of the label shall be subject to forfeiture or destruction without compensation.

**Section 17. Responsibility of a Licensed Grower Regarding Harvest of Hemp Lots.**

- (1) The department may inspect a Licensed Grower's premises, or collect samples of any hemp or other cannabis material, at any time.
- (2) The grower shall not harvest hemp plants from a lot without the department first collecting samples from that lot.
- (3) Fifteen (15) days prior to the anticipated harvest of hemp plants, the grower shall submit to the department a completed and current Harvest Report form identifying the intended date of harvest (or date of destruction, in the case of a failed crop).
- (4) The department's receipt of a Harvest Report shall trigger a sample collection by a properly trained representative of the department in accordance with the procedures set forth in 302 KAR 50:056.
- (5) During the department's scheduled sample collection, the grower or an authorized representative of the grower shall be present at the growing site.
- (6) Representatives of the department shall be provided with complete and unrestricted access to all hemp and other cannabis plants, whether growing or harvested, and all land, buildings, and other structures used for the cultivation, handling, and storage of all hemp and other cannabis plants; and all locations listed in the hemp grower's license.
- (7) The licensed grower shall harvest the crop not more than thirty (30) days following the date of sample collection by the department.
- (8) If the licensed grower fails to complete a harvest within thirty (30) days following the date of sample collection, then the licensed grower shall submit a new Harvest Report and may be required to pay a secondary pre-harvest sample fee in the amount established in 302 KAR 50:060.
- (9) Floral materials shall not be moved outside the Commonwealth, nor moved beyond a processor, nor commingled, nor extracted, until the department releases the material in writing.
- (10) Harvested materials from one lot shall not be commingled with other harvested lots without prior written permission from the department.
- (11) A licensed grower who fails to submit a Harvest Report shall be subject to revocation of his or her license.
- (12) A licensed grower who proceeds to harvest a crop without first obtaining authorization from the department shall be subject to revocation of his or her license.
- (13) The department shall conduct inspections of some licensed growers on a randomly selected basis.

### **Section 18. Collection of Samples; THC Testing; Post-Testing Actions.**

- (1) The department shall collect hemp samples for THC testing in accordance with the procedures set forth in 302 KAR 50:056.
- (2) The designated laboratory shall receive, prepare, and release hemp samples in accordance with the procedures set forth in 302 KAR 50:056.
- (3) The designated laboratory shall measure delta-9-THC concentration of each hemp sample (postdecarboxylation, often referred to as total THC) in accordance with the procedures set forth in 302 KAR 50:056.
- (4) The department shall undertake post-testing actions in accordance with the procedures established in 302 KAR 50:056.
- (5) All samples shall become the property of the department and shall not be returnable. Compensation shall not be owed by the department.
- (6) If the designated laboratory is not able to provide THC testing services required by the department, the department may identify and contract with a third party lab to perform THC testing services.
- (7) The department may collect samples of hemp or other cannabis material at any time.

### **Section 19. Restrictions on Sale or Transfer.**

- (1) A licensed grower shall not sell or transfer, or allow the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person in the Commonwealth who does not hold a license issued by the department.
- (2) A licensed grower shall not sell or transfer, or allow the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person outside the Commonwealth who is not authorized to possess such materials under the laws of that jurisdiction.
- (3) The department shall allow the sale or transfer of stripped stalks, fiber, dried roots, nonviable seeds, seed oils, floral and plant extracts (excluding THC in excess of zero and three-tenths (0.3) percent) and other marketable hemp products to members of the general public, both within and outside the Commonwealth, if the marketable hemp product's decarboxylated delta-9-THC level is not more than zero and three-tenths (0.3) percent.
- (4) A licensed grower selling or transferring, or permitting the sale or transfer, of floral or plant extracts (including CBD), shall retain testing data or results for at least three (3) years demonstrating that the extract's delta-9-THC level is not more than zero and three-tenths (0.3) percent.
- (5) A licensed grower shall not sell or transfer floral extracts containing a decarboxylated delta-9-THC concentration in excess of zero and three-tenths (0.3) percent.
- (6) Licensed growers shall comply with the federal Food Drug and Cosmetic Act, 21 U.S.C. Chapter 9, and all other applicable local, state, and federal laws and regulations relating to product development, product manufacturing, consumer safety, and

public health.

- (7) A licensed grower shall not knowingly permit hemp to be sold to or used by any person in the Commonwealth, who is involved in the manufacture of an item named on the prohibited products list established in 302 KAR 50:070.
- (8) A person shall not ship or transport, or allow to be shipped or transported, any hemp product with a decarboxylated delta-9-THC concentration in excess of zero and three-tenths (0.3) percent.

**Section 20. Other Prohibited Activities.**

- (1) A licensed grower shall not allow another person, other than an agent of the licensed grower, to grow, handle, or store hemp under their license in lieu of obtaining a separate hemp grower license.
- (2) A license holder shall not make, manufacture or distribute in the Commonwealth any of the prohibited products listed in 302 KAR 50:070.

**Section 21. Information Submitted to the Department Subject to Open Records Act, KRS 61.870 Through 61.844.**

- (1) Except as established in subsection (2) of this section, information and documents generated or obtained by the department shall be subject to disclosure pursuant to the Kentucky Open Records Act, KRS 61.870 through 61.884.
- (2) Personally identifiable information including physical address, mailing address, driver's license numbers, background checks, GPS coordinates, telephone numbers, and email addresses, shall be shielded from disclosure to the maximum extent permitted by law, except that the department shall provide this information to law enforcement agencies and other regulatory agencies upon request.

**Section 22. Violations Requiring Temporary License Suspension Procedures.**

- (1) The department shall notify a licensed grower in writing that the Hemp Grower License has been temporarily suspended if a representative of the department receives information supporting an allegation that a licensed grower has:
  - (a) Plead guilty to, or is convicted of, any felony or drug-related misdemeanor or violation, in accordance with KRS 260.864.
  - (b) Engaged in conduct violating a provision of KRS 260.850 through 260.869, 302 KAR Chapter 50, or the hemp grower license with a culpable mental state greater than negligence;
  - (c) Made a false statement to a representative of the department or a law enforcement agency with a culpable mental state greater than negligence;
  - (d) Been found to be growing or in possession of cannabis with a measured delta-9-THC concentration above zero and three-tenths (0.3) percent with

- a culpable mental state greater than negligence; or
  - (e) Failed to comply with an order from a representative of the department or a law enforcement agency with a culpable mental state greater than negligence.
  - (f) Been found to be growing or in possession of cannabis plant material with a measured THC concentration of 3.000% or greater.
- (2) The department shall schedule a license revocation hearing for a date as soon as practicable after the notification of temporary suspension, but not later than sixty (60) days following the notification of temporary suspension.
- (3) A person whose Hemp Grower License has been temporarily suspended shall not harvest, process, or remove cannabis from the premises where hemp or other cannabis was located at the time when the department issued its notice of temporary suspension, except as authorized in writing by a representative of the department.
- (4) As soon as possible after the notification of temporary suspension, a representative of the department shall inspect the licensed grower's premises and perform an inventory of all cannabis, hemp, and hemp products that are in the licensed grower's possession.

### **Section 23. License Revocation Hearings and Consequences of Revocation.**

- (1) The department shall notify a person whose Hemp Grower License has been temporarily suspended of the date when the person's license revocation hearing will occur at a time and place designated by the commissioner.
- (2) License revocation hearings shall be adjudicated by a three (3) person administrative panel in accordance with KRS 260.864.
- (3) License revocation hearings shall be open to the public.
- (4) A person whose Hemp Grower License has been temporarily suspended shall appear in person at the assigned hearing time. Barring unexpected events, such as inclement weather, failure to appear on time shall constitute a waiver of the person's right to present information and arguments against revoking the hemp grower license.
- (5) A representative of the department shall be allowed an opportunity to present information and arguments for revoking the hemp grower license.
- (6) A person whose hemp grower license has been temporarily suspended shall be allowed an opportunity to present information and arguments against revoking the hemp grower license.
- (7) The three (3) members of the administrative panel shall rule on the question of revocation by a majority vote.
- (8) If a majority of the three (3) members of the administrative panel find that it is more likely than not that a licensed grower has committed any of the acts listed in subsection (1) of this section, then the hemp grower license shall be revoked effective

immediately.

- (9) If a majority of the members of the administrative panel vote against revoking the hemp grower license, the department shall lift the temporary suspension within twenty-four (24) hours of the vote.
- (10) If a majority of the members of the administrative panel vote in favor of revoking the hemp grower license, then a representative of the department or a law enforcement agency shall have authority to destroy or confiscate all cannabis, hemp, and hemp products that are in the person's possession.
- (11) A person whose property is destroyed or confiscated by a representative of the department or a law enforcement agency shall be owed no compensation or indemnity for the value of the cannabis, hemp, or hemp products that were destroyed or confiscated.
- (12) The department shall immediately report any person whose license has been revoked on the grounds that he or she violated a provision of KRS 260.850 through 260.869, 302 KAR Chapter 50, or violated the grower license with a culpable mental state greater than negligence, to an appropriate law enforcement agency.
- (13) A person whose grower license has been revoked shall not be eligible for licensure for a period of five (5) years from the date of the most recent violation.

#### **Section 24. Monetary Civil Penalties.**

- (1) If a representative of the department receives information supporting a finding that it is more likely than not that a person has engaged in conduct violating a provision of KRS 260.850 through 260.869, 302 KAR Chapter 50, or the hemp grower license application, then the department shall assess a monetary civil penalty not to exceed \$2,500 per violation.
- (2) A person wishing to appeal the department's assessment of a monetary civil penalty shall submit a written request for a hearing within fifteen (15) days of the notification date.
- (3) A person wishing to appeal the department's assessment of a monetary civil penalty shall mail a hearing request letter to KDA Hemp Licensing Program, 111 Corporate Drive, Frankfort, Kentucky 40601.
- (4) Appeals shall be heard by a three (3) person administrative panel whose members shall be designated by the commissioner. The administrative panel shall include at least one (1) person who is a department employee and at least one (1) person who is not a department employee and not involved or invested in any Kentucky hemp projects.
- (5) The members of the administrative panel shall determine if the department's action in assessing the monetary civil penalty was arbitrary or capricious.
- (6) Hearings on the appeal shall be open to the public and occur at a time, date, and location designated by the commissioner.

- (7) An appealing person shall appear in person at the assigned hearing time. Barring unexpected events, such as inclement weather, failure to appear on time shall constitute grounds for dismissal of the appeal.
- (8) An appealing person shall be allowed an opportunity to present arguments for reversing the assessed monetary civil penalty.
- (9) A representative of the department shall be allowed an opportunity to present arguments for affirming the assessed monetary civil penalty.
- (10) The three (3) members of the administrative panel shall rule on the appeal by a majority vote.
- (11) A majority of the three (3) members of the administrative panel may affirm the assessed monetary civil penalty, affirm and increase or decrease the assessed monetary civil penalty, or reverse the assessed monetary civil penalty.
- (12) The department shall have the authority to pursue unpaid monetary civil penalties by filing a civil cause of action in the Franklin Circuit Court.

### **Section 25. Licensing for Representatives of Universities and Colleges.**

- (1) Except as established in this section, faculty members, administrators, and staff members of an institution of higher education shall be subject to all requirements of this administrative regulation.
- (2) An institution of higher education shall not allow its faculty, administration, or staff members, or any sponsored student, to be in possession of, or conduct academic research involving, living hemp plants, leaf material, floral material, or viable seeds of hemp without first completing and submitting a Hemp License Application.
- (3) An authorized faculty, administrator, or staff member of an eligible institution of higher education who wishes to be in possession of, or conduct an academic research project involving living hemp plants, leaf material, floral material, or viable seeds of hemp shall complete and submit a Hemp License Application.
- (4) If a university applicant's research plan includes growing hemp, then a Hemp Grower License will be issued by the department.
- (5) If a university applicant's research plan does not include growing hemp, then a Hemp Processor/Handler License will be issued by the department. An authorized faculty, administrator, or staff member of an eligible institution of higher education who wishes to be in possession of, or conduct an academic research project involving, leaf material or floral material from hemp shall complete and submit a Processor/Handler License Application.
- (6) The department shall accept applications from an authorized faculty, administrator, or staff member of an eligible institution of higher education at any time of the year.
- (7) The department shall not collect fees for licenses issued to a faculty member, administrator, or staff member of an institution of higher education if the project is for research only and not intended for commerce.

- (8) Sampling and testing of hemp grown under the authority of this section shall be conducted by the department if the harvested material is intended for commerce.
- (9) An eligible institution of higher education shall:
  - (a) Be accredited by, and in good standing with, a regional or national higher education accreditation agency;
  - (b) Confer academic degrees at the associate, bachelor, master, or doctoral level; and
  - (c) Have a principal campus or office that is located at a site within the Commonwealth of Kentucky.
- (10) Universities and Colleges growing hemp for research purposes shall ensure the disposal of all noncompliant plants.
- (11) Universities and Colleges growing hemp for research purposes shall also comply with the reporting requirements including reporting disposal of noncompliant plants.
- (12) Universities and Colleges that handle cannabis varieties with known THC concentrations above the level acceptable for hemp shall follow the Controlled Substance Act requirements for handling marijuana.

**Section 26. Record keeping requirements; Three (3) Year Retention Period.**

- (1) For at least three (3) years, license holders shall maintain and make available for inspection by the department during reasonable business hours, records regarding:
  - (a) Acquisition of hemp plants;
  - (b) Production and handling of hemp plants;
  - (c) Storage of hemp plants; and
  - (d) Disposal of all cannabis plants that do not meet the definition for "hemp".
- (2) The department shall have access to any premises where hemp plants could be held during reasonable business hours.
- (3) All reports and records required to be submitted to the department as part of participation in the program in this part, which include confidential data or business information, such as information constituting a trade secret or disclosing a trade position, financial condition, or business operations of the particular licensee or their customers, shall be received by, and at all times kept in the custody and control of, one (1) or more employees of the department or their representatives. Confidential data or business information may be shared with applicable federal, state, or local law enforcement agencies or their designees in compliance with applicable law.

**Section 27. Corrective Action Plans for Negligent Violations.**

- (1) If the department determines that a grower committed a negligent violation of any provision within KRS Chapter 260.850 to 260.869, 302 KAR Chapter 50, or 7 CFR 990.6(b), then the department shall devise and implement a corrective action plan for the grower.



- (2) Examples of negligent violations shall include but not be limited to:
  - (a) Failure to license land where hemp is grown;
  - (b) Failure to obtain a license; and
  - (c) Production of cannabis with THC exceeding one percent (1%).
- (3) Corrective action plans shall remain in place for at least two (2) years and include, at a minimum:
  - (a) The date by which the grower shall correct each negligent violation;
  - (b) Steps to correct each negligent violation; and
  - (c) A description of the procedures to demonstrate compliance.
- (4) A grower who commits a negligent violation shall not, as a result of that violation, be subject to any criminal enforcement action by any government.
- (5) If a subsequent violation occurs while a corrective action plan is in place, a new corrective action plan shall be submitted with a heightened level of quality control, staff training, and quantifiable action measures.
- (6) A grower who commits three negligent violations within a five (5) year period shall have his or her license revoked and be ineligible to obtain a license for a period of five (5) years beginning on the date of the third violation. A violation that occurred prior to January 1, 2022 shall not count toward the three (3) violations referred to in this subsection.
- (7) The department shall perform at least two (2) inspections to ensure the licensee's compliance with the corrective action plan.

**Section 28. Mandatory Reports to Law Enforcement Agencies for Violations with a Culpable Mental State Greater than Negligence.**

- (1) In addition to being subject to the license suspension, license revocation, and monetary civil penalty procedures established in this administrative regulation and 302 KAR 50:031, a person who is found by the department to have violated any statute or administrative regulation governing that person's participation in the hemp program with a culpable mental state greater than negligence shall be subject to the reporting requirements established in this section.
- (2) The department shall immediately report a person who is found by the department to have violated any statute or administrative regulation governing that person's participation in the hemp program with a culpable mental state greater than negligence to the:
  - (a) Attorney General of the United States;
  - (b) Commissioner of the Kentucky State Police; and
  - (c) Commander of the Kentucky State Police's Cannabis Suppression Branch.  
(47 Ky.R. 643, 1196; eff. 3-2-2021.)

**GENERAL GOVERNMENT**  
**Department of Agriculture**  
**Office of Agricultural Marketing**

**302 KAR 50:031. Procedures and policies for hemp processors and handlers.**

**RELATES TO:** KRS Chapter 217B, 260.850-260.869; 7 U.S.C. 1639p

**STATUTORY AUTHORITY:** KRS 260.862; 7 U.S.C. 1639p

**NECESSITY, FUNCTION, AND CONFORMITY:** KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations for a Hemp Licensing Program in the Commonwealth of Kentucky. KRS 260.862(1)(c) authorizes the department to license persons who wish to participate in a Hemp Licensing Program by cultivating, handling, processing, or marketing hemp. This administrative regulation establishes procedures and requirements for licensing persons who wish to process or handle hemp as a participant in the department's Hemp Licensing Program.

**Section 1. Definitions.**

- (1) "Agent" means a person who is employed by or working under contract for a license holder, and who does not have any ownership interest in the hemp.
- (2) "Applicant" means a person who submits an application on his or her behalf or on behalf of a business entity to participate in the Hemp Licensing Program.
- (3) "Brokering" means engaging or participating in the marketing of industrial hemp by acting as an intermediary or negotiator between prospective buyers and sellers
- (4) "Cannabis":
  - (a) Means the plant that, depending on its THC concentration level, is defined as either "hemp" or "marijuana." Cannabis is a genus of flowering plants in the family Cannabaceae of which Cannabis sativa is a species, and Cannabis indica and Cannabis ruderalis or subspecies thereof. Cannabis includes all parts of the plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts; and
  - (b) Does not include a "publicly marketable hemp product," as defined by this administrative regulation.
- (5) "CBD" means cannabidiol.
- (6) "Commissioner" is defined by KRS 260.850(1).
- (7) "Commonwealth" means the Commonwealth of Kentucky.
- (8) "Conviction":

- (a) Means an adjudication or finding of guilt; it also includes a plea of guilty or nolo contendere; and
  - (b) Does not mean a conviction subsequently overturned on appeal, pardoned, or expunged.
- (9) "Corrective action plan" means a document established by the department for a licensee to correct a negligent violation of, or non-compliance with, KRS 260.850-260.869 or an administrative regulation promulgated under the authority of those statutes.
- (10) "Culpable mental state greater than negligence" means to act intentionally, knowingly, willfully, or with criminal negligence.
- (11) "Decarboxylation" means the completion of the chemical reaction that converts delta-9-THC-acid into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven tenths (87.7) percent of delta-9-THC-acid.
- (12) "delta-9-THC" means delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of cannabis). For compliance purposes, all delta-9-THC concentrations are measured post-decarboxylation (result commonly referred to as total THC).
- (13) "Department" or "KDA" is defined by KRS 260.850(3).
- (14) "GPS" means Global Positioning System.
- (15) "Handling" is defined by KRS 260.850(4).
- (16) "Hemp" or "industrial hemp" is defined by KRS 260.850(5).
- (17) "Hemp Grower License" means a document issued by the department authorizing the person to grow, handle, and store hemp in the Commonwealth under the terms established in the document, KRS 260.850 through 260.869, and this administrative regulation.
- (18) "Hemp Processor/Handler License" means a document issued by the department authorizing the person to process, handle, market, and store hemp in the Commonwealth under the terms established in the document, KRS 260.850 through 260.869, and this administrative regulation.
- (19) "Hemp product" or "industrial hemp product" is defined by KRS 260.850(6).
- (20) "Key participant"
- (a) Means a person who has a direct or indirect financial interest in the entity producing hemp, such as an owner or a partner in a partnership and includes an entity's chief executive officer, chief operating officer, and chief financial officer; and
  - (b) Does not mean facility managers or shift managers.
- (21) "Law enforcement agency" means the Kentucky State Police, DEA, or other federal, state, or local law enforcement agency, or drug suppression unit.

- (22) "Licensed grower" means a person authorized in the commonwealth by the department to grow, handle, store, and market hemp under the terms established in a hemp grower license, KRS 260.850 through 260.869, and 302 KAR 50:021.
- (23) "Licensed processor" means a person in the Commonwealth authorized by the department to process, handle, store, and market hemp under the terms established in a hemp processor/handler license, KRS 260.850 through 260.869, and this administrative regulation.
- (24) "Location ID" means the unique identifier established by the applicant for each unique set of GPS coordinates where hemp will be grown, handled, stored, or processed, which can include a field name or building name.
- (25) "Negligence" means failure to exercise the level of care that a reasonably prudent person would exercise in complying with an administrative regulation, rule, or instruction.
- (26) "Nonviable seed" means a seed that has been crushed, dehulled, or otherwise rendered to have a zero percent germination rate.
- (27) "Person" means an individual or business entity.
- (28) "Prohibited variety" means a variety or strain of cannabis excluded from the Kentucky Hemp Licensing Program.
- (29) "Processing" is defined by KRS 260.850.
- (30) "Program" means the department's Hemp Licensing Program.
- (31) "Propagule" means a plant or plant part that can be utilized to grow a new plant.
- (32) "Publicly marketable hemp product" means a hemp product that meets one (1) or more of the following descriptions:
  - (a) The product
    - (i) does not include any living hemp plants, viable seeds, leaf materials, floral materials, or delta-9-THC content above zero and three-tenths (0.3) percent; and
    - (ii) does include, without limitation, the following products: bare stalks, bast fiber, hurd fiber, nonviable roots, nonviable seeds, seed oils, and plant extracts (excluding products containing delta-9-THC above zero and three-tenths (0.3) percent);
  - (b) The product is CBD that was derived from hemp, as defined by this administrative regulation; or
  - (c) The product is CBD that is approved as a prescription medication by the United States Food and Drug Administration.
- (33) "Signing authority" means an officer or agent of the organization with written authorization to commit the legal entity to a binding agreement.

- (34) "Strain" means a group of hemp with presumed common ancestry and identified physiological distinctions. A strain does not meet the uniformity, stability or distinction requirements to be considered a variety.
- (35) "Variety" means a subdivision of a species that is:
  - (a) Uniform, in the sense that the variations in essential and distinctive characteristics are describable;
  - (b) Stable, in that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity if reproduced or reconstituted as required by the different categories of varieties; and
  - (c) Distinct, in that the variety can be differentiated by one (1) or more identifiable morphological, physiological, other characteristics from all other publically known varieties, or other characteristics from all other publicly known varieties.
- (36) "Variety of concern" means any variety of hemp that tests above 0.3000 percent delta-9-THC in one (1) or more pre-harvest samples. A hemp variety designated as a "variety of concern" could be subject to restrictions and additional testing.

## **Section 2. Processor or Handler License Application.**

- (1) Any person who wishes to engage in the processing, handling, brokering, or marketing of hemp that does not fall within the definition of a "publicly marketable hemp product" at any location in the Commonwealth shall submit to the department a complete Processor/Handler License Application, or annual license renewal, incorporated by reference as part of the Processor/Handler License Application in 302 KAR 50:080.
- (2) Existing processor or handler license holders shall complete the department's requirements for license renewal by December 31.
- (3) Any person who does not hold a grower license from the department shall not grow, cultivate or handle living hemp plants or other cannabis.
- (4) Any person who does not hold a processor/handler license from the department shall not process, handle, broker or market hemp or other cannabis that does not fall within the definition of a "publicly marketable hemp product" at any location within the commonwealth.
- (5) A person under the age of eighteen (18) years of age shall not apply for or hold a processor or handler license.
- (6) Application deadlines:
  - (a) Completed Processor/Handler License Application forms shall be postmarked or received by the department by the end of the application period established in the application.
  - (b) Completed Processor/Handler License Application forms shall be delivered to KDA Hemp Licensing Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

- (c) The department shall deny any Processor/Handler License Application that is not received by the deadline established in the application.
- (7) The department shall require each applicant to pay a processor or handler application fee in the amount established in 302 KAR 50:060.
- (8) Application fees shall not cover or include the cost of the criminal background checks required by KRS 260.862(2)(d) and Section 3 of this administrative regulation. Applicants and license holders shall pay criminal background check fees directly to the Kentucky State Police or other law enforcement agency.
- (9) The department shall deny any Processor/Handler License Application that is received without the application fee established in 302 KAR 50:060.
- (10) With the Hemp Processor/Handler License Application form the applicant shall submit, at a minimum:
  - (a) If the applicant is an individual, the individual's full name, residential address, telephone number, and email address (if available); or
  - (b) If the applicant is a business entity, the following information:
    - (i) The entity's name, Employer Identification Number, business location address in Kentucky, and principal business location; and
    - (ii) For the individual who will have signing authority on the entity's behalf, his or her full name, title within the entity, business address, telephone number, and email address (if available).
  - (c) Complete and accurate responses to each request for information on the application form;
  - (d) Maps and the street address, location ID, and GPS coordinates for each building or site where hemp will be processed, handled, or stored.
- (11) Any Processor/Handler License Application that is missing required information shall be subject to denial.

### **Section 3. Criminal Background Check.**

- (1) Each licensed processor/handler or applicant shall undergo and pay for an annual criminal background check as required by KRS 260.862(2)(d).
- (2) A licensed processor/handler or applicant, or key participant within an entity that is a processor/handler or applicant, shall, following completion of the background check, ensure delivery of the report to the department with the application or renewal.
- (3) The department shall not accept a report from a criminal background check that occurred more than 60 days prior to the date of the application.
- (4) Failure to submit the background check with the application shall be grounds for license denial.

- (5) Substitution of a signing authority shall require approval from the department and the submission of a current criminal background check on the substitute signing authority.

**Section 4. Application for Processor or Handler Licensing; Criteria and Procedure for Evaluation.**

- (1) The department shall apply the criteria established in paragraphs (a) through (m) of this subsection in evaluating applications for a processor/handler license:
  - (a) In accordance with Section 2 of this administrative regulation, the applicant shall submit a complete application with all required components and attachments.
  - (b) An applicant who has been a program participant previously, the applicant shall comply with the responsibility to submit any reports required by 302 KAR Chapter 50.
  - (c) All involved business entities shall be registered and in good standing with the Kentucky Secretary of State.
  - (d) The applicant's processing sites, handling sites, and storage sites, shall be located in the Commonwealth of Kentucky.
  - (e) The criminal background check report indicates that, within ten (10) years from the date when the background check was issued, the applicant shall not have:
    - (i) A felony conviction; or
    - (ii) A drug-related misdemeanor conviction or violation.
  - (f) The applicant's planned activities shall remain compliant with state law and administrative regulation.
  - (g) The applicant shall have adequate facilities, or plans to acquire adequate facilities sufficiently to complete the planned activities.
  - (h) Including those times when the applicant was not a participant in the Hemp Licensing Program, the applicant shall have demonstrated a willingness to comply with the department's rules, instructions from department staff, and instructions from representatives of Kentucky State Police and other law enforcement agencies.
  - (i) The applicant shall not be delinquent in making any required reports or payments to the department in connection with the applicant's participation in the Hemp Licensing Program or other programs within the department.
  - (j) The applicant shall not have any unpaid fees, fines or civil penalties owed to the department.
  - (k) The applicant shall not have made and shall not make any false statements or representations to a representative of the department or a law enforcement agency.

- (l) The applicant's proposed sites shall comply with the land use restrictions set forth in Section 5 of this administrative regulation. Denial of all proposed processing and handling sites shall constitute grounds for denial of the application.
- (m) The applicant shall not have had a hemp license revoked within 5 years previous to the date of this application.
- (2) The department shall conditionally approve an application for a processor/handler license if the application satisfies the criteria established in this administrative regulation.
- (3) The department shall notify applicants by letter or email whether the application has been denied or conditionally approved. A person shall not be a participant in the Hemp Licensing Program until the applicant has received a hemp processor/handler license from the department.
- (4) Applicants shall pay licensing fees prior to receiving a processor/handler license.
- (5) Applicants shall complete a mandatory orientation session at a location to be determined by the department. The department shall not allow any person to complete orientation in lieu of the applicant.

**Section 5. Land Use Restrictions for Licensed Processors or Handlers.**

- (1) A licensed processor or handler shall not process or store leaf or floral material from hemp or other cannabis in or adjacent to any structure that is used for residential purposes without first obtaining written permission from the department.
- (2) A licensed processor or handler shall not apply to process, handle, or store hemp on any property that is not owned or completely controlled by the applicant or licensed processor.
- (3) A licensed processor or handler shall not process, handle, or store hemp on property owned by, leased from, or previously submitted in an application by any person who is ineligible or was terminated or denied admission to the Hemp Licensing Program for:
  - (a) Failure to obtain an acceptable criminal background check,
  - (b) Failure to comply with an order from a representative of the department; Or
  - (c) Both.

**Section 6. Administrative Appeal from Denial of Application.**

- (1) An applicant wishing to appeal the department's denial or partial denial of an application shall submit a written request for a hearing postmarked within fifteen (15) days of the date of the department's notification letter or email.
- (2) An appealing applicant shall mail a hearing request letter to KDA Hemp Licensing Program, 111 Corporate Drive, Frankfort, Kentucky 40601.



- (3) Appeals shall be heard by a three (3) person administrative panel whose members shall be designated by the commissioner. The panel shall include at least one (1) person who is a department employee and at least one (1) person who is not a department employee and not involved or invested in any hemp projects in Kentucky.
- (4) The members of the administrative panel shall not be required to accept or consider information or documents that were not compliant with application deadlines established in this administrative regulation.
- (5) The members of the administrative panel shall apply the same standards established in this administrative regulation to determine if the department's action in denying the application was arbitrary or capricious.
- (6) Hearings on appeals shall be open to the public and occur at a time and date and location designated by the commissioner.
- (7) An appellant applicant shall appear in person at the assigned hearing time. Failure to appear on time shall constitute grounds for dismissal of the appeal.
- (8) The three (3) members of the administrative panel shall rule on the appeal by a majority vote.

#### **Section 7. Hemp Processor or Handler Licenses.**

- (1) An applicant shall not be a participant in the Hemp Licensing Program until the department has issued a processor/handler license following the applicant's completion of the department's mandatory orientation session and payment of licensing fees.
- (2) The processor/handler license application shall establish the terms and conditions governing participation in the Hemp Licensing Program.
- (3) Failure to agree or comply with terms and conditions established in the processor/handler license application or this administrative regulation shall constitute grounds for appropriate departmental action, up to and including termination of the license and expulsion from the Hemp Licensing Program.
- (4) Annual renewal of a processor/handler license shall require the license holder to:
  - (a) Submit to the department an annual criminal background check for the signing authority of record;
  - (b) Complete a mandatory, annual program orientation session hosted by the department;
  - (c) Pay annual fees in the amount established in 302 KAR 50:060;
  - (d) Update all licensed addresses, location IDs, and GPS coordinates with the department; and
  - (e) Agree to comply with the policies set forth in 302 KAR Chapter 50.

- (6) A processor/handler license will remain in force as long as the license holder meets the annual renewal requirements by December 31 of each year.
- (7) A processor/handler license may be terminated by the license holder or the department upon thirty (30) days prior written notice.
- (8) The department shall issue processor/handler's license numbers in accordance with this format: "P\_0001" through "P\_9999."

### **Section 8. Processor or Handler Licensing Fee.**

- (1) The licensing fee for processing harvested hemp fiber shall be the amount established in 302 KAR 50:060.
- (2) The licensing fee for processing harvested hemp grain shall be the amount established in 302 KAR 50:060.
- (3) The licensing fee for processing hemp floral material (for example, CBD extraction) shall be the amount established in 302 KAR 50:060.
- (4) A licensed processor or handler that processes more than one (1) harvest component (for example, fiber, grain, and floral material) shall pay the licensing fee that is required for each harvested component that is applicable.
- (5) A handler that does not engage in processing (for example, a seed cleaner, laboratory or dryer) shall be subject to a licensing fee in the amount established in 302 KAR 50:060.
- (6) The licensed processor or handler fee shall be paid annually in full prior to the issuance or renewal of the processor/handler license.

### **Section 9. Seed and Propagule Acquisition.**

- (1) A license holder intending to acquire seeds or propagules first shall determine whether or not the variety or strain intended for purchase is listed on the department's current Summary of Varieties List.
  - (a) If the variety or strain is listed on the Summary of Varieties List, a pre-approval from the department shall not be required.
  - (b) If the variety or strain is not listed on the Summary of Varieties List, the license holder shall submit a New Hemp Variety or Strain Request Form along with a certificate of analysis for that strain or variety, showing that mature plants grown from that seed variety or strain have a floral material delta-9-THC (measured post-decarboxylation, also referred to as total THC) content of not more than 0.300% on a dry weight basis from an independent third-party laboratory.
- (2) A license holder who develops a new hemp variety or strain shall submit the New Hemp Variety or Strain Request form, prior to its use in crop production.

- (3) The department shall not approve a New Hemp Variety or Strain Request unless the licensed grower affirms in writing that the requested seed acquisition plan shall not infringe on the intellectual property rights of any person, and the seed or propagule source is a current legal hemp operation.
- (4) The department shall not approve a New Hemp Variety or Strain Request if a representative of the department has information supporting a belief that the variety or strain will produce plants with delta-9-THC (measured post-decarboxylation, also referred to as total THC) content of more than 0.300% on a dry weight basis.
- (5) A license holder shall not buy, sell, possess, or transfer seeds or propagules of any variety or strain designated as a prohibited variety on the department's published summary of varieties list.
- (6) Upon request from a representative of the department, a licensed grower or licensed processor shall provide a distribution list showing locations where and to whom the hemp seeds or propagules were distributed.
- (7) Any person engaging in the distribution of hemp seeds shall adhere to all applicable Kentucky seed laws (KRS 250.010 through KRS 250.990) and regulations (12 KAR 1:116 through 12 KAR 1:175).
- (8) Any person who intends to move transplants or other living plants to a location outside Kentucky must obtain a Class A Nursery License from the Kentucky Office of the State Entomologist.

#### **Section 10. Seeds of Wild, Landrace, or Unknown Origin.**

- (1) A person shall not acquire or grow hemp or cannabis seeds or propagules of wild, landrace, or unknown origin without first obtaining written approval from a representative of the department.
- (2) The department shall not permit hemp or cannabis seeds or propagules of wild, landrace, or unknown origin to be planted, cultivated, or replicated by any person without the department first arranging for replication and THC testing of mature plants grown from the seeds or propagules by the department or its designee.
- (3) Any licensed grower or licensed processor or handler found to have saved seed, propagules, or cuttings, or cultivated seeds, propagules, or cuttings from a cannabis plant of wild, landrace, or unknown origin, without permission from the department shall be subject to suspension or revocation of their license and forfeiture without compensation of their materials.

#### **Section 11. Site Access for Representatives of the Department and Law Enforcement Agencies.**

- (1) The department shall provide information about approved growing, handling, processing, and storage site locations to representatives of the Kentucky State Police,

DEA, and other law enforcement agencies whose representatives request licensed site location information, including GPS coordinates.

- (2) Licensed processors or handlers shall have no reasonable expectation of privacy with respect to premises where hemp or other cannabis seeds, plants, or materials are located and any premises listed in the processor or handler license.
- (3) A licensed processor or handler, whether present or not, shall permit a representative of the department or a law enforcement agency to enter into premises where hemp or other cannabis seeds, plants, or materials are located and any premises listed in the processor or handler license, with or without cause, and with or without advance notice.

### **Section 12. Collection and Retention of Cannabis Samples.**

- (1) The department may collect, test, and retain samples of hemp or other cannabis, and substances derived from hemp or cannabis in the possession of a licensed processor or handler.
- (2) All samples collected by the department shall become the property of the department and shall be nonreturnable. Compensation shall not be owed by the department.
- (3) The material to be collected for sampling shall be determined by the department inspector.

### **Section 13. Restrictions on Sale or Transfer.**

- (1) A licensed processor or handler shall not sell or transfer, or allow the sale or transfer, of living plants, viable seeds, leaf material, or floral material to or from any person in the Commonwealth who does not hold a license issued by the department.
- (2) A licensed processor or handler shall not sell or transfer, or allow the sale or transfer, of living plants, viable seeds, leaf material, or floral material to or from any person outside the Commonwealth who is not authorized to possess such materials under the laws of that jurisdiction.
- (3) The department shall permit the sale or transfer of stripped stalks, fiber, dried roots, nonviable seeds, seed oils, cannabinoid extracts (excluding THC in excess of zero and three-tenths (0.3) percent), and other marketable hemp products to members of the general public, both within and outside the Commonwealth, if the marketable hemp product's decarboxylated delta-9-THC level is not more than zero and three-tenths (0.3) percent and is otherwise lawful and compliant with regulations.
- (4) A licensed processor or handler selling or transferring, or permitting the sale or transfer, of floral or plant extracts (including CBD), shall conduct and retain testing data reflecting the decarboxylated delta-9 THC level for at least three (3) years.

- (5) A licensed processor or handler shall not sell or transfer floral extracts containing a decarboxylated delta-9 THC concentration in excess of zero and three-tenths (0.3) percent except that pursuant to KRS 260.8635, a licensed processor, or a person acting as a representative of a licensed processor, may move or transport hemp extract material having a delta-9 tetrahydrocannabinol concentration in excess of three-tenths of one percent (0.3%) from one licensed processing location in the Commonwealth to another licensed processing location in the Commonwealth, if:
  - (a) The hemp extract material shall move directly from one (1) licensed processing location to another; and
  - (b) The licensed processor shall provide written notice to the department of the planned movement at least twenty-four (24) hours in advance by submitting to the department a completed Hemp Concentrate Transport Notification Form.
- (6) A licensed processor or handler shall comply with the federal Food Drug and Cosmetic Act, 21 U.S.C. Chapter 9, and all other applicable local, state, and federal laws and regulations relating to product development, product manufacturing, consumer safety, and public health.
- (7) Any person making human-consumable products, or substances that will be used to make human-consumable products, shall be Good Manufacturing Practices-compliant and permitted by the Department of Public Health within the Cabinet for Health and Family Services.
- (8) Any person packaging a product prior to sale shall comply with the Uniform Packaging and Labeling Regulations as prescribed in 302 KAR 75:130.
- (9) Any person packaging a hemp-derived cannabinoid product shall comply with 902 KAR 45:190, Hemp-derived cannabinoid products; packaging and labeling requirements.
- (10) A licensed processor or handler shall not knowingly permit hemp to be sold to or used by any person in the Commonwealth who is involved in the manufacture of an item named on the prohibited products list established in 302 KAR 50:070.
- (11) A person shall not ship or transport, or allow to be shipped or transported, any hemp product with a decarboxylated delta-9-THC concentration in excess of zero and three-tenths (0.3) percent.
- (12) A licensed processor or handler shall only purchase or receive harvested hemp plant material that has been determined compliant and released for sale or transfer by the appropriate hemp regulatory program in the grower's area of jurisdiction.

#### **Section 14. Other Requirements.**

- (1) A licensed processor or handler shall not process or store hemp on any site not listed in the processor/handler license.

- (2) A person shall not convert a substance that was extracted or derived from hemp or other cannabis into a Schedule I controlled substance.
- (3) A license holder shall not make, manufacture or distribute any of the prohibited products listed in 302 KAR 50:070.
- (4) A person shall not possess living hemp or other cannabis plants without a hemp grower license.
- (5) A licensed processor or handler shall not allow another person, other than an agent of the licensed processor or handler, to process, handle or store hemp under their license in lieu of obtaining a separate hemp processor/handler license.
- (6) Processors using hazardous materials or flammable solvents (for example, ethanol) shall comply with the requirements of the State Fire Marshal.
- (7) Any person owning or operating an analytical laboratory offering third-party testing services shall report post-decarboxylated delta-9 THC on a 100% dry weight basis.
- (8) Any person owning or operating an analytical laboratory offering third-party testing services shall participate in the University of Kentucky's Hemp Proficiency Testing Program.

**Section 15. Information Submitted to Department Subject to Open Records Act, KRS 61.870 Through 61.844.**

- (1) Except as provided in subsection (2) of this section, information and documents generated or obtained by the department shall be subject to disclosure pursuant to the Kentucky Open Records Act, KRS 61.870 through 61.884.
- (2) Personally identifiable information including physical address, mailing address, driver's license numbers, background checks, GPS coordinates, telephone numbers, and email addresses shall be shielded from disclosure to the maximum extent permitted by law; provided, however, the department shall provide this information to law enforcement agencies and other regulatory agencies upon request.

**Section 16. Violations Requiring Temporary License Suspension Procedures.**

- (1) The department shall notify a licensed processor/handler in writing that the Processor/Handler License has been temporarily suspended if a representative of the department receives information supporting an allegation that a licensed processor/handler has:
  - (a) Plead guilty to, or is convicted of, any felony or drug-related misdemeanor or violation in accordance with KRS 260.864.
  - (b) Engaged in conduct violating a provision of KRS 260.850 through 260.869, 302 KAR Chapter 50, or the processor/handler license with a culpable mental state greater than negligence;

- (c) Made a false statement to a representative of the department or a law enforcement agency with a culpable mental state greater than negligence;
  - (d) Been found to be in possession of cannabis with a measured delta-9-THC concentration above zero and three tenths (0.3) percent with a culpable mental state greater than negligence;
  - (e) Been found to be growing hemp or cannabis without a hemp grower license with a culpable mental state greater than negligence; or
  - (f) Failed to comply with an order from a representative of the department or a law enforcement agency with a culpable mental state greater than negligence.
  - (g) Been found to be in possession of cannabis with a measured THC concentration of 3.000% or greater.
- (2) The department shall schedule a license revocation hearing for a date as soon as practicable after the notification of temporary suspension, but in any event not later than sixty (60) days following the notification of temporary suspension.
  - (3) A person whose processor/handler license has been temporarily suspended shall not process, or remove cannabis from the premises where hemp or other cannabis was located at the time when the department issued its notice of temporary suspension, except as authorized in writing by a representative of the department.
  - (4) As soon as possible after the notification of temporary suspension, a representative of the department shall inspect the licensed processor/handler's premises and perform an inventory of all cannabis, hemp, and hemp substances that are in the licensed processor/handler's possession.

### **Section 17. License Revocation Hearings and Consequences of Revocation.**

- (1) The department shall notify a person whose processor/handler license has been temporarily suspended of the date when the person's license revocation hearing will occur at a time and place designated by the commissioner.
- (2) License revocation hearings shall be adjudicated by a three (3) person administrative panel in accordance with KRS 260.864.
- (3) License revocation hearings shall be open to the public.
- (4) A person whose processor/handler license has been temporarily suspended shall appear in person at the assigned hearing time. Failure to appear on time shall constitute a waiver of the person's right to present information and arguments against revoking the processor/handler license.
- (5) A representative of the department shall be allowed an opportunity to present information and arguments for revoking the processor/handler license.

- (6) A person whose processor/handler license has been temporarily suspended shall be allowed an opportunity to present information and arguments against revoking the processor/handler license.
- (7) The three (3) members of the administrative panel shall rule on the question of revocation by a majority vote.
- (8) If a majority of the three (3) members of the administrative panel find that it is more likely than not that a licensed processor or handler has committed any of the acts listed in Section 16(1) of this administrative regulation then the processor/handler license shall be revoked effective immediately.
- (9) If a majority of the members of the administrative panel vote against revoking the processor/handler license, the department shall lift the temporary suspension within twenty-four (24) hours of the vote.
- (10) If a majority of the members of the administrative panel vote in favor of revoking the processor/handler license, then a representative of the department or a law enforcement agency shall have authority to destroy or confiscate all cannabis, hemp, and hemp substances that are in the person's possession.
- (11) A person whose property is destroyed or confiscated by a representative of the department or a law enforcement agency shall be owed no compensation or indemnity for the value of the cannabis, hemp, or hemp products that were destroyed or confiscated.
- (12) The department shall immediately report any person whose license has been revoked on the grounds that he or she violated a provision of KRS 260.850 through 260.869, 302 KAR Chapter 50, or the processor/handler license with a culpable mental state greater than negligence, to an appropriate law enforcement agency.
- (13) A person whose processor/handler license has been revoked shall not be eligible for licensure for a period of five (5) years from the date of the most recent violation.

### **Section 18. Monetary Civil Penalties.**

- (1) If a representative of the department receives information supporting a finding that it is more likely than not that a person has engaged in conduct violating a provision of KRS 260.850 through 260.869, 302 KAR Chapter 50 or the processor or handler license application, then the department shall assess a monetary civil penalty not to exceed \$2,500 per violation.
- (2) A person wishing to appeal the department's assessment of a monetary civil penalty shall submit a written request for a hearing within fifteen (15) days of the notification date.
- (3) A person wishing to appeal the department's assessment of a monetary civil penalty shall mail a hearing request letter to KDA Hemp Licensing Program, 111 Corporate Drive, Frankfort, Kentucky 40601.



- (4) Appeals shall be heard by a three (3) person administrative panel whose members shall be designated by the commissioner. The administrative panel shall include at least one (1) person who is a department employee and at least one (1) person who is not a department employee and not involved or invested in any Kentucky hemp projects.
- (5) The members of the administrative panel shall determine if the department's action in assessing the monetary civil penalty was arbitrary or capricious.
- (6) Hearings on the appeal shall be open to the public and occur at a time, date, and location designated by the commissioner.
- (7) An appealing person shall appear in person at the assigned hearing time. Failure to appear on time shall constitute grounds for dismissal of the appeal.
- (8) An appealing person shall be allowed an opportunity to present arguments for reversing the assessed monetary civil penalty.
- (9) A representative of the department shall be allowed an opportunity to present arguments for affirming the assessed monetary civil penalty.
- (10) The three (3) members of the administrative panel shall rule on the appeal by a majority vote.
- (11) A majority of the three (3) members of the administrative panel may affirm the assessed monetary civil penalty, affirm and increase or decrease the assessed monetary civil penalty, or reverse the assessed monetary civil penalty.
- (12) The department shall have the authority to pursue unpaid monetary civil penalties by filing a civil cause of action in the Franklin Circuit Court.

**Section 19. Licensing for Representatives of Universities and Colleges.**

- (1) Except as established in this section, faculty members, administrators, and staff members of an institution of higher education shall be subject to all requirements of this administrative regulation.
- (2) An institution of higher education shall not allow or authorize its faculty, administration, or staff members, or any sponsored student, to be in possession of, or conduct academic research involving living hemp plants, leaf material, floral material, or viable seeds of hemp without first completing and submitting a Hemp License Application.
- (3) An authorized faculty, administrator, or staff member of an eligible institution of higher education who wishes to be in possession of, or conduct an academic research project involving living hemp plants, leaf material, floral material, or viable seeds of hemp shall complete and submit a Hemp License Application.
- (4) If a university applicant's research plan includes growing hemp, then a Hemp Grower License will be issued.

- (5) If a university applicant's research plan does not include growing hemp, then a Hemp Processor/Handler License will be issued.
- (6) The department shall accept applications from an authorized faculty, administrator, or staff member of an eligible institution of higher education at any time of the year.
- (7) The department shall not collect fees for licenses issued to a faculty member, administrator, or staff member of an institution of higher education if the project is for research only and that is, not intended for commerce.
- (8) Sampling and testing of hemp processed or handled under the authority of this section shall be conducted by the department if the harvested material is intended for commerce.
- (9) An eligible institution of higher education shall:
  - (a) Be accredited by, and in good standing with, a regional or national higher education accreditation agency;
  - (b) Confers academic degrees at the associate, bachelor, master, or doctoral level; and
  - (c) Has a principal campus or office that is located at a site within the Commonwealth of Kentucky.

## **Section 20. Corrective Action Plans for Negligent Violations.**

- (1) If the department determines that a processor or handler committed a negligent violation of any provision within KRS Chapter 260.850 through 260.869, or any administrative regulation promulgated under the authority of those statutes, then the department shall devise and implement a corrective action plan for the processor or handler.
- (2) Corrective action plans will remain in place for at least two (2) years and include, at a minimum:
  - (a) The date by which the processor or handler shall correct each negligent violation;
  - (b) Steps to correct each negligent violation; and
  - (c) A description of the procedures to demonstrate compliance.
- (3) A processor or handler who commits a negligent violation shall not, as a result of that violation, be subject to any criminal enforcement action by any government.
- (4) If a subsequent violation occurs while a corrective action plan is in place, a new corrective action plan must be submitted with a heightened level of quality control, staff training, and quantifiable action measures.
- (5) A processor or handler who commits three (3) negligent violations within a 5-year period shall have his or her license revoked and be ineligible to obtain a license for a period of five (5) years beginning on the date of the third violation. A violation that

occurred prior to January 1, 2022 shall not count toward the three violations referred to in this subsection.

**Section 21. Mandatory Reports to Law Enforcement Agencies for Violations with a Culpable Mental State Greater than Negligence.**

- (1) In addition to being subject to the license suspension, license revocation, and monetary civil penalty procedures established in 302 KAR 50:021 and this administrative regulation, a person who is found by the department to have violated a requirement of KRS Chapter 260 or 302 KAR Chapter 50 with a culpable mental state greater than negligence shall be subject to the reporting requirements established in this section.
- (2) The department shall immediately report a person who is found by the department to have violated any statute or administrative regulation governing that person's participation in the hemp program with a culpable mental state greater than negligence to the commander of the Kentucky State Police's Cannabis Suppression Branch. (47 Ky.R. 651, 1204; eff. 3-2-2021.)

**GENERAL GOVERNMENT**  
**Department of Agriculture**  
**Office of Agricultural Marketing**

**302 KAR 50:045. Department's reports to USDA; records retention for three years.**

**RELATES TO:** KRS Chapter 217B, 260.850-260.869; 7 U.S.C. 1739p, 7 CFR Part 990

**STATUTORY AUTHORITY:** KRS 260.862; 7 U.S.C. 1739p

**NECESSITY, FUNCTION, AND CONFORMITY:** KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations for a Hemp Licensing Program in the Commonwealth of Kentucky. KRS 260.862(1)(c) authorizes the department to license persons who wish to participate in a Hemp Licensing Program by cultivating, handling, processing, or marketing hemp. This administrative regulation defines certain departmental reporting and record-retention duties.

**Section 1. Definitions.**

- (1) "Department" or "KDA" is defined by KRS 260.850.
- (2) "GPS" means Global Positioning System.
- (3) "Hemp" or "industrial hemp" is defined by KRS 260.850.
- (4) "Location ID" means the unique identifier established by the applicant for each unique set of GPS coordinates where hemp will be grown, handled, stored, or processed, which can include a field name or building name.

**Section 2. Record keeping requirements; three year retention period.**

- (1) For at least three years, license holders shall retain and make available for inspection by the department (or USDA inspectors, auditors, or their representatives) during reasonable business hours:
  - (a) Records regarding acquisition of hemp plants;
  - (b) Records regarding production and handling of hemp plants;
  - (c) Records regarding storage of hemp plants; and
  - (d) Records regarding disposal of all cannabis plants that do not meet the definition of hemp.

**Section 3. Monthly Producer Reports.**

- (1) On or before the first day of each month, the department shall submit a Monthly Producer Report to USDA providing the contact information, and current status, of each license that has been issued by the department. If the first day of the month falls on a weekend or a holiday, then the department shall submit its Monthly Producer Report on or before the first business day following the first day of the month. The department shall submit its Monthly Producer Report in a digital format that is compatible with

USDA's information sharing system whenever possible, or on USDA Form AMS-23. The department's Monthly Producer Reports shall include the following information:

- (a) For each new grower who is an individual, the Monthly Producer Report shall include the full name of the individual, the license number, the business address, the legal description (GPS location) of the land where hemp is produced, the telephone number, and the email address (if available); and the status of each grower's license, the period covered by the report, and an indication that there were no changes during the current reporting cycle, if applicable.
- (b) For each new grower that is an entity, the Monthly Producer Report shall include the full name of the entity, the license number, the principal business location address, the legal description (GPS location) of the land where hemp is produced, and the full name, title, and email address (if available) for each employee for whom the entity is required to submit a criminal history record report; and the status of each grower's license, the period covered by the report, and an indication that there were no changes during the current reporting cycle, if applicable.
- (c) For each grower that was included in a previous report, and whose reported information has changed, the Monthly Producer Report shall include the previously reported information and the new information; and the status of each grower's license, the period covered by the report, and an indication that there were no changes during the current reporting cycle, if applicable.

#### **Section 4. Monthly Disposal Reports.**

- (1) On or before the first day of each month, the department shall submit a Monthly Disposal Report to USDA providing notice to USDA of any occurrence of non-conforming plants or plant material. If the first day of the month falls on a weekend or a holiday, then the department shall submit its Monthly Disposal Report on or before the first business day following the first day of the month. The department shall submit its Monthly Producer Report in a digital format that is compatible with USDA's information sharing system whenever possible or on USDA Form AMS-24. The department's Monthly Disposal Reports shall include:
  - (a) Grower's name, address, and license number;
  - (b) Location ID, GPS coordinates, and USDA FSA lot description (farm number, tract number, field number, and sub-field number) for the lot that was subject to disposal;
  - (c) Date of the disposal,
  - (d) Name of the KDA employee who supervised the disposal; and
  - (e) Total acreage.

#### **Section 5. Annual Reports.**

- (1) On or before December 15 of each year, the department shall submit an Annual Report to USDA. The department shall submit its Annual Report in a digital format that is

compatible with USDA's information sharing system whenever possible or on USDA Form AMS-25. The department's Annual Reports shall include the following information for each licensee and address:

- (a) Total acreage planted;
- (b) Total acreage disposed or remediated; and
- (c) Total harvested acreage.

**Section 6. Laboratory Test Results Reports.**

- (1) The department shall ensure that the designated testing laboratory's Laboratory Test Results Reports are submitted to USDA in a digital format that is compatible with USDA's information sharing system whenever possible or on USDA Form AMS-22. The Laboratory Test Results Reports shall include the following information:
  - (a) The grower's license number, name, and business address;
  - (b) The Location ID and USDA FSA lot number (farm number, tract number, field number, and sub-field number) for the lot from which the sample was collected;
  - (c) The laboratory's name and DEA registration number;
  - (d) The date of the test and date of the report;
  - (e) Whether the test was a retest; and
  - (f) The test result for total delta-9-THC on a dry weight basis.

**GENERAL GOVERNMENT**  
**Department of Agriculture**  
**Office of Agricultural Marketing**

**302 KAR 50:056. Sampling and THC testing; disposal of noncompliant harvests; post-testing actions.**

**RELATES TO:** KRS Chapter 217B, 260.850-260.869; 7 U.S.C. 1739p, 7 CFR Part 990

**STATUTORY AUTHORITY:** KRS 260.862; 7 U.S.C. 1739p

**NECESSITY, FUNCTION, AND CONFORMITY:** KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations for a Hemp Licensing Program in the Commonwealth of Kentucky. KRS 260.862(1)(c) authorizes the department to license persons who wish to participate in a Hemp Licensing Program by cultivating, handling, processing, or marketing hemp. This administrative regulation establishes procedures and requirements for licensing persons who wish to grow or cultivate hemp as a participant in the department's Hemp Licensing Program.

**Section 1. Definitions.**

- (1) "Acceptable Hemp THC Level" means the sum of the Measurement of Uncertainty plus the 0.300% delta-9-THC limit on a dry weight basis established in federal law, 7 U.S.C., and KRS Chapter 260.
- (2) "Cannabis"
  - (a) Means the plant that, depending on its THC concentration level, is defined as either "hemp" or "marijuana." Cannabis is a genus of flowering plants in the family Cannabaceae of which Cannabis sativa is a species, and Cannabis indica and Cannabis ruderalis or subspecies thereof. Cannabis includes all parts of the plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts; and
  - (b) Does not include a "publicly marketable hemp product," as defined by 302 KAR 50:021, Section 1(37).
- (3) "CBD" means cannabidiol.
- (4) "Certified seed" means the progeny of breeder, foundation, or registered seed handled to maintain satisfactory genetic purity and varietal identity and certified to AOSCA (Association of Official Seed Certifying Agencies) standards and having an official AOSCA seed label. (This does not include the state's THC compliance verification programs.)
- (5) "Decarboxylated" means the completion of the chemical reaction that converts

delta-9-THC-acid into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven tenths (87.7) percent of delta-9-THC-acid.

- (6) "delta-9-THC" means delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of cannabis). For compliance purposes, all delta-9-THC concentrations must be measured post-decarboxylation or by another method which shall include both delta-9-THC and delta-9-THCA (also known as total THC).
- (7) "Department" or "KDA" is defined by KRS 260.850(3).
- (8) "Hemp" or "industrial hemp" is defined by KRS 260.850(5).
- (9) "Hemp transplants" means hemp seedlings, rooted cuttings, immature plants produced from tissue culture, or other means of reproduction, which are not harvested but transplanted into a large container or field to mature for harvest. The movement of transplants from their original location to the crop production location is not considered a harvest.
- (10) "Inspector" means an employee or other representative of the department who has been properly trained by the department to collect samples and perform inspections.
- (11) "Lot" means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of hemp throughout.
- (12) "Measurement of Uncertainty" means the parameter, associated with the result of a measurement that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to the measurement.
- (13) "MSU BVC" means the Breathitt Veterinary Center at the Murray State University in Hopkinsville.
- (14) "Person" means an individual or business entity.
- (15) "Post-harvest sample" means a sample taken from the harvested hemp from a particular lot's harvest in accordance with the procedures as established in 302 KAR 50:056. The entire lot's harvest is in the same form (for example, intact-plant or ground materials), homogenous, and not mixed with non-hemp materials or hemp from another lot.
- (16) "Pre-harvest sample" means a composite, representative portion from living plants in a hemp lot collected in accordance with the procedures as established in 302 KAR 50:056.
- (17) "Program" means the department's Hemp Licensing Program.
- (18) "Propagule" means a plant or plant part that can be utilized to grow a new plant.
- (19) "UK DRS" means the Division of Regulatory Services at the University of Kentucky College of Agriculture, Food, and Environment in Lexington.

## **Section 2. Procedures for Inspection and Sample-Collection Visits.**



- (1) A hemp plant shall not be harvested from any lot before a department inspector completes an inspection and sample-collection visit.
- (2) The licensed grower shall submit to the department a completed Harvest Report form at least fifteen (15) days prior to the grower's expected harvest date.
- (3) Upon receiving a completed Harvest Report form, the department shall contact the licensed grower to schedule an inspection and sample-collection visit for a specific time on a date that is not later than the grower's expected harvest date.
- (4) The licensed grower, or the grower's authorized representative, shall be present during the inspection and sample-collection visit.
- (5) During the inspection and sample-collection visit, the licensed grower shall provide to the inspector complete and unrestricted access to all hemp and other cannabis plants, whether growing or harvested; all land, buildings, and other structures used for the cultivation and storage of hemp and other cannabis plants; and all locations listed in the Hemp Grower License.
- (6) During the inspection and sample-collection visit, the inspector shall perform a visual inspection of each location listed in the Hemp Grower License in order to verify the GPS coordinates and look for evidence that hemp plants or other cannabis plants were harvested without authorization prior to the inspector's inspection and sample-collection visit or any other suspicious circumstance.
- (7) The licensed grower shall complete the harvest of the crop from a lot not more than thirty (30) days following the date of the inspection and sample-collection visit.
- (8) If the licensed grower fails to complete the harvest of the crop from a lot within thirty (30) days following the date of sample collection, then the licensed grower shall submit a new Harvest Report and may be required to pay a secondary pre-harvest sample fee established in 302 KAR 50:060.
- (9) Floral material shall not be moved outside the Commonwealth, nor moved beyond a processor, nor commingled, extracted, converted into a consumer-ready product, enter commerce, until the department releases the material in writing.

### **Section 3. Standards and Procedures for Performance Based Sampling.**

- (1) The department intends to sample and test every lot of hemp prior to harvest every year. In the event that it is not feasible to sample and test every lot, then the department may implement these performance-based sampling procedures.
- (2) The goal is to ensure at a confidence level of 95 percent that no more than one percent (1%) of the plants in each lot will exceed the acceptable THC level and ensure that a representative sample is collected that represents a homogenous composition of the lot.

- (3) A lot of hemp shall only be eligible for performance based sampling consideration if the licensee maintains records documenting the variety or cultivar's compliance with the acceptable THC concentration.
- (4) The transfer of hemp transplants from one location to the location at which the plants will grow to maturity and from which the plants will be harvested shall not be considered to be a harvest. Hemp transplants will not be subject to sampling before the plants are transferred to the location at which these plants will grow to maturity. Instead, the mature crop produced from hemp transplants will be subject to sampling and testing.
- (5) A hemp licensee who has met all four of the below compliance history requirements may not be subject to the sampling and testing requirement in the current year:
  - (a) produced hemp for the past three consecutive years;
  - (b) underwent THC testing by the department each of those three years;
  - (c) received THC testing results below the acceptable THC level (total THC not more than 0.3%) each of those three years; and
  - (d) currently growing the same variety(s) or cultivar(s) as in the previous three years.
- (6) Hemp crops which were planted with known Certified seed varieties for grain or fiber, and which are to be harvested only for grain or fiber (with no leaf or floral material harvested) may not be subject to the sampling and testing requirement. Previous testing of those varieties in Kentucky by the department revealed that only 9 of 179 lots (5 %) tested above the acceptable hemp THC level. At least 50% of all lots produced from these varieties will be sampled each year on a random basis.
- (7) Hemp varieties appearing on the department's Summary of Varieties list that have been tested below the acceptable THC level at least 90% of the time may be subject to a lower frequency of sampling and testing. At least 50% of all lots produced from these varieties will be sampled each year on a random basis.

#### **Section 4. Procedure for Collecting Samples.**

- (1) The inspector shall use the following equipment and supplies:
  - (a) An "Inspection and Sample Collection" Form, Alcohol wipes;
  - (b) Pruning shears;
  - (c) Paper sample-collection bags;
  - (d) A permanent marker;
  - (e) Security tape or a stapler;
  - (f) A GPS unit, or a device with GPS-capable technology; and
  - (g) Nitrile disposable gloves; and
  - (h) A ruler.
- (2) The inspector shall take cuttings from five (5) plants in each lot to make up a composite sample for that lot. The number of plants selected to form a composite sample was

calculated using the Codex Alimentarius Recommended Methods of Sampling for the Determination of Pesticide Residues for Compliance with MRLS CAC/GL 33-1999. In 2019, Kentucky's hemp testing program showed that 43% of the pre-harvest samples were above 0.30% THC; therefore "l" is equal to 0.43. For a confidence level of ninety-five (95) percent, the minimum plant number required shall be three (3). A lot from a thousand-acre field would require five and three-tenths (5.3) plants.

- (3) The inspector shall select the individual plants to be sampled from each lot by selecting at random at least five (5) plants that appear to be representative of the composition of the lot and avoiding selecting plants that are close to the perimeter of the lot.
- (4) From each individual plant selected for sampling, the inspector shall cut the highest twenty (20) centimeters from the plant's primary stem of female flower. The inspector shall not remove seed, stem, or other material from the sample that is cut from the plant.
- (5) The inspector shall place the cuttings from the lot into a paper sample-collection bag, shut the bag by folding over its top, and secure the fold with security tape or a stapler.
- (6) Using a permanent marker, the inspector shall write on the sealed paper sample collection bag the Sample ID consistent with:
  - (a) The last four (4) digits of the Grower License number,
  - (b) The date, in MMDDYY format; and
  - (c) A two (2) digit sample number assigned by the inspector.
  - (d) Example: For Grower License 21\_1234, with a sample collected on October 15, 2020, from the third lot sampled by the inspector on that date, the Sample ID is 1234-101520-03.
- (7) The inspector shall complete the Inspection and Sample Collection Form by entering:
  - (a) The licensed grower's name and contact information;
  - (b) The address where the lot is located;
  - (c) The Grower License number;
  - (d) The inspector's name;
  - (e) The date of the inspection and sample collection visit; and
  - (f) For each sample collected, the Location ID, the Sample ID, the hemp variety or strain name, and a description of the crop.
- (8) Following the completion of the inspection and sample-collection visit, the inspector shall deliver the sealed sample-collection bag to the department's designated drying facility.
- (9) The department shall not unseal sample-collection bags during the drying process.

## **Section 5. Procedure for THC Testing.**

- (1) THC testing shall be completed by a Drug Enforcement Administration-registered

testing lab designated by the department.

- (2) Upon receipt of a sealed sample-collection bag from the department, the laboratory shall receive, prepare, and release hemp samples in accordance with the UK DRS SOP# HM-LB-001 (Procedures for Receiving, Preparing and Releasing Hemp Samples); or MSU BVC SOP # TOX WIN 0042 (Hemp Receiving) and MSU BVC SOP # TOX WIN 0043 (Hemp Storage and Destruction), as applicable.
- (3) Hemp material not used by the laboratory for delta-9-THC testing shall be stored as a retained sample.
- (4) The laboratory shall measure delta-9-THC content, including both delta-9-THC and delta-9-THCA, on a dry weight basis in accordance with the UK DRS SOP# HMP-LB-002 (Procedures for Measuring Delta 9 THC Content in Industrial Hemp by Gas Chromatography with Flame Ionization Detection) or MSU BVC SOP # TOX WIN 0069 (Hemp Potency), as applicable, including the Measurement of Uncertainty.
- (5) A person shall not add to, amend, or in any way alter the composition of the retained sample.

#### **Section 6. Post-testing Actions.**

- (1) Not later than 60 days after the date of the inspection and sample-collection visit, the department shall notify the licensed grower of the results of the THC test results and the grower's eligibility to move the harvested materials into commerce.
- (2) For the purpose of determining whether a test result is compliant with the definition of hemp (0.300% delta-9-THC on a dry-weight basis), the department shall evaluate it against the Acceptable Hemp THC Level that is applicable for the current year (that is, 0.300% delta-9-THC on a dry-weight basis plus the Measurement of Uncertainty).
- (3) A sample from a lot with a measured THC concentration not exceeding the Acceptable Hemp THC Level shall be deemed compliant (i.e., conforming to the legal definition of hemp).
- (4) A sample from a lot with a measured THC concentration exceeding the Acceptable Hemp THC Level shall be deemed non-compliant.
- (5) Within seven (7) days of receiving notice of a measured THC concentration that exceeds the Acceptable Hemp THC Level but is less than 1.000%, the Licensed Grower shall consent to the destruction of all cannabis from that lot, or he or she may request remediation and a post-harvest re-test in accordance with the procedures established in Section 7 of this administrative regulation.
- (6) The retest fee shall be paid in an amount established in 302 KAR 50:060.
- (7) Samples with a measured THC concentration of 1.000% or greater shall not be eligible for a post-harvest retest and shall be destroyed. A licensee who refuses to comply with a destruction order shall be subject to the license suspension and revocation proceedings set forth in 302 KAR 50:021 or 50:031, as appropriate.

- (8) The sample for a retest shall be collected on a date determined by the department.
- (9) Samples with a measured THC concentration of 3.000% or greater shall be grounds for license suspension and revocation proceedings set forth in 302 KAR 50:021.

**Section 7. Procedure for Collecting Samples for Post-harvest Retests of Remediated Material.**

- (1) The inspector shall use the following equipment and supplies:
  - (a) An Inspection and Sample Collection Form;
  - (b) Alcohol wipes;
  - (c) Pruning shears;
  - (d) Paper sample-collection bags for wet samples;
  - (e) Plastic sample-collection bags for dry samples;
  - (f) A permanent marker;
  - (g) Security tape or a stapler;
  - (h) A GPS unit, or a device with GPS-capable technology; and
  - (i) Nitrile disposable gloves.
- (2) The material selected for Post-Harvest Sampling from this lot will be determined by the inspector, not the grower.
- (3) The inspector shall perform a visual inspection to verify that the harvested material is in a homogenous state . If the harvested material is not in a homogenous state, then the inspector shall notify the Hemp Program Manager and convey any instructions the Hemp Program Manager may designate to undertake additional remediation steps to bring the entire harvest into a homogenous state. If the license holder refuses or fails to undertake such designated activities, he or she shall be deemed to have waived any right to request a post-harvest retest and the material shall be designated for disposal.
- (4) Harvested material selected for Post-Harvest Sampling shall be taken following remediation by grinding the plant into biomass or removing and disposing of all leaf and flower, in accordance with the instructions established in paragraphs (a) and (b) of this subsection.
  - (a) For ground plant post-harvest samples:
    - (i) Ensure that the entire harvest is accounted for and in the same form. ( All harvested material whether whole plant or floral material only shall be ground with no intact plants or whole flowers remaining from that harvest);
    - (ii) Sample material from bag or container without removing seed, stem, or other material;
    - (iii) Sample from a minimum of five (5) locations within the containers for at least one (1) cup of material from the lot;
    - (iv) Place the complete sample in a plastic sample container; and
    - (v) Seal the plastic sample container.

- (b) For Post-Harvest Samples following the removal and disposal of leaf and flower:
  - (i) Ensure that the entire harvest is accounted for and in the same form (, grain and/or stalk);
  - (ii) Sample material from bag, bale, or container without removing seed, stem, or other material.
  - (iii) Sample from a minimum of five (5) locations within the containers, collecting at least one (1) cup of material from the lot;
  - (iv) Place the complete sample in a plastic sample container; and
  - (v) Seal the plastic sample container.
- (5) Post-Harvest Samples of non-remediated crops is not recommended, but if the grower requests and pays for a Post-Harvest Sample of harvested intact plants, the sampling will be conducted according to the instructions established in (a) through (e).
  - (a) Ensure that the entire harvest is accounted for and in the same form ( intact plants);
  - (b) Clip the top twenty (20) cm of hemp plant, primary stem, including female floral material, without removing seed, stem, or other material
  - (c) Take cuttings from at least five (5) hemp plants within the harvest's storage or drying area at the discretion of the inspector;
  - (d) Place the complete sample in a paper bag; and
  - (e) Seal the paper bag by folding over the top once and stapling to keep closed.
- (6) The inspector shall place the cuttings or composite sample from the lot into a sample collection bag, and secure the bag with security tape or staples.
- (7) Using a permanent marker, the inspector shall write on the sealed sample-collection bag the Sample ID consistent with the following format:
  - (a) The last four (4) digits of the Grower License number,
  - (b) The date, in MMDDYY format;
  - (c) A two (2) digit sample number assigned by the inspector; and
  - (d) Example: For Grower License 21\_1234, with a sample collected on October 15, 2020, from the third lot sampled by the inspector on that date, the Sample ID would be 1234-101520-03.
- (8) The inspector shall complete the Inspection and Sample Collection Form by entering the following information:
  - (a) The licensed grower's name and contact information;
  - (b) The address where the lot was grown and where it is currently located;
  - (c) The Grower License number;
  - (d) The inspector's name;
  - (e) The date of the inspection and sample collection visit; and
  - (f) For each sample collected, the Location ID, the Sample ID, the hemp variety or strain name, and a description of the crop.

- (9) Following the completion of the inspection and sample-collection visit, the inspector shall deliver the sealed sample-collection bag to the department's designated drying facility.
- (10) The department shall not unseal sample-collection bags during the drying process.
- (11) The procedure for THC testing used by UK DRS shall be the same for post-harvest retests as those set forth in Section 5 of this administrative regulation.
- (12) A lot having a post-harvest sample with a measured THC concentration exceeding the Acceptable Hemp THC Level shall be deemed non-compliant and designated for disposal.

### **Section 8. Disposal of Non-compliant Harvested Materials.**

- (1) If a lot is designated for mandatory disposal, then the department shall ensure that all leaf material and floral material from that lot is disposed of using one (1) of the procedures set forth in this Section of this administrative regulation. The costs of disposal, if any are incurred by the department, shall be charged to the license holder.
- (2) Disposal by on-site destruction with department supervision. Without removing the harvested material from the license holder's premises (or other licensed premises where the harvested material is located), a department employee shall personally observe the harvested material's destruction (the act of rendering it into a useless and non-retrievable state) using one of these methods:
  - (a) By grinding it up and incorporating it into the soil; or
  - (b) By controlled incineration.
- (3) Disposal by on-farm transfer to a person who is registered or authorized by the department to accept controlled substances for the purposes of destruction. At the premises of the license holder (or other licensed premises where the harvested material is located), a department employee shall load, or observe the loading, of the harvested material until the transfer is complete.
- (4) Disposal by vehicle transport to a department-approved location.
  - (a) Prior to the transport: At the premises of the license holder or other licensed premises where the harvested material is located, a department employee shall load, or observe the loading, of the harvested material until the material is completely secured on or in the vehicle.
  - (b) During the transport: A department employee shall accompany the harvested material as it moves in a vehicle directly to a department-approved location. The vehicle shall constantly move towards its final destination without unnecessary stops, stops for reasons unrelated to the transport task, or stops of an extended duration.
  - (c) After the transport: Upon arrival at the department-approved location, a department employee shall unload, or observe the unloading, of the harvested

material until the material is completely removed from the vehicle.

- (d) Following the material's removal from the vehicle, a department employee shall personally observe the harvested material's destruction (the act of rendering it into a useless and non-retrievable state) using one (1) of these methods:
  - (i) by grinding it up and incorporating it into the soil; or
  - (ii) by controlled incineration.

## **Section 9. Incorporation by Reference.**

- (1) The following material is incorporated by reference:
  - (a) "UK DRS SOP# HM-MT-001 (Procedures for Measuring THC Content in Hemp by Gas Chromatography with Flame Ionization Detection GC/FID)", Revision date 06/01/2021;
  - (b) "UK DRS SOP# HM-LB-001 (Procedures for Receiving, Preparing and Releasing Hemp)", Revision date 07/20/2021;
  - (c) "MSU BVC SOP # TOX WIN 0042 (Hemp Receiving)", Version date 5/20/2020;
  - (d) "MSU BVC SOP # TOX WIN 0043 (Hemp Storage and Destruction)", Version date 5/21/2020; and
  - (e) "MSU BVC SOP # TOX WIN 0069 (Hemp Potency)", Version date 6/10/2020.
- (2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Office of Agricultural Marketing, 105 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. These materials may also be obtained at [www.kyagr.com](http://www.kyagr.com).



**GENERAL GOVERNMENT**  
**Department of Agriculture**  
**Office of Agricultural Marketing**

**302 KAR 50:060. Fees for the Hemp Licensing Program.**

**RELATES TO:** KRS Chapter 217B, 260.850-260.869

**STATUTORY AUTHORITY:** KRS 260.862

**NECESSITY, FUNCTION, AND CONFORMITY:** KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations for a Hemp Licensing Program in the Commonwealth of Kentucky and authorizes the department to license persons who wish to participate in a Hemp Licensing Program by cultivating, handling, processing, or marketing hemp. KRS 260.862(1)(e) authorizes the department to establish a schedule of nonrefundable fees. This administrative regulation establishes a schedule of fees for applicants and licensees.

**Section 1. Schedule of Fees for Hemp Growers.**

- (1) The definitions for this section shall be the same definitions established in 302 KAR 50:021, Section 1.
- (2) The fees established in this section shall be nonrefundable.
- (3) The Grower License Application fee shall be waived. There shall be a \$200 service charge for those applications submitted on paper. There shall be no service charge for applications submitted online.
- (4) The annual Grower Licensing Fee shall be \$400 for each growing address. This fee includes the first three (3) samples collected for THC testing from that growing address. Beginning with the fourth sample, the Licensed Grower shall be invoiced for a secondary pre-harvest sample fee of \$250 for each additional sample collected for THC testing.
- (5) The secondary pre-harvest sample fee shall be \$250 for each sample.
- (6) The retest fee shall be \$250 for each sample.
- (7) The site modification surcharge fee shall be \$750 for each GPS coordinate location change for each growing site after the grower licensing agreement has been executed.

**Section 2. Schedule of Fees for Hemp Processors or Handlers.**

- (1) The definitions for this section shall be the same definitions established in 302 KAR 50:031, Section 1.
- (2) The fees established in this section shall be nonrefundable.
- (3) The Processor/Handler License Application fee shall be waived. There shall be a \$200 service charge for those applications submitted on paper. There shall be no service

charge for applications submitted online.

- (4) The annual Processor/Handler Licensing Fee for processing the grain component of hemp shall be \$500.
- (5) The annual Processor/Handler Licensing Fee for processing the fiber component of hemp shall be \$500.
- (6) The annual Processor/Handler Licensing Fee for processing the floral material component of hemp (such as CBD) shall be \$3,000.
- (7) The annual Processor/Handler Licensing Fee for a handler (such as a seed cleaner or laboratory) shall be \$500.
- (8) A processor for more than one (1) component (grain, fiber, or floral material) shall pay the licensing fee for each component. (For example, a person who processes hemp for fiber, grain, and CBD shall pay a participation fee of \$4,000.)
- (9) The site modification surcharge fee shall be \$750 for each GPS coordinate location change for each processing or handling site after the Processor/Handler application or renewal has been submitted. (44 Ky.R. 1770; 2007; eff. 4-6-2018; 46 Ky.R. 2520; 47 Ky.R. 313; eff. 9-17-2020.)

**GENERAL GOVERNMENT**  
**Department of Agriculture**  
**Office of Agricultural Marketing**

**302 KAR 50:070. Prohibited products.**

**RELATES TO:** KRS 260.850-260.869, 7 U.S.C. 5940

**STATUTORY AUTHORITY:** KRS 260.862

**NECESSITY, FUNCTION, AND CONFORMITY:** KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations for any industrial hemp research pilot program in the Commonwealth of Kentucky. This administrative regulation establishes classes or categories of hemp products that are prohibited for sale, transfer or distribution to members of the public.

**Section 1. Products Not to be Sold to Members of the Public.**

- (1) The following hemp-derived products shall not be manufactured:
  - (a) Hemp cigarettes;
  - (b) Hemp cigars;
  - (c) Chew, dip, or other smokeless material consisting of hemp leaf material or hemp floral material; and
  - (d) Hemp leaf material or floral material teas.
- (2) The following hemp-derived products shall not be marketed, sold, or distributed to any person in Kentucky who does not hold a license from the department, or any person outside the Commonwealth (but within the United States) who is not authorized by an institution of higher education, or state department of agriculture pursuant to 7 U.S.C. 5940 and the laws of that state:
  - (a) Whole hemp buds;
  - (b) Ground hemp floral material;
  - (c) Ground hemp leaf material; and
  - (d) Any hemp product with a delta-9-THC concentration in excess of zero and three-tenths (0.3) percent.
- (3) If the department finds that it is more likely than not that a person has manufactured, marketed, sold, or distributed a hemp-derived product in violation of this administrative regulation, the department shall assess a civil monetary penalty against that person of not less than \$100 and not more than \$1,000 per violation, in addition to possible termination of the grower licensing agreement or processor or handler licensing agreement. (44 Ky.R. 1771; 2008; eff. 4-6-2018.)

**GENERAL GOVERNMENT**  
**Department of Agriculture**  
**Office of Agricultural Marketing**

**302 KAR 50:080. Materials incorporated by reference.**

**RELATES TO:** KRS Chapter 217B, 260.850-260.869; 7 U.S.C. 1739p, 7 CFR Part 990

**STATUTORY AUTHORITY:** KRS 260.862; 7 U.S.C. 1739p

**NECESSITY, FUNCTION, AND CONFORMITY:** KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations for any Hemp Licensing Program in the Commonwealth of Kentucky. This administrative regulation establishes material incorporated by reference for 302 KAR Chapter 50.

**Section 1. Incorporation by Reference.**

- (1) The following material is incorporated by reference:
  - (a) "Hemp Grower License Application";
  - (b) "Field Planting Report";
  - (c) "Greenhouse/Indoor Planting Report";
  - (d) "Harvest Report";
  - (e) "New Hemp Variety or Strain Request";
  - (f) "Site Modification Request";
  - (g) "Processor/Handler License Application"; and
  - (h) "University/College Hemp Application".
- (2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Office of Agricultural Marketing, 105 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. These materials may also be obtained at [www.kyagr.com/](http://www.kyagr.com/).