



South Carolina
DEPARTMENT OF AGRICULTURE
CONSUMER PROTECTION DIVISION | HEMP FARMING PROGRAM

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South Carolina Hemp Farming State Plan

A Plan to implement the South Carolina Hemp Program under S.C. Code Ann. § 46-55-10 et seq. and the U.S. Hemp Farming Act of 2018.

WHEREAS, under S.C. Code Ann. § 46-55-10 et seq. and the U.S. Hemp Farming Act of 2018, the South Carolina Commissioner of Agriculture is authorized to draft and submit to the Secretary of the U.S. Department of Agriculture a State Plan which sets forth the procedure under which the South Carolina Department of Agriculture regulates hemp production in South Carolina. Pursuant to 7 C.F.R. 990.2, states which seek to have primary authority over the regulation and production of hemp in their home jurisdiction must complete a state plan for review and approval by the United States Department of Agriculture (hereinafter “USDA”). This document serves as the South Carolina Department of Agriculture’s (hereinafter the “Department”) submission of its State Plan in compliance with 7 C.F.R. 990.2 S.C. Code Ann. § 46-55-10 et seq.

SECTION 1. SHORT TITLE

This Plan may be cited as the South Carolina Hemp Farming State Plan.

SECTION 2. PURPOSES

It is the declared policy of this state that hemp is a viable agricultural crop in this state. The purpose of this Plan is to enable the Department and its Permittees to promote the cultivating, handling, and processing of hemp. This State Plan provides a framework for the Department and its Permittees to cultivate, handle, and process hemp in this state.

SECTION 3. DEFINITIONS

For the purposes of this State Plan:

1. “Acceptable hemp THC level” is the application of the measurement of uncertainty to the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis producing a distribution or range that includes 0.3% or less. This definition affects neither the “Federally defined THC level for hemp,” as defined below nor, the definition of “marijuana,” as defined below. When a laboratory tests a sample, it must report the delta-9 tetrahydrocannabinol content concentration level on a dry weight basis and the measurement

of uncertainty. The acceptable hemp THC level for the purpose of compliance with the requirements of this State Plan is when the application of the measurement of uncertainty to the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution or range that includes 0.3% or less. For example, if the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is 0.35% and the measurement of uncertainty is $\pm 0.06\%$, the measured delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the acceptable hemp THC level for the purpose of plan compliance.

2. "Cannabidiol" or "CBD" means the compound by the same name derived from the hemp variety of the *Cannabis sativa* L. plant.
3. "Commercial sales" mean the sale of hemp products in the stream of commerce, at retail, wholesale and online.
4. "Commissioner" is the Commissioner of the South Carolina Department of Agriculture or his designee.
5. "Conviction" is defined to explain what is considered a conviction and what is not. Specifically, a plea of guilty or nolo contendere or any finding of guilt is a conviction. However, if the finding of guilt is subsequently overturned on appeal, pardoned, or expunged, then it is not considered a conviction for purposes of this State Plan. This definition of "conviction" is consistent with how some other agencies who conduct criminal history record searches determine disqualifying crimes.
6. "Corrective action plan" means a plan set forth by the Department for a permitted hemp producer to correct a negligent violation of or non-compliance with a hemp production plan, its terms, or any other provision set forth under this State Plan. This term is defined in accordance with the 2018 Farm Bill, which mandates certain non-compliance actions to be addressed through corrective action plans.
7. "Culpable mental state greater than negligence" is a term used in the 2018 Farm Bill to determine when certain actions would be subject to specific compliance actions. This term means to act intentionally, knowingly, willfully, recklessly, or with criminal negligence.
8. "Cultivating" means planting, watering, growing, and harvesting a plant or crop.
9. "Decarboxylated" means the completion of the chemical reaction that converts THC-acid (THCA) 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 THC-acid.
10. "Decarboxylation" is the removal or elimination of a carboxyl group from a molecule or organic compound.
11. "Department" or "SCDA", as the terms may be used interchangeably, is the South Carolina Department of Agriculture.

12. "Federally defined THC level for hemp" means a delta-9 THC concentration of not more than 0.3 percent on a dry weight basis, or the THC concentration for hemp defined in the Agriculture Improvement Act of 2018, Pub.L. 115-334, whichever is greater.
13. "Growing Location" or "lot", as the terms may be used interchangeably, refers to a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout. In addition, "lot" is a common term in agriculture that refers to the batch or contiguous, homogeneous whole of a product being sold to a single buyer at a single time. Under the terms of this part, "lot" is to be defined by the producer in terms of farm location, field acreage, and variety (i.e., cultivar) and to be reported as such to the FSA.
14. "Handling" means taking ownership, possessing, or storing hemp plants for any period of time. "Handling" also includes possessing or storing hemp plants in a vehicle for any period of time other than during its actual transport from the premises of a permitted person to cultivate or process hemp to the premises of another permitted person. "Handling" does not mean possessing or storing finished Hemp Products as that term is defined below.
15. "Hemp" means the plant species *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. Hemp does not include Hemp Products as defined below.
16. "Hemp Plant Parts" shall mean any floral buds, leaves, roots, seeds, stalks, or stems of the plant *Cannabis sativa* L. with a THC concentration of not more than the federally defined THC level for hemp.
17. "Hemp Products" means all products with the federally defined THC level for hemp derived from, or made by, processing hemp plants or hemp plant parts, that are prepared in a form available for commercial sale, including, but not limited to cosmetics, personal care products, food intended for animal or human consumption, cloth, cordage, fiber, fuel, paint, paper, particleboard, plastics, and any product containing one or more hemp-derived cannabinoids, such as cannabidiol. Unprocessed or raw plant material, including non-sterilized hemp seeds, is not considered a hemp product.
18. "Industrial Hemp" is equivalent in all meanings to "Hemp."
19. "Key Participant" means a sole proprietor, a partner in partnership, or a person with executive managerial control in a corporation. A person with executive managerial control includes persons such as a chief executive officer, chief operating officer and chief financial officer. This definition does not include non-executive managers such as farm, field, or shift managers.
20. "Marijuana," as defined under Section 44-53-110 and notwithstanding any other provisions of the law, does not include hemp or hemp products. Cannabis with a THC level exceeding 0.3 percent is considered marijuana, which remains classified as a schedule I controlled substance regulated by the Drug Enforcement Administration (DEA) under the Controlled Substances Act (CSA).

21. "Negligence" is a term used in the 2018 Farm Bill to describe when certain actions are subject to specific compliance actions. For the purposes of this part, the term means failure to exercise the level of care that a reasonably prudent person would exercise in complying with the regulations set forth under this part.
22. "Permitted Farmer" or "Permitted Hemp Farmer" means an individual permitted to cultivate hemp.
23. "Permitted Handler" or "Permitted Hemp Handler" means an individual or business permitted to handle hemp. A Handler Permit does not allow for cultivation of hemp.
24. "Permitted Processor" or "Permitted Hemp Processor" means an individual or business permitted to process hemp. A Processor Permit does not allow for cultivation of hemp.
25. "Permittee" means a person or business, if applicable, authorized by the Department under the authority of the South Carolina Hemp Farming Act S.C. Code Ann. § 46-55-10 et seq. and this State Plan to grow, handle, cultivate, or process hemp. Permitted Farmers, Permitted Handlers, and Permitted Processors are all Permittees.
26. "Processing" means converting an agricultural commodity into a marketable form.
27. "Produce," when used as a verb, is a common agricultural term that is often used synonymously with "grow" and means to propagate plants for market, or for cultivation for market, in the United States. In the context of this part, "produce" refers to the propagation of cannabis to produce hemp. In this State Plan "cultivate" and "farm" when used to refer to the propagation of cannabis to produce hemp shall have the same meaning as produce. The 2018 Farm Bill mandates that USDA maintain a real-time informational database that identifies registered hemp production sites, whether under a State, tribal, or USDA plan, for the purposes of compliance and tracking with law enforcement. AMS will maintain this system with the information collection assistance of FSA. In order to maintain consistency and uniformity of hemp production locations, USDA is recommending that FSA collect this information through their crop acreage reporting system. In this context, a common use of the term "producer" is essential to maintaining a substantive database. For this reason, the definition of "producer" incorporates the FSA definition of "producer" with the additional qualifier that the producer is permitted or authorized to produce hemp under the Hemp Program.
 - a. "State Plan" means the plan submitted by the Department and approved by the Secretary of the U.S. Department of Agriculture under which the Department regulates hemp production
28. "Store" is part of the term "handle" as defined above and means to deposit hemp plants or hemp plant product in a storehouse, warehouse or other identified location by a producer for safekeeping prior to delivery to a permitted recipient for further processing.
29. "THC" means tetrahydrocannabinol or Delta-9 tetrahydrocannabinol. THC is the primary intoxicating component of cannabis. Notwithstanding any other provision of the law, the THC that is found in hemp shall not be considered to be THC in qualifying as a controlled substance.

SECTION 4. PERMITTING AND FEES

1. Each hemp farmer, processor, or handler shall obtain a permit from SCDA prior to engaging in the regulated activity.
2. No Permittee shall allow any unpermitted person who is not an employee of that Permittee to grow, cultivate, handle, store, process, or transport hemp under his or her Permit.
3. Each Permittee shall be assigned a permit number in the form prescribed by USDA.
4. Permits must be renewed annually.
5. A person applying for multiple permits must complete a permit application and submit the associated fee for each application.
6. Fees
 - a. The annual fee for a Hemp Farmer Permit shall be \$1,000.
 - b. The annual fee for Hemp Processor Permit shall be \$3,000.
 - c. The annual fee for Hemp Handler Permit shall be up to \$1,000.
7. Any persons who materially falsify any information in their application shall be deemed ineligible to participate in the Hemp Farming Program.
8. New permit fees are due upon notification of application approval. No permit shall be issued until payment of the permit fee is received by SCDA.

SECTION 5. HEMP FARMER PERMIT

1. No person shall grow hemp without first applying for and receiving a Hemp Farmer Permit from SCDA.
2. A Hemp Farmer Permit issued by SCDA shall authorize the Permittee to obtain hemp seed, possess hemp seed for planting, cultivate a hemp crop, harvest hemp plant parts, as well as possess, store, handle, transport, and market plant parts pursuant to this State Plan. A Hemp Farmer Permit does not authorize the Permittee to process hemp.
3. No person under the age of 18 shall be granted a Hemp Farmer Permit under this State Plan.
4. No person shall be eligible to obtain a Hemp Farmer Permit if the applicant:
 - a. was convicted of a State or Federal felony related to a controlled substance within the ten years immediately preceding the criminal records report date, which must not be completed more than 60 days before the submission of the application, provided however, that an exception applies to a person who was lawfully growing Hemp under the 2014 Farm Bill before December 20, 2018, and whose Conviction also occurred before that date. If the applicant is an entity all Key Participants of the entity are subject to this requirement;
 - b. fails to provide all application requirements and documentation; or

- c. materially falsifies any information contained in the application.
5. To be eligible to obtain a Hemp Farming Permit, each applicant, at a minimum, must submit the following with prospective Farmer's application:
 - a. The full legal name of the applicant;
 - b. The physical address of the applicant;
 - c. The mailing address of the applicant;
 - d. The email address of the applicant;
 - e. The phone number of the applicant;
 - f. fingerprints, and the appropriate fees, required by the South Carolina Law Enforcement Division (SLED) to perform a fingerprint-based state criminal records check and for the Federal Bureau of Investigation to perform a national fingerprint-based criminal records check; and
 - g. each Growing Location: global positioning coordinates; physical address; maps for each field, greenhouse, building, or storage facility where hemp will be cultivated or stored; and number of outdoor acres, indoor square footage, and number of plants intended to be planted.
6. For applicants and Key Participants, the Department shall require a state criminal records check, supported by fingerprints, by SLED and a national criminal records check, supported by fingerprints, by the Federal Bureau of Investigation. The results of these criminal records checks must be reported to the Department. SLED is authorized to retain the fingerprints for certification purposes and for notification of the Department regarding criminal charges. No person shall be eligible to obtain a permit if the applicant was convicted of a State or Federal felony related to a controlled substance within the ten years immediately preceding the criminal records report date, which must not be completed more than 60 days before the submission of the application, and who does not meet the felon ban exception set forth above.

SECTION 6. HEMP PROCESSOR PERMIT

1. No person shall process hemp plant parts without first applying for and receiving a Hemp Processor Permit from SCDA.
2. A Hemp Processor Permit issued by SCDA shall authorize the Permittee to possess hemp plant parts, convert hemp plant parts to a Hemp Product, as well as possess, store, handle, transport, and market plant parts pursuant to this State Plan. A Hemp Processor Permit does not authorize the Permittee to cultivate hemp.
3. No person under the age of 18 shall be granted a Hemp Processor Permit under this State Plan.
4. No person shall be eligible to obtain a Hemp Processor Permit if the applicant:

- a. was convicted of a State or Federal felony related to a controlled substance within the ten years immediately preceding the criminal records report date, which must not be completed more than 60 days before the submission of the application, provided however, that an exception applies to a person who was lawfully growing Hemp under the 2014 Farm Bill before December 20, 2018, and whose Conviction also occurred before that date. If the applicant is an entity all Key Participants of the entity are subject to this requirement;
 - b. fails to provide all application requirements and documentation; or
 - c. materially falsifies any information contained in the application.
5. To be eligible to obtain a Hemp Processor Permit, each applicant, at a minimum, must submit the following with prospective Processor's application:
 - a. The full legal name of the applicant;
 - b. The physical address of the applicant;
 - c. The mailing address of the applicant;
 - d. The email address of the applicant;
 - e. The phone number of the applicant; and
 - f. fingerprints, and the appropriate fees, required by the South Carolina Law Enforcement Division (SLED) to perform a fingerprint-based state criminal records check and for the Federal Bureau of Investigation to perform a national fingerprint-based criminal records check.
6. For applicants and Key Participants, where applicable, the Department shall require a state criminal records check, supported by fingerprints, by SLED and a national criminal records check, supported by fingerprints, by the Federal Bureau of Investigation. The results of these criminal records checks must be reported to the Department. SLED is authorized to retain the fingerprints for certification purposes and for notification of the Department regarding criminal charges. No person shall be eligible to obtain a permit if the applicant was convicted of a State or Federal felony related to a controlled substance within the ten years immediately preceding the criminal records report date, which must not be completed more than 60 days before the submission of the application, and who does not meet the felon ban exception set forth above.

SECTION 7. HEMP HANDLER PERMIT

1. No person shall handle hemp plant parts without first applying for and receiving a Hemp Handler Permit from SCDA. Notwithstanding the forgoing, Permitted Hemp Farmers and Permitted Hemp Processors may handle hemp plant parts without possessing a Hemp Handler Permit. A Hemp Handler Permit does not authorize the Permittee to cultivate or process hemp.
2. No person under the age of 18 shall be granted a Hemp Handler Permit under this State Plan.
3. No person shall be eligible to obtain a Hemp Handler Permit if the applicant:

- a. was convicted of a State or Federal felony related to a controlled substance within the ten years immediately preceding the criminal records report date, which must not be completed more than 60 days before the submission of the application, provided however, that an exception applies to a person who was lawfully growing Hemp under the 2014 Farm Bill before December 20, 2018, and whose Conviction also occurred before that date. If the applicant is an entity all Key Participants of the entity are subject to this requirement;
 - b. fails to provide all application requirements and documentation; or
 - c. materially falsifies any information contained in the application.
4. To be eligible to handle hemp in this state, each applicant, at a minimum, must submit the following with prospective Handler's application:
 - a. The full legal name of the applicant;
 - b. The physical address of the applicant;
 - c. The mailing address of the applicant;
 - d. The email address of the applicant;
 - e. The phone number of the applicant; and
 - f. fingerprints, and the appropriate fees, required by the South Carolina Law Enforcement Division (SLED) to perform a fingerprint-based state criminal records check and for the Federal Bureau of Investigation to perform a national fingerprint-based criminal records check.
 5. For applicants and Key Participants, where applicable, the Department shall require a state criminal records check, supported by fingerprints, by SLED and a national criminal records check, supported by fingerprints, by the Federal Bureau of Investigation. The results of these criminal records checks must be reported to the Department. SLED is authorized to retain the fingerprints for certification purposes and for notification of the Department regarding criminal charges. No person shall be eligible to obtain a permit if the applicant was convicted of a State or Federal felony related to a controlled substance within the ten years immediately preceding the criminal records report date, which must not be completed more than 60 days before the submission of the application, and who does not meet the felon ban exception set forth above.

SECTION 8. PRODUCER AND LAND INFORMATION TO USDA

1. USDA requires that the Department collect, maintain and report to USDA contact and real-time information for each hemp producer¹ licensed or authorized in the state regarding:
 - a. Contact information including at minimum the full name of the individual, permit or authorization identifier, business address, telephone number, and email address (if

¹ USDA regulations 990.1 defines "producer" as a producer as defined in 7 CFR 718.2 that is licensed or authorized to produce hemp under this part. South Carolina's analogous term is "Hemp Farmer" or " Permitted Hemp Farmer."

available). If the producer is a business entity, the information must include the full name of the business, address of the principal business location, full name and title of the Key Participants, an email address if available, and EIN number of the business entity.

- b. A legal description of the land on which the producer will produce hemp in the State or territory of the Indian Tribe including, to the extent practicable, its geospatial location; and
 - c. The status and number of the producer's license or authorization.
2. To comply with this, the Department requires the following:
- a. The Department requires that prospective Hemp Farmers first apply for a permit with the Department using the Department's online database program. This program will allow the Department to transmit information regarding its Permittees to USDA upon request. Additionally, the Department shall provide USDA, by the first of each month, a report which includes all contact information, legal description of all land on which Permitted Farmers are authorized to produce hemp, and the status of each Permitted Farmers' Permit.
 - b. The Department shall include the following contact information in the report referenced in the paragraph above:
 - i. For each prospective Hemp Farmer who is an individual and is permitted or authorized by the Department, the report shall include the full name of the individual, permit or authorization identifier, business or farm address, telephone number, and email address, if the email address is available.
 - ii. For each new Hemp Farmer that is an entity² and is permitted or authorized by the Department, the report shall include full name of the entity, the principal business location address, license or authorization identifier, EIN number of the business entity and the full name, title, and email address (if available) of each employee for whom the entity is required to submit a criminal history record report.
 - c. The Department requires each prospective Hemp Farmer to provide the following information for each growing location upon application and annually: global positioning coordinates; physical address; maps for each field, greenhouse, building, or storage facility where hemp will be cultivated or stored; and number of outdoor acres, indoor square footage, and number of plants intended to be planted.
 - d. The Department, through its online database program, will have the capability to submit the required reports to USDA on a timely basis. As stated above, the Department shall provide to USDA, by the first of each month, a report which includes all contact

² At the time of submission of this Plan, the Department does not offer Farmer Permits to entities any only permits individuals. The Department anticipates that in future growing years, it will open the Farmer Permits to entities, and in that event the provisions set forth in this section will apply.

information for Permitted Farmers, legal description of all land on which Permitted Farmers are authorized to produce hemp, and the status of each Permitted Farmers' Permit.

- e. The Department shall utilize the Hemp Producer Report on forms supplied by the Department to meet this requirement.

SECTION 9. ACCURATE AND EFFECTIVE SAMPLING

1. USDA requires that this State Plan must include a procedure for accurate and effective sampling of all hemp produced, to include the following requirements:
 - a. Within thirty (30) days prior to the anticipated harvest of cannabis plants, a Federal, State, local, or Tribal law enforcement agency or other Federal, State, or Tribal designated person shall collect samples from the flower material from such cannabis plants for delta-9 tetrahydrocannabinol concentration level testing.
 - b. The method used for sampling from the flower material of the cannabis plant must be sufficient at a confidence level of 95 percent that no more than one percent (1%) of the plants in the lot would exceed the acceptable hemp THC level. The method used for sampling must ensure that a representative sample is collected that represents a homogeneous composition of the lot.
 - c. During a scheduled sample collection, the producer or an authorized representative of the producer shall be present at the growing site.
 - d. Representatives of the sampling agency shall be provided with complete and unrestricted access during business hours 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 producer license.
 - e. A producer shall not harvest the cannabis crop prior to samples being taken.
2. To comply with this, the Department requires the following:
 - a. Hemp Farmers must comply with the Department's sampling procedures which mirror the Standard Sampling Method set forth in the "Sampling Guidelines for Hemp U.S. Domestic Hemp Production Program" document issued January 15, 2021 by USDA and attached to this State Plan as Appendix 1.
 - b. All hemp producers are subject to annual inspection and sampling conducted by the Department to verify that plants do not exceed acceptable federally defined THC level for hemp.
 - c. 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 growing locations on record for the Permitted Hemp Farmer's permit.

- d. The Department's inspectors or an authorized agent shall collect a minimum of two samples from each variety planted per growing location during the growing season and before harvest to ensure compliance with the federally defined THC level for hemp. The number of samples collected from each variety shall be determined using the formula set forth in the "Sampling Guidelines for Hemp U.S. Domestic Hemp Production Program" document issued January 15, 2021 by USDA and attached to this State Plan as Appendix 1, but in no event shall be less than two samples from each variety.
- e. In addition to the annual inspection and sampling referenced in this Section, above, the Commissioner or his authorized agent(s) shall have access, during normal working hours, to any premises where there is reason to believe that hemp plants or plant parts are transported, produced, cultivated, and/or stored for the purpose of inspection, investigation, and/or collection of samples for testing. The Commissioner or his authorized agent(s) may inspect any hemp seed, plant, or plant parts located on the premises. SCDA shall not charge a testing fee for samples collected pursuant to an investigation initiated by SCDA.
- f. SCDA will also conduct annual inspections of a random sample of Permittees to verify that hemp is not being produced in violation of this State Plan.
- g. If a hemp producer voluntarily surrenders any permit, the Department may exercise its discretion to inspect and sample any permitted area during normal business hours without advance notice prior to accepting the surrender.
- h. The Department may require the Permitted Farmer or the Permitted Farmer's authorized representative to be present during an inspection to provide the Department's inspector with complete and unrestricted access during business hours to all hemp and/or cannabis plants, parts and seeds within a permitted area whether growing or harvested, and all land, buildings and other structures used for the cultivation and storage of hemp. During a scheduled sample collection, the Permitted Farmer or the Permitted Farmer's authorized representative shall be present at the growing site.
- i. The Department may require access to and copies of all documents and records pertaining to the Hemp Farmer's business at any time. Such records shall be promptly produced, ample time for review shall be provided, and copies may be made during time of inspection.
- j. Individual samples of each variety of hemp may be sampled from the permitted area at the Department's discretion.
- k. The method used for sampling from the flower material of the cannabis plant must be sufficient at a confidence level of 95 percent that no more than one percent (1%) of the plants in the lot would exceed the federally defined THC level for hemp. The method

used for sampling must ensure that a representative sample is collected that represents a homogeneous composition of the lot.

- l. The Department or an authorized agent shall collect samples from the flower material within thirty (30) days prior to the anticipated harvest of cannabis plants. The Permitted Farmer must notify the Department of its intended harvest date at least thirty days in advance. This window provides the Department's inspectors the time needed to visit the growing location to collect the samples
- m. A Hemp Farmer shall not harvest the hemp crop prior to samples being taken from the area intended to be harvested.
- n. Samples of hemp plant material from different lots shall not be commingled with hemp plant material from other lots.
- o. The Department shall take samples from each field, greenhouse, building, or site where hemp is being cultivated by the Permittee. The samples shall consist of cuttings from at least two hemp plants per growing location and per variety. The hemp plants selected for sampling shall be determined by the Department and not the Hemp Farmer.
- p. For the annual sampling to occur prior to harvest referenced in this Section, the Department may charge a sampling fee not to exceed \$100 per sample collected, plus the actual cost of shipping and handling.

SECTION 10. ACCURATE AND EFFECTIVE TESTING

1. USDA requires that this State Plan must include a procedure for testing that is able to accurately identify whether the sample contains a delta-9 tetrahydrocannabinol content concentration level that exceeds the acceptable hemp THC level, to include the following:
 - a. Laboratories conducting hemp testing must be DEA-registered as conducting these tests could potentially require handling of material (cannabis) above the 0.3% concentration of THC (dry weight basis) thus constituting marijuana as defined in 7 USC § 1639o(1), a Schedule I controlled substance. Notwithstanding the forgoing, because there are an insufficient number of DEA-registered laboratories to test all the anticipated hemp that will be produced in 2020 and possibly 2021, DEA has agreed to extend the enforcement flexibility allowing non-DEA registered labs to test hemp until January 1, 2022 and is processing lab registration applications quickly to get more labs testing hemp DEA-registered. Therefore, laboratories that are not DEA-registered may be used until January 1, 2022.
 - b. Test procedures must utilize validated post-decarboxylation or similarly reliable analytical methodology that provides total THC concentrations accounting for the conversion of delta-9-tetrahydrocannabinolic acid (THCA) into THC.
 - c. Testing methodologies meeting the requirements of this Section 10.1 include, but are not limited to, gas or liquid chromatography with detection. The total THC concentration level shall be determined and reported on a dry weight basis.

- d. Selection of methodology for the purpose of determining concentrations of total THC should consider guidance provided in the AOAC Standard Method Performance Requirements (Appendix F, AOAC Official Methods of Analysis). For this State Plan, methodology shall meet the following criteria:
 - i. The validity and reliability of test results must be demonstrated through evidence of a laboratory quality assurance program or laboratory accreditation, including that meeting ANSI/ISO 17025:2017;
 - ii. Analytical method selection, validation, and verification must ensure that the testing method used is appropriate (fit for purpose), and that the laboratory can successfully perform the testing;
 - iii. The demonstration of testing validity must ensure consistent, accurate analytical performance;
 - iv. Method performance specifications must ensure analytical tests are sufficiently sensitive and selective for the purposes of the detectability requirements of this part; and
 - v. Measurement of uncertainty (MU) must be estimated and reported with test results. Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty in accordance with Joint Committee for Guides in Metrology 100:800, Evaluation of measurement Data – Guide to the Expression of Uncertainty in Measurement and NIST Technical Note 1297: Guidelines for Evaluating and Expressing the Uncertainty of NIST Measurement Results.
2. Any test of a representative sample resulting in higher than the acceptable hemp THC level shall be conclusive evidence that the lot represented by the sample is not in compliance with this part. Lots tested and not certified by the DEA-registered laboratory at or below the acceptable hemp THC level may not be further handled, processed or enter the stream of commerce and the producer shall ensure the lot is disposed of in accordance with the federal guidelines set forth by USDA in § 990.27 of its Final Rule.
3. To comply with this, the Department requires the following:
 - a. Quantitative determination of THC levels measured gas or liquid chromatography with detection.
 - b. The testing methodology shall consider the potential conversion of THC-A in hemp into THC and the test result shall measure the total available THC derived from the sum of the THC and THC-A content. Appropriately, the THC-A result will be modified by the molecular weight conversion factor 0.877 prior to summation with THC. The total THC concentration level shall be reported on a dry weight basis.
 - c. Analytical testing for purposes of detecting the concentration levels of THC shall meet the following standards:

- i. Laboratory must be DEA registered, subject to the exception set forth above in Section 10.1.a;
 - ii. laboratory quality assurance must ensure the validity and reliability of test results;
 - iii. analytical method selection, validation, and verification must ensure that the testing method used is appropriate (fit for purpose), and that the laboratory can successfully perform the testing;
 - iv. the demonstration of testing validity must ensure consistent, accurate analytical performance;
 - v. method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of detectability requirements of this Section;
 - vi. an effective disposal procedure in accordance with DEA regulations for samples of hemp plants and hemp plant parts that do not meet the requirements federally defined THC level for hemp or this Section; and
 - vii. the measurement of uncertainty shall be estimated and reported with the results.
- d. The results of the THC analysis shall be reported to the Permittee and, if tested by an approved third-party laboratory, to the Department.
 - e. Samples with a THC concentration that do not exceed the acceptable hemp THC level shall be issued a certificate of analysis and require no further action. The lot or harvested plant material from which the sample was obtained shall be released for marketing or further processing.
 - f. Samples that exceed the acceptable hemp THC level shall be reported by the Department to the Permittee and the Permittee may request a resample and retest of the lot or harvested plant material. If no request is made within 10 days of the sample results being reported to the Permittee, then the lot or harvested plant material from which the sample was taken shall be subject to disposal and destruction as set forth in Section 11 below.
 - g. No hemp plants or plant parts for which a THC analysis is pending shall be transferred, transported, sold, marketed, or otherwise disposed of until approved by the Department.
 - h. The Permittee shall be responsible for all sample testing fees.

SECTION 11. DISPOSAL PROCEDURES

1. USDA requires that this State Plan must include an effective disposal procedure for hemp plants that are produced under this State Plan and that do not meet the requirements set forth by USDA and set forth within this State Plan. USDA producers are required to follow procedures for ensuring effective disposal of cannabis plants produced in violation of this rule.

2. To comply with this, the Department requires the following: All hemp plants and plant material resulting from a lot or harvested plant material represented by a sample with a THC concentration greater than the Federally defined THC level for hemp shall be disposed of in accordance with the on-farm disposal options described herein and prohibited from being further handled, processed, or entering the stream of commerce.
 - a. All Permitted Hemp Farmers must submit, and the Department must approve a destruction plan prior to destruction.
 - b. Permitted Hemp Farmers notified they have produced cannabis plants exceeding the acceptable hemp THC level must arrange for either disposal or remediation of the lot represented by the sample.
 - c. Disposal methods must be in accordance with the procedures as specified above and described in the “Remediation and Disposal Guidelines for Hemp Growing Facilities U.S. Domestic Hemp Production Program” document issued January 15, 2021 by USDA and attached to this State Plan as Appendix 2.
 - d. Remediation activities include disposing of flower materials and salvaging the remainder of the plant or blending the entire plant into biomass plant material. Through both forms of remediation, producers may be able to minimize losses, and in some cases produce a return on investment while ensuring that non-compliant material does not enter commerce. If a Permitted Hemp Farmer elects to perform remediation activities as allowable under this State Plan's provisions (referenced above), an additional sampling and testing of the post-remediated crop must occur to determine THC concentration levels. Only those successfully remediated crops, meaning crops that test at or below Federally defined THC level for hemp, will be allowed to enter the stream of commerce, and all other remaining non-compliant crops must then be disposed.
 - e. No destruction may occur unless Department personnel are present to witness the destruction unless otherwise set forth by an exception in writing by the Department.
 - f. Permitted Hemp Farmers must document the disposal or remediation of all non-compliant cannabis. This can be accomplished by providing USDA with a copy of the documentation of disposal or remediation using the reporting requirements established by USDA. These reports must be submitted to USDA following the completion of the disposal or remediation process.
 - g. All hemp plants and plant materials produced in violation of this State Plan may be subject to destruction as set forth in this Section.

SECTION 12. USDA REPORTING AND RECORDKEEPING

1. USDA requires that this State Plan must include a procedure for the prompt notification of the AMS Administrator by certified mail or electronically of any occurrence of cannabis plants or plant material that do not meet the definition of hemp set forth by USDA and in this State Plan and attach the records demonstrating the appropriate disposal of all of those plants and materials in the lot from which the representative samples were taken.

2. To comply with this, the Department requires the following:
 - a. SCDA shall submit to USDA a report notifying USDA of any occurrence hemp plants or plant material that exceed the Federally defined THC level for hemp by the first of each month. If the first of the month falls on a weekend or holiday, the report is due by the first business day following the due date. The report shall be submitted using a digital format compatible with USDA's information sharing systems, whenever possible. If digital transmission is used, the report will be sent by certified mail. The report shall contain the following information:
 - i. The name and address of the Permitted Hemp Farmer;
 - ii. Permit number;
 - iii. Location information, such as lot number, location type, and GPS or other location descriptor for the production area subject disposal;
 - iv. Information on the agent handling the disposal; Disposal completion date;
 - v. Total acreage;
 - vi. Laboratory test results;
 - vii. Business address of Permittee;
 - viii. Lot identification number for the sample;
 - ix. Name and DEA registration number of laboratory;
 - x. Date of test and report;
 - xi. Identification of retest, if applicable; and
 - xii. Test result.
 - b. SCDA shall submit an annual Report to USDA, using a digital format compatible with USDA's information sharing systems, whenever possible, by the end of the year and the report shall contain the following information:
 - i. Total planted acreage;
 - ii. Total harvested acreage;
 - iii. Total acreage disposed.

3. Records

- a. All Permittees shall maintain, at a minimum, the following records, where applicable:
 - i. For Permitted Hemp Farmers, all records for crop production and crop destruction;
 - ii. Documentation of any sales or distribution, including the party to which all product was sold or distributed;

- iii. For Permitted Hemp Farmers, documentation of traceability from seed acquisition to harvest or crop termination; and
- iv. For Permitted Hemp Processors, documentation of hemp acquisition from grower to their final product.
- v. For Permitted Hemp Handlers transporting or delivering hemp including, but not limited to, contract carriers, shall have a dated invoice, bill of lading, or manifest in his or her possession during the entire time of transport or delivery, which shall include:
 - 1. The seller's and purchaser's name and address;
 - 2. The specific origin and destination of the hemp being transported; and
 - 3. The quantity of hemp being transported.
- b. All records required under this Section shall be maintained by the Permittee while the permit is valid and for a minimum of 3 years after the expiration of the permit. Because this State Plan allows Permitted Hemp Farmers to remediate plants, the Final Rule also requires producers to maintain records on all remediated cannabis plants.
- c. Required records shall be provided for inspection within 48 hours upon request by SCDA.

SECTION 13. REQUIREMENTS FOR PERMITTED HEMP FARMERS

- 1. Permitted Hemp Farmers may not cultivate or store hemp or hemp plant parts unless the location where the hemp is to be cultivated or stored is on record prior to hemp being brought on site. In the Hemp Farmer Application, the Farmer will provide for each Growing Location the following: global positioning coordinates; physical address; maps for each field, greenhouse, building, or storage facility where hemp will be cultivated or stored; and number of outdoor acres, indoor square footage, and number of plants intended to be planted.
- 2. Permitted Hemp Farmers alter the approved Growing Location(s) and/or storage areas set forth in the application if:
 - a. At least 14 days prior to the proposed modification, the hemp producer shall:
 - b. Submit a Site Modification Request on forms provided by the Department, which includes, at minimum: global positioning coordinates; physical address; maps for each field, greenhouse, building, or storage facility where hemp will be cultivated or stored; and number of outdoor acres, indoor square footage, and number of plants intended to be planted.
 - c. Pay a site modification fee of \$150. The fee shall not apply to storage-only sites, but the Department must approve such storage sites prior to use. In the event the site modification is not approved, this fee will be refunded.

3. Permitted Hemp Farmers shall report hemp crop acreage or square footage to the USDA Farm Service Agency and shall provide, at a minimum, the following information:
 - a. Street address and, to the extent practicable, GPS location for each field, greenhouse, or indoor growing structure where hemp will be cultivated;
 - b. Acreage or square footage for each field, greenhouse, or indoor growing structure dedicated to the cultivation of hemp; and
 - c. SCDA Hemp Farmer Permit number.
4. Permitted Hemp Farmers shall post a sign at each field, greenhouse, or indoor growing structure. The sign shall comply with the following requirements and remain posted during the entire crop cycle:
 - a. It shall include the following:
 - i. The designation, "South Carolina Hemp Farming Program";
 - ii. The Hemp Farmer's Permit number; and
 - iii. SCDA Hemp Farming Program's telephone number.
 - b. Minimum sign size shall be 18" x 24" for a field and 8.5" x 11" for a greenhouse or indoor growing structure;
 - c. The sign shall be posted at each field, greenhouse, or indoor growing structure; and
 - d. The sign shall be printed and conform to the design template provided to each Permitted Hemp Farmer by SCDA.
5. Permitted Hemp Farmers shall submit in writing a completed planting report on forms provided by the Department for each field, greenhouse, or indoor growing structure within 15 days commencing after the first day of the planting of hemp. The completed planting report shall include, but not limited to, the Permittee's USDA Farm Service Agency site identification number.
 - a. Permitted Hemp Farmers shall submit in writing a completed planting report to SCDA for each greenhouse or indoor growing structure by March 31, June 30, September 30, and December 31 of each year after the initial planting.
 - b. If a field or other outdoor growing location on record with SCDA is not planted by July 31, Permitted Hemp Farmers shall submit in writing a completed "No Plant" report on forms provided by the Department.
6. Permitted Hemp Farmers submit in writing a completed Harvest/Destruction report to SCDA prior to the intended harvest date or intended destruction date of a failed crop.
7. A Permitted Hemp Farmer who fails to timely submit a Harvest/Destruction Report or who harvests a crop prior to a sample being collected by SCDA may be subject to crop destruction and regulatory action up to and including permit suspension or revocation.

8. Permitted Hemp Farmers shall monitor and destroy volunteer hemp plants from the Permittee's cultivation for a period of three years after cultivation ends.

SECTION 14. LAND USE RESTRICTIONS

1. A Permitted Hemp Farmer shall not grow, handle, store hemp in any structure that is used for residential or retail purposes.
2. A Permitted Hemp Farmer or Processor shall not grow, handle, process or store hemp in any outdoor field or site that is located within 1,000 feet of a school, daycare, park or similar public areas frequented by children as determined by SCDA.
3. An applicant may not apply for a permit to grow, cultivate, handle, or process hemp on property that is not owned or leased by that applicant.

SECTION 15. RESTRICTIONS ON SALE OR TRANSFER

1. A Permittee shall not sell or transfer or permit the sale or transfer of living hemp plants, viable plant parts, or non-sterilized (viable) seeds to any person in the state who does not hold a Hemp Farming Permit issued by SCDA.
2. Notwithstanding the forgoing, Permittees may transfer up to one pound of hemp plants or plant part or two pounds of non-sterilized, viable seed per transfer to testing laboratories, both within and outside the state for the purpose of measuring THC, CBD, or other phytocannabinoid profile levels.
3. When transferring outside of the state, it is the responsibility of the Permittee to ensure compliance with laws in other states.
4. A Permittee shall not store or cultivate live hemp plants or propagating stock at any location that was not previously approved by SCDA on that Permittee's application and/or site modification request on forms provided by the Department

SECTION 16. PROHIBITIONS

1. No person shall:
 - a. Sell, offer for sale, expose, distribute or transport hemp or hemp seed not produced in accordance with the provisions of this State Plan;
 - b. Fail to comply with sample collection, and testing requirements prior to harvesting or destroying any hemp plants or plant parts in accordance with this State Plan;
 - c. Detach, alter, deface, or destroy any required documentation specified in this State Plan;
 - d. Alter, substitute, or misrepresent seed in a manner inconsistent with this State Plan;
 - e. Hinder or obstruct in any way any authorized agent(s) of SCDA in the performance of their duties;

- f. Fail to comply with all permitting and reporting requirements set forth in the South Carolina Hemp Farming Act S.C. Code Ann. § 46-55-10 et seq. or this State Plan;
- g. Fail to keep required records as set forth in this State Plan or to provide such records to SCDA for inspection upon request;
- h. Fail to monitor and/or destroy volunteer hemp plants for three years following cultivation as set forth in this State Plan;
- i. Provide false, misleading, or incorrect information to SCDA pertaining to the cultivation, processing, storage or transportation of hemp including, but not limited to, information provided in any application, report, record, or inspection required or maintained in accordance with the South Carolina Hemp Farming Act S.C. Code Ann. § 46-55-10 et seq. or this State Plan;
- j. Plant, grow, store, transfer, or process hemp on any site not on record with the SCDA as set forth in this State Plan;
- k. Sell or transfer, or permit the sale or transfer of living hemp plants or plant parts to any person in the state who does not hold a Hemp Farming Permit issued by SCDA; or
- l. Commingle harvested hemp plant parts from one lot with harvested hemp plant parts from another lot.

SECTION 17. ENFORCEMENT

1. Adjudicatory Proceedings; Violations

- a. The Commissioner may suspend or revoke any permit issued under the provisions of the South Carolina Hemp Farming Act S.C. Code Ann. § 46-55-10 et seq. or this State Plan.
- b. Whenever the Commissioner has reason to believe that a Permittee has violated any provision of the South Carolina Hemp Farming Act S.C. Code Ann. § 46-55-10 et seq. or this State Plan, the Commissioner shall notify the Permittee of the alleged violation as well as an opportunity to respond thereto, by certified mail, prior to any scheduled hearing date.
- c. Each separate day on which any violation occurs may be considered a separate violation.
- d. No penalty may be assessed, nor may any permit be suspended or revoked by the Commissioner prior to the holding of an adjudicatory hearing before the commissioner.
- e. Such adjudicatory hearing shall be conducted in accordance with the requirements of the South Carolina Administrative Procedure Act; any person alleged to have violated any provision of the South Carolina Hemp Farming Act S.C. Code Ann. § 46-55-10 et seq. or this State Plan, shall be accorded all rights and privileges under said Act.

- f. The Department shall make an initial determination on alleged violations and recommend findings of fact and conclusions of law together with penalties, if applicable, in writing.
- g. The Commissioner shall make the final determination on the disposition of alleged violations. If the Commissioner does not accept the recommendations of the Department following an adjudicatory proceeding, the Commissioner shall notify the Department, in writing, of the reasons for not accepting the Department's recommendations.
- h. Reinstatement of a revoked permit shall be by hearing before the Department and approval of the Commissioner.

2. Appeals

- a. An applicant for a hemp permit may appeal a permit denial to the South Carolina Commissioner of Agriculture or his or her designee. Permittees may appeal denials of permit renewals, permit suspensions, or permit revocations. All appeals must be submitted in writing and received within thirty days of the denial, suspension, or revocation. This submission deadline should provide adequate time to prepare the necessary information required to formulate the appeal. An appeal must explain the reasoning behind the appeal, e.g. why the Department's decision is not justified or is improper. The appeal should include any additional information or documentation the Permittee believes the Department should consider when reviewing its decision. The Department will take into account the Permittee's justification for why the permit should not be denied, suspended, or revoked, and then issue a final determination. Determinations made by the Department under the appeals process will be final.

3. Corrective Action Plan for Negligent Violations and Mandatory Reporting

- a. In addition to being subject to permit suspension, permit revocation, and civil penalties, a person who is found by SCDA to have negligently committed the following violations may be subject to a corrective action plan:
 - i. Failing to provide a legal description of the field, greenhouse, indoor growing structure, or site where hemp will be cultivated, handled, or stored prior to bringing hemp or hemp parts onto said field, greenhouse, indoor growing structure, or site;
 - ii. Failing to obtain a Farmer, Processor, or Handler Permit from SCDA prior to engaging in the respective restricted activity; or
 - iii. Producing hemp exceeding the acceptable hemp THC level. Notwithstanding the forgoing, a person that has made reasonable efforts to grow hemp and produces hemp of containing at or less than one (1) percent THC on a dry weight basis shall not be deemed to have committed a negligent violation.
- b. A corrective action plan issued by SCDA shall include the following information:

- i. A reasonable date by which the person shall correct the negligent violation; and
 - ii. A requirement that the person shall periodically report to SCDA about the person's compliance with the corrective action plan, the South Carolina Hemp Farming Act S.C. Code Ann. § 46-55-10 et seq., and this State Plan for a period of at least two years from the date of the negligent violation.
 - iii. SCDA shall conduct periodic inspections to determine if the corrective action plan has been implemented as submitted.
 - iv. A person who is found by SCDA to have negligently violated the South Carolina Hemp Farming Act S.C. Code Ann. § 46-55-10 et seq. or this State Plan three times in a five-year period shall be ineligible to hold a hemp farming, processor, or handler permit for a period of five years beginning on the date of the third violation. Notwithstanding the forgoing, a person shall not be subject to more than one negligent violation per calendar year.
 - v. A person that has negligently violated the South Carolina Hemp Farming Act S.C. Code Ann. § 46-55-10 et seq. or this State Plan shall not be reported to local, state, or federal government authorities for criminal enforcement action. However, notwithstanding the forgoing, SCDA has an obligation to respond fully and accurately to any independent requests for information that SCDA receives from local, state, or federal government authorities.
4. If the Commissioner determines that a Permittee has willfully violated state law with a culpable mental state greater than negligence, the Commissioner shall immediately report
5. A person believed to be in violation of the South Carolina Hemp Farming Act S.C. Code Ann. § 46-55-10 et seq. or this State Plan may be issued a written or verbal stop order by SCDA. Stop orders shall be effective immediately upon notification to the alleged violator.
 - a. If an alleged violator refuses to accept a written stop order when tendered or refuses or fails to claim such stop order when sent by certified mail, the stop order shall be deemed to have been delivered to the alleged violator.
 - b. Refusal or failure to abide by the terms of a stop order shall constitute a willful violation of this State Plan.

SECTION 18. FUNDING

The Department has sufficient resources and personnel to carry out this Plan.

The Department is authorized by the South Carolina Hemp Farming Act S.C. Code Ann. § 46-55-10 et seq. to charge application, permit, and renewal of permit fees reasonably calculated by the Department to pay the cost of administering the South Carolina Hemp Program. As set forth in South Carolina Hemp Farming Act S.C. Code Ann. § 46-55-10 et seq., monies from fees collected under the Hemp Farming Program shall be continuously appropriated to the Department for purposes of carrying out the duties of the South Carolina Hemp Farming Program.

SECTION 19. HEMP PRODUCTS

The enforcement and permitting scheme outlined in the South Carolina Hemp Farming Act S.C. Code Ann. § 46-55-10 et seq. shall not apply to the possession, handling, transport or sale of hemp products as defined herein, including those containing hemp-derived cannabinoids, including CBD.

SECTION 20. UNLAWFUL CONDUCT RELATING TO MARIJUANA IN PROXIMITY TO HEMP; PENALTIES

An individual who manufactures, distributes, dispenses, delivers, purchases, aids, abets, attempts, or conspires to manufacture, distribute, dispense, deliver, or purchase, or possesses with the intent to manufacture, distribute, dispense, deliver, or purchase marijuana, in a manner intended to disguise the marijuana due to its proximity to hemp, does so in violation of the State Plan. Penalties provided for in this State Plan may be imposed in addition to any other penalties provided by law.

SECTION 21. INTERSTATE COMMERCE

Nothing in this rule prohibits the interstate commerce of hemp. No State or Indian Tribe may prohibit the transportation or shipment of hemp produced in accordance with this State Plan and with section 2018 Farm Bill through the State or the territory of the Indian Tribe, as applicable.

SECTION 22. SEVERABILITY

This State Plan includes a severability provision. This section provides that if any provision of this State Plan is found to be invalid, the remainder of the State Plan shall not be affected.

APPENDIX 1
Sampling Guidelines for Hemp
U.S. Domestic Hemp Production Program
Issued January 15, 2021

PURPOSE:

1. Standard and Performance-based sampling guidelines are specified for field and indoor sampling of hemp. States and Tribes shall develop their own sampling protocols in accordance with §990.3.
2. Samples are taken to obtain specimens for the measurement of total tetrahydrocannabinol (THC) content, which determine whether the specimens are hemp or marijuana. The measurements are intended to be representative of the total THC content in a “lot” of hemp cropacreage as identified by the producer. Hemp producers may not harvest hemp prior to the hemp being sampled for THC concentration. Testing procedures are provided in a separate guidance document.

SCOPE:

1. Samples collected under this procedure are acceptable for submission to a qualified testing laboratory for determination of total THC concentration in hemp. After December 31, 2022, all laboratories testing hemp under the U.S. Domestic Hemp Production Program must be registered with the DEA in accordance with §990.3(a)(3)(iii)(H) and §990.25(g)(iii).
2. Since the THC content of hemp generally peaks as the plant ripens, the timing of when sampling occurs is important to accurately measure total THC concentration and monitor compliance with the USDA hemp production program. Harvest shall be completed within 30 days from sample collection.
3. Samples shall be collected only by a trained sampling agent. Sampling agents must be trained under applicable USDA, State, or Tribal training procedures. States and Tribes must maintain information, available to producers, about trained sampling agents. Hemp producers may not act as sampling agents.
4. It is the responsibility of the licensed producer to pay any fees associated with sampling.
5. It is the responsibility of the sampling agent to pay any fees associated with sampling agent training or testing.

SUMMARY OF PRACTICE:

1. This practice provides procedures for entering a growing area and collecting the minimum number of plant specimens necessary to represent a homogeneous composition of the “lot” that is to be sampled. A trained sampling agent enters a growing area, strategically examines the

growing area, establishes an approach for navigating the growing area, and collects individual specimens of plants in order to obtain a representative sample of hemp in the designated lot.

2. Cuttings from each “lot” of hemp crop acreage, as identified by the producer, and submitted to and uniquely identified by the Farm Service Agency (FSA) per the requirements of the USDA hemp production program, shall be organized as composite samples. The terminology used by FSA to denote land areas include terms like “farm,” “tract,” “field,” and “subfield,” which are equivalent to AMS’s term “lot.” For the purposes of these procedures, a “lot” is a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout. In addition, “lot” refers to the batch of contiguous, homogeneous whole of a product being sold to a single buyer at a single time. The size of the “Lot” is determined by the producer in terms of farm location and field acreage and is to be reported as such to the FSA.

PERFORMANCE-BASED SAMPLING PROTOCOLS:

1. States and Tribes may develop performance-based sampling protocols.
2. Performance-based sampling protocols may consider seed certification processes, other process that identify varieties that have consistently resulted in compliant hemp plants, whether the producer is conducting research on hemp at an institution of higher learning or that is funded by a Federal, State, or Tribal government, whether a producer has consistently produced compliant hemp plants over an extended period of time, and other similar factors.
3. Performance-based sampling protocols may consider alternative requirements for operations that grow “immature” cannabis that does not reach the flowering stage. These facilities may grow seedlings, clones, microgreens, or other non-flowering cannabis, as determined by the State or Tribe.
4. A performance-based sampling protocol must have the potential to ensure, at a confidence level of 95 percent, that the cannabis plants will not test above the acceptable hemp THC level of 0.3 percent on a dry weight basis.
5. Regardless of the specific performance-based sampling requirements developed under a State or Tribal plan, all samples must be collected from the flowering tops of the plant by cutting the top five to eight inches from the “main stem” (that includes the leaves and flowers), “terminal bud” (that occurs at the end of a stem), “or “central cola” (cut stem that could develop into a bud) of the flowering top of the plant.
6. States and Tribes are required to include performance-based sampling protocols in the plan submitted to USDA for approval if they decide to use this methodology.

STANDARD SAMPLING PROTOCOLS:

1. The standard sampling method must be used by all producers, except for producers operating under a State or Tribal plan that includes a performance-based sampling requirement.

2. The standard sampling protocol ensures, at a confidence level of 95 percent, that no more than one percent of the plants in each lot would exceed the acceptable hemp THC level and ensures that a collected sample represents a homogeneous composition of the lot.
3. Every lot and every producer must be sampled and tested.
4. All samples must be collected from the flowering tops of the plant by cutting the top five to eight inches from the “main stem” (that includes the leaves and flowers), “terminal bud” (that occurs at the end of a stem), or “central cola” (cut stem that could develop into a bud) of the flowering top of the plant.
5. All producers licensed directly by USDA are subject to these requirements.

EQUIPMENT AND SUPPLIES:

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

SAMPLING GUIDELINES:

1. The licensee or designated employee should be present throughout the sampling process, if possible.
2. Surveillance of the growing area.
 - a. The sampling agent should estimate the average height, appearance, approximate density, condition of the plants, and degree of maturity of the inflorescences (flowers/buds).
 - b. The sampling agent should visually establish the homogeneity of the stand to establish that the growing area is of like variety.
3. Time of Sampling:

- a. Within 30 days prior to the anticipated harvest of a designated hemp lot, an approved sampling agent, State or Tribally designated person or Federal, State, local, or Tribal law enforcement agency shall collect representative samples from such cannabis plants for THC concentration level testing.
4. Field Sampling:
 - a. The licensee or designated employee should accompany the sampling agent throughout the sampling process, if possible.
 5. Surveillance of the growing area.
 - a. The sampling agent should verify the GPS coordinates of the growing area as compared with the GPS coordinates submitted by the licensee to USDA.
 - b. The sampling agent should estimate the average height, appearance, approximate density, condition of the plants, and degree of maturity of the inflorescences (flowers/buds).
 - c. The sampling agent should visually establish the homogeneity of the stand to establish that the growing area is of like variety.
 6. Time of Sampling:
 - a. Within 30 days prior to the anticipated harvest of a lot a sampling agent should collect representative samples from such a lot for THC concentration level testing.
 7. Field Sampling:
 - a. For purposes of determining the number of individual plants to select for sampling, the size of the growing area should be considered. For sampling purposes, samples from separate lots must be kept separate and not be comingled.
 - b. For lots of less than one acre, including greenhouses, select a minimum of 1 plant, then take a cutting from the plant to form a sample. For lots of 1 to 10 acres, including greenhouses, follow the chart in example 2 below, take cuttings of each plant, then combine to form a composite sample.
 - c. For growing areas larger than ten (10) acres, including greenhouses, the number of plants that should be selected to form a composite sample is based upon the Codex Alimentarius Recommended Methods of Sampling for the Determination of Pesticide Residues for Compliance with MRLS CAC/GL 33-1999.
 - d. The sample size is estimated in a two-step process. The first step is to estimate the number of primary plants to be sampled. The second step is to adjust the estimate of primary plants by the acreage under cultivation.

The initial number of primary plants is estimated using:

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

where p is the confidence level to detect hemp plants testing above the acceptable THC threshold and i is the proportion of hemp plants having THC content above the acceptable threshold. The values for i are based on past experience in the same or similar growing areas, and should be consistent with the requirements currently in the Final Rule.

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

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

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

Examples 1 and 2 below describe the minimum number of samples that must be collected in order to meet the 95% confidence level requirements in the Final Rule. If a State or Tribal hemp program does not have data from a prior growing season to determine the i value, the sampling charts below may be utilized. State and Tribal hemp programs are free to include more rigorous sampling requirements, or to develop performance based requirements.

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

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

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

Number of acres	Sample Size
Less than 1	1
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10

- e. Sampling agents should always walk at right angles to the rows of plants if possible, beginning at one point of the lot and walking towards another point on the opposite side of the lot. If the lot is too dense for this to be possible, the sampling agent should take all reasonable steps to ensure that a sample is collected that represents a homogeneous composition of the lot by avoiding edges and thoroughfares.
- f. While walking through the growing area, the sampling agent should cut at least “n” inflorescences (the flower or bud of a plant) based on the acreage of the growing area , at random but convenient distances. Avoid collecting sample specimens from the borders of the field/greenhouse.
- g. The cut should be obtained from the flowering tops of plants when flowering tops are present, and shall be approximately five to eight inches in length from the “main stem” (that includes the leaves and flowers), “terminal bud” (that occurs at the end of a stem), or “central cola” (cut stem that develops into a bud) of the flowering top of the plant.



- h. Utilize paper sample bag(s) for collecting sample cuttings. Ensure that each bag has the minimum number of cuttings, n , as calculated by 7.4, or in the Example Tables 1 and 2. If one bag cannot accommodate the minimum number of cuttings due to lot size, the sample may be divided into multiple bags, but must be clearly labeled in such a way that each bag is appropriately matched with the corresponding lot. (i.e. For lot 101 with three corresponding sample bags: 101 1 of 3, 101 2 of 3, 101 3 of 3.)
- i. Seal each bag and record the sample number or other documentation as required by the State or Tribe.
- j. A sampling protocol must have the potential to ensure, at a confidence level of 95 percent, that the cannabis plants will not test above the acceptable hemp THC level of 0.3 percent on a dry weight basis.

8. Sample identification:

- a. The sampling agent should seal each bag and record the sample identification number. The sample should also be identified with the following information: Sampling agent contact information; name and contact information of the producer; producer hemp license or authorization number; date of sample; and lot, subfield, or other identifier as provided by the USDA Farm Service Agency; any other information that may be required by States, Tribes, Law Enforcement Authorities, mail delivery services, Customers or groups of customers.

Note: In accordance with 7 CFR 1.901(e), the contents of this document does not have the force and effect of law and are not meant to bind the public in any way, and the document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

APPENDIX 2

Remediation and Disposal Guidelines for Hemp Growing Facilities

U.S. Domestic Hemp Production Program Issued January 15, 2021

PURPOSE:

1. Standard Remediation and Disposal guidelines are specified for commercial indoor and outdoor production of hemp as well as the production of hemp for research purposes.
2. Remediation refers to any process by which non-compliant hemp (THC concentration > 0.3%) is rendered compliant (THC concentration \leq 0.3%). Remediation can be achieved by separating and destroying non-compliant flowers while retaining stalks, leaves, and seeds; or by shredding the entire hemp plant to create a homogenous “biomass” that can be retested for THC compliance.
3. Disposal means destroying non-compliant hemp or hemp for research purposes using one of the approved on-farm methods. Approved methods include plowing under, mulching / composting, disking, bush mowing, deep burial, and burning.

SCOPE:

1. Commercial lots shall be subject to remediation or disposal when a sample tests over the acceptable hemp THC level according to laboratory results obtained through, USDA approved State or Tribal sampling and testing protocols or USDA sampling and testing protocols.
2. Commercial lots that test above the acceptable hemp THC level shall be subject to either remediation or disposal.
3. Samples must be collected by a USDA-approved sampling agent, an approved state agency, or by a Federal, State, or Tribal law enforcement agent authorized by USDA to collect samples.
4. It is the responsibility of the licensed producer or researcher to pay any fees associated with resampling, remediation, and/or disposal.
5. Producers must verify disposal or remediation by submitting required documentation in accordance with 7 CFR §990.27. All records regarding disposal and remediation of all cannabis plants that do not meet the definition of hemp shall be made available for inspection by State, Tribal, or USDA inspectors, auditors, or their representatives during reasonable business hours in accordance with an applicable State or Tribal plan or §990.28.
6. Laboratories should have an effective disposal procedure as part of an internal SOP for non-compliant samples.

SUMMARY OF PRACTICE:

1. This practice provides procedures for ensuring the disposal or remediation of non-compliant hemp. When a cannabis sample tests over the acceptable THC concentration level, all cannabis

plants in the lot shall either be remediated to bring the lot under the acceptable THC concentration level, or all cannabis plants shall be disposed of. Both remediation and disposal may be performed by the producer, researcher or an approved representative of the State, Tribe, or USDA.

In accordance with §990.3, the State or Tribal plan shall include methodologies for ensuring that non-compliant hemp is properly remediated or destroyed. This may come in the form of in-person verification by State or Tribal representatives, or alternative requirements that direct growers to provide pictures, videos, or other proof that disposal or remediation occurred successfully. Hemp produced for research must be disposed of in accordance with the applicable State or Tribal plan or §990.21(d), for research conducted with a USDA producer license.

2. Non-compliant hemp plants may be remediated by separating and destroying non-compliant flowers, while retaining stalks, leaves, and seeds.
3. Non-compliant hemp plants may be remediated by shredding the entire hemp plant to create "biomass." All flowers, buds, trichomes, leaves, stalks, seed, and all plant parts from a lot should be chopped or shredded in such a way as to create a homogenous, uniform blend of the lot called "biomass." Lots should be kept separate and not be combined during this process. This biomass shall be resampled and retested to ensure the biomass material tests within an acceptable THC concentration level before it may enter the stream of commerce in accordance with §990.3(d) and §990.27(c). If the biomass tests above the acceptable THC concentration level is non-compliant hemp and must be destroyed through one of the disposal options provided herein.
4. Disposal means destroying non-compliant hemp by performing any one or combination of the following on-farm activities: plowing under, mulching / composting, disking, bush mowing, deep burial, and burning.

EQUIPMENT AND SUPPLIES:

1. Equipment for Remediation
 - a. Gloves
 - b. Shears, clippers, scissors, shredding equipment (to remove non-compliant flowers from stalks)
 - c. Striping, shredding, or mulching equipment
 - d. Large plastic bags or other containers to store shredded biomass
 - e. The bags and containers should be made from material known to be free from THC
 - f. Marking and labeling equipment (to mark and label hemp lots for remediation from other lots)
2. Equipment for Disposal
 - a. Plow or tractor (for plowing, mulching, composting, disking, bush mowing, deep burial)

- b. Composter (for composting)
 - c. A burn area and fire equipment (for burning non-compliant lots)
3. Equipment for Resampling
- a. Disposable gloves – Nitrile
 - b. Scoop with long handle (cleaned prior to and following each sample)
 - c. Bag to store resample
 - d. Permanent markers
 - e. The bags should be made from material known to be free from THC
 - f. A 750 mL or similar measuring instrument (cleaned prior to and following each sample)

REMEDIATION GUIDELINES:

1. The licensee or designated employee; or an approved representative of the State, Tribe, or USDA shall remediate or destroy non-compliant hemp in accordance with §990.3(d) and §990.27(c). As part of a State or Tribal plan, a State or Tribe shall create procedures for ensuring that any non-compliant hemp parts or biomass that are non-compliant with the acceptable hemp THC level after remediation are properly destroyed and unable to enter the stream of commerce as set forth in 7 C.F.R. § 990.3(a)(6). A State or Tribal plan may require that State or Tribal officials be present during the remediation or disposal process.
2. Upon notification that a lot has tested above the acceptable hemp THC level, the licensee should notify the appropriate licensing authority of the licensee’s decision to either destroy or remediate the non-compliant lot in accordance with the State, Tribal, or USDA plan. The licensee shall notify the State, Tribe, or USDA of their decision to either remediate or dispose of the non-compliant lot. Additionally, the licensee should notify the State, Tribe, or USDA, of the remediation or disposal method set forth in §990.70 and §990.71.
3. If the licensee chooses to remediate the non-compliant lot, the licensee should select either to separate and remove all flowers from stalks, leaves and seeds of the lot or to shred the entire lot into “biomass.”
4. Separation and removal of the flowers from stalks, leaves and seeds:



- a. The flowers, including buds, trichomes, “trim,” and “kief,” should be removed from the lot and destroyed. As part of a State or Tribal plan, State and Tribes should include

acceptable methods for the removal of non-compliant flowers and floral material under this remediation strategy. Methods may include, but are not limited to, the removal, by hand, of non-compliant flowers and floral materials and the mechanical removal of non-compliant flowers and floral materials.

- b. Until such time as the non-compliant flowers and floral material are disposed of, the stalks, leaves, and seeds should be separated from the non-compliant floral material and clearly labeled and demarcated as “hemp for remediation purposes.”
- c. Seeds removed from non-compliant hemp during remediation should not be used for propagative purposes.

5. Creation of Biomass



- a. The entire lot, as reported to the FSA, should be shredded to create a homogenous, uniform biomass. As part of a State or Tribal plan, State and Tribes shall include acceptable methods for the creation of biomass under this remediation strategy. Methods may include, but are not limited to, the shredding of hemp plants through shredders, composters, or specialty mechanical equipment.
- b. The biomass created through this process shall be resampled and retested to ensure compliance before entering the stream of commerce in accordance with §990.3(a)(6) and §990.27(c). Biomass that fails the retesting is non-compliant hemp and shall be destroyed.
- c. Remediated biomass should be separated from any compliant hemp stored in the area and clearly labeled and demarcated as “hemp for remediation purposes.” All lots subject to remediation should be stored, labeled and demarcated apart from each other and from other compliant hemp lots stored or held nearby.
- d. Remediated biomass should not leave the labeled and demarcated area until a test result showing compliance with the acceptable hemp THC level is received or until the biomass will be destroyed.

RE-SAMPLING REMEDIATED BIOMASS:

1. Remediated biomass shall be resampled and retested to ensure compliance before entering the stream of commerce in accordance with §990.3(a)(6) and §990.27(c). Biomass that fails the retesting shall be destroyed.
2. The resample should be taken by sampling agent as described in the “Sampling Guidelines.”

3. A representative sample of the biomass should be taken for compliance purposes. When taking the resample, the sampling agent should take biomass material from various depths, locations, and containers in the labeled and demarcated area to collect a representative sample of the material. At minimum, ~750 mL or three (3) standard measuring cups of biomass material should be collected. Sampling agents may collect more biomass material based on the requirements of the testing laboratory. If ~750 mL of material is not available, the sampling agent should collect enough biomass material for a representative sample.
4. An original copy of the resample test results, or a legible copy, should be retained by the producer or an authorized representative and available for inspection for a period of three (3) years from the date of receipt.
5. Laboratories testing a resample should utilize the same testing protocols as when testing a standard sample as described in the “Laboratory Testing Guidelines.”

DISPOSAL GUIDELINES:











Photo Example	Ag Production Activity	Compliant Outcome	Photo Example
	<p>Plowing Under</p> <p>Curved plow blades rotate subsoil to surface and bury crop below</p>	<p>Plowing Under</p> <p>“Green Manure”</p> <p>Amends soil directly from crop</p>	
	<p>Mulching / Composting</p> <p>Fields crops cut and blended with manure or other biomass material</p>	<p>Mulching / Composting</p> <p>“Green Manure”</p> <p>Mulch mixed with manure or other biomass</p>	
	<p>Disking</p> <p>Leveling off field using tow-behind disk implement</p>	<p>Disking</p> <p>“Green Manure”</p> <p>Amends soil directly from crop while leveling field</p>	

Photo Example	Ag Production Activity	Compliant Outcome	Photo Example
	<p>Bush Mower/Chopper</p> <p>Commercial lawn mower used to shred and mix thick vegetation</p>	<p>Bus Mower/Chopper</p> <p>“Green Manure”</p> <p>Shredded biomass decomposes into soil</p>	
	<p>Deep Burial</p> <p>Fields are trenched, surface soil is buried at depth of at least 12”</p>	<p>Deep Burial</p> <p>Field biomass buried in trenches and covered with soil</p>	
	<p>Burning</p> <p>Setting fire to specific production fields or biomatter piled on the field</p>	<p>Burning</p> <p>Fields are cleared of all plant material</p>	

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