

# Kentucky Hemp Regulations



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Kentucky Department of Agriculture  
Office of Agricultural Marketing  
(as filed February 13, 2020)

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**GENERAL GOVERNMENT**  
**Department of Agriculture**  
**Office of Agricultural Marketing**  
**(as filed February 13, 2020)**

**302 KAR 50:020. Policies and procedures for hemp growers.**

**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, or a person who is authorized to sign for a business entity, who submits an application 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" 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 are subspecies thereof. Cannabis includes all parts of the plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts; and 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" means an adjudication or finding of guilt; it also includes a plea of guilty or nolo contendere. If a conviction is subsequently overturned on appeal, pardoned, or expunged, then it is not considered a conviction.
- (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 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 the 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 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 260.863, 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 50:030.
- (20) "Hemp product" or "industrial hemp product" is defined by KRS 260.850(6).
- (21) "Key participant" 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. "Key participants" include, without limitation, an entity's chief executive officer, chief operating officer, and chief financial officer." "Key participants" do not include farm managers, field managers, 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 260.859, and 302 KAR 50:030.
- (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 they have been 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 50:055. The entire lot's harvest is in the same form (for example, intact-plant, flowers, ground materials, etc.), 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 50:055.
- (33) "Prohibited variety" means a variety or strain of cannabis excluded from the 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:

1. 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

2. 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.

(38) "Secondary pre-harvest sample" means a pre-harvest sample that is taken:

(a) In a given plot 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) "UK DRS" means the Division of Regulatory Services at the University of Kentucky College of Agriculture, Food, and Environment.

(42) "University" means an accredited institution of higher learning located in the Commonwealth.

(43) "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 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.

(44) "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.

(45) "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 must 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 in the manner directed by the department.
- (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, the following information:
    - (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 entrances, 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, the following requirements for licensed growers:
- (a) Acknowledge that licensed growers shall comply with all administrative regulations in 302 KAR 50;
  - (b) Agree to pay a licensing fee in the amount established in 302 KAR 50:060;
  - (c) Acknowledge that licensed growers shall comply with instructions from representatives of the department and law enforcement agencies;
  - (d) 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) Consent to forfeiture and destruction, without compensation, of:
    1. 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;
    2. Plants located in an area that is not licensed by the department; and
    3. Plants not accounted for in required reporting to the department;
  - (f) Agree 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) Acknowledge that licensed growers shall submit a Site Modification Request Form, the appropriate fees based on the requested changes, and 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 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) Acknowledge that anyone applying pesticides to hemp shall hold a pesticide license and apply pesticides in accordance with Section 18 of this administrative regulation;
  - (i) Acknowledge that the risk of financial or other loss shall be borne solely by the licensed grower;
  - (j) Acknowledge that licensed growers shall comply with restrictions established by the department limiting the movement of hemp plants and plant parts;
  - (k) Agree 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) Agree 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) Agree to submit Planting Reports, Harvest/Destruction Reports, and other reports required by the department to which the grower has agreed, on or before the deadlines established in this administrative regulation;
- (n) Agree 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) Agree not to employ or rent land to cultivate hemp from any person who was terminated or denied admission to the Hemp Licensing Program for one (1) or both of the following reasons:
  - 1. Failure to obtain an acceptable criminal background check; or
  - 2. Failure to comply with an order from a representative of the department;
- (p) Agree to abide by all land use restrictions for licensed growers set forth in Section 5 of these regulations.

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

- (1) Each licensed grower or applicant, or key participant within an entity that is a grower or applicant, shall undergo and pay for an annual criminal background check as required by KRS 260.862(2)(d).
- (2) A licensed grower or 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 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 (l) 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:
    - 1. Field Planting Report and Greenhouse/Indoor Planting Report, incorporated by reference in 302 KAR 50:080;
    - 2. Harvest/Destruction Report, incorporated by reference in 302 KAR 50:080;

3. 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:

1. A felony conviction; or

2. A drug-related misdemeanor conviction or violation;

(g) No 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 be eligible to obtain a license; provided, however, that

(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) In the past, 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 set forth in Section 5 of this administrative regulation. Denial of all proposed growing sites shall constitute grounds for denial of the application.

(2) The department shall conditionally approve an application for a hemp grower 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 grower license from the department.

(4) Conditionally approved applicants shall complete a mandatory orientation session at a location designated by the department, and pay licensing fees prior to receiving a hemp grower license.

(5) The department shall not allow any person to complete orientation in lieu of the applicant.

## **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 adjacent to any structure that is used for residential purposes.

(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 provided in subsection 5(9) of this administrative regulation, 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 was terminated, or denied admission to the Hemp Licensing Program for one (1) or both of the following reasons:

(a) Failure to obtain an acceptable criminal background check; or

(b) Failure to comply with an order from a representative of the department.

(12) Licensed growers with plots of one (1) acre or less are required to post signage at the plot location. The signage shall include the following information:

(a) The statement, "Kentucky Department of Agriculture Hemp Licensing Program";

(b) License holder's name;

- (c) License holder's license number; and
- (d) The 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 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 such activities as drying, grinding, separating foliage from stem, storing and packaging; and market his or her own hemp. A Hemp Grower License does 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 fifteen (15) days after the department collects the pre-harvest sample, the licensed grower shall submit a new Harvest/Destruction 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) If the licensed grower fails to pay the secondary pre-harvest sample fee within fifteen (15) days of invoice, the lack of payment shall be considered a violation of the hemp grower license.
  - (e) 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 Form, 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.
- (4) 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.
- (5) The department shall not approve a site modification request for a new growing location until the department has received the site modification surcharge fee.
- (6) 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.

- (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 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 to a location outside Kentucky must 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 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) Field location ID as listed on the hemp grower's license; and
  - (c) 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 13. 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) Greenhouse or indoor growing location ID as listed in the hemp grower license; and
  - (c) 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 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 14. Planting Reports to USDA's Farm Service Agency.**

- (1) In addition to the other reports required by this administrative regulation, a licensed grower shall report hemp crop acreage to USDA's Farm Service Agency including, at a minimum, the following information:
  - (a) Street address and, to the extent practicable, geospatial location for each lot or greenhouse where hemp will be produced.
  - (b) 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; and
  - (c) The grower's name and license number.
- (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 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.
- (7) The department shall publish a guidance document titled "Kentucky Hemp and Pesticides" on its website to provide guidance about pesticide use on hemp.

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

- (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/Destruction 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/Destruction Report shall trigger a sample collection by a representative of the department in accordance with the procedures set forth in 302 KAR 50:055.
- (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 fifteen (15) days following the date of sample collection by the department, unless specifically authorized in writing by the department.

(8) If the licensed grower fails to complete a harvest within fifteen (15) days following the date of sample collection, then the licensed grower shall submit a new Harvest/Destruction 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/Destruction 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.

### **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 50:055.

(2) UK DRS shall receive, prepare, and release hemp samples in accordance with the procedures set forth in 302 KAR 50:055.

(3) UK DRS shall measure delta-9-THC concentration of each hemp sample (post-decarboxylation, often referred to as total THC) in accordance with the procedures set forth in 302 KAR 50:055.

(4) The department shall undertake post-testing actions in accordance with the procedures established in 302 KAR 50:055.

(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 UK DRS 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 permit 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 permit 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 permit 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.**

- (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; provided, however, the department shall provide this information to law enforcement agencies and other regulatory agencies upon request.

## **Section 22. Consequences 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, or any administrative regulation promulgated under the authority of those statutes, then the department shall devise and implement a corrective action plan for the grower.
- (2) Corrective action plans will remain in place for at least two (2) years and include, at a minimum, the following:
- (a) The date by which the grower shall correct each negligent violation;
  - (b) Steps to correct each negligent violation;
  - (c) A description of the procedures to demonstrate compliance; and
  - (d) Inspections or other measures to ensure compliance.

- (3) 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.
- (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.

### **Section 23. 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 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.
- (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 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 24. 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. 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 Section 23(1) of this administrative regulation, 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 25. 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. 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 26. Licensing for Representatives of Universities and Colleges.**

- (1) Except as provided in this Section of this administrative regulation, faculty members, administrators, and staff members of an institution of higher education shall be subject to each of the sections of this administrative regulation.
- (2) No institution of higher education shall permit 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, and harvested hemp without first completing and submitting a Grower 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, and harvested hemp shall complete and submit a Grower License Application.
- (4) No institution of higher education shall permit or authorize its faculty, administration, or staff members, or any sponsored student, to be in possession of, or conduct academic research involving, leaf material, or floral material from hemp without first completing and submitting a Processor/Handler License Application.
- (5) 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 (that is, 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) As used in this section, “eligible institution of higher education” means an institution of higher education that is:
  - (a) Is 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 27. Record keeping requirements; three year retention period.**

(1) For at least three years, license holders shall maintain and make available for inspection by the department 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.

(2) The department shall have access to any premises where hemp plants may 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, including but not limited to 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 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.

**GENERAL GOVERNMENT**  
**Department of Agriculture**  
**Office of Agricultural Marketing**  
**(as filed February 13, 2020)**

**302 KAR 50:030. Policies and procedures for hemp processors and handlers.**

**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, or a person who is authorized to sign for a business entity, who submits an application 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" 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 are subspecies thereof. Cannabis includes all parts of the plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts; and 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" means an adjudication or finding of guilt; it also includes a plea of guilty or nolo contendere. If a conviction is subsequently overturned on appeal, pardoned, or expunged, then it is not considered a conviction.
- (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 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 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.
- (14) "GPS" means Global Positioning System.
- (15) "Handling" is defined by KRS 260.850.
- (16) "Hemp" or "industrial hemp" is defined by KRS 260.850.(16) "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 260.863, and this administrative regulation.

(17) "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 50:030.

(18) "Hemp product" or "industrial hemp product" is defined by KRS 260.850.

(19) "Law enforcement agency" means the Kentucky State Police, DEA, or other federal, state, or local law enforcement agency, or drug suppression unit.

(20) "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 302 KAR 50:020.

(21) "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 260.859, and this administrative regulation.

(22) "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.

(23) "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

(24) "Nonviable seed" means a seed that has been crushed, dehulled, or otherwise rendered to have a zero percent germination rate.

(25) "Person" means an individual or business entity.

(26) "Prohibited variety" means a variety or strain of cannabis excluded from the Hemp Licensing Program.

(27) "Processing" is defined by KRS 260.850.

(28) "Program" means the department's Hemp Licensing Program.

(29) "Propagule" means a plant or plant part that can be utilized to grow a new plant.

(30) "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.

(31) "Signing authority" means an officer or agent of the organization with written authorization to commit the legal entity to a binding agreement.

(32) "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.



- (33) "UK DRS" means the Division of Regulatory Services at the University of Kentucky College of Agriculture, Food, and Environment.
- (34) "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 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.
- (35) "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 Packet 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 designated in the manner directed by the department.

(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.

(2) Each person who is required to undergo an annual criminal background check as required by KRS 260.862(2)(d) 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 (l) 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:

1. A felony conviction; or

2. A drug-related misdemeanor conviction or violation.

(f) The applicant's planned activities shall remain compliant with state law and KDA policy.

(g) The applicant shall have adequate facilities, or plans to acquire adequate facilities sufficiently soon enough, to complete the planned activities.

(h) In the past, 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.

(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 complete a mandatory orientation session at a location designated by the department, and pay licensing fees prior to receiving a processor/handler license.

(5) 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.

(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 one (1) or both of the following reasons:
- (a) Failure to obtain an acceptable criminal background check, or
  - (b) Failure to comply with an order from a representative of the department.

## **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 set forth in this 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.
- (9) 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.

(5) 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.

(6) A processor/handler license may be terminated by the license holder or the department upon thirty (30) days prior written notice.

(7) 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, 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 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 (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 were distributed.
- (7) Any person engaging in the distribution of hemp seeds shall adhere to all applicable Kentucky seed laws (KRS 250.010 to KRS 250.990) and regulations (12 KAR 1:116 to 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 shall have the authority to 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 permit 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 processor or handler shall not sell or transfer, or permit 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 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.

(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.

(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) 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.

(10) 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 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 ship or transport, or allow to be shipped or transported, any hemp substance with a delta-9-THC concentration in excess of zero and three-tenths (0.3) percent.

(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.**

- (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. Consequences for Negligent Violations.**

- (1) If the department determines that a licensed processor/handler committed a negligent violation of any provision within KRS Chapter 260.850 to 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 licensed processor/handler.
- (2) Corrective action plans will remain in place for at least two (2) years and include, at a minimum, the following:
  - (a) The date by which the licensed processor/handler shall correct each negligent violation;
  - (b) Steps to correct each negligent violation;
  - (c) A description of the procedures to demonstrate compliance; and
  - (d) Inspections or other measures to ensure compliance.
- (3) A person 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.

### **Section 17. 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 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.
- (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 18. 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 17(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 19. 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 20. Licensing for Representatives of Universities and Colleges.**

(1) Except as provided in this Section of this administrative regulation, faculty members, administrators, and staff members of an institution of higher education shall be subject to each of the sections of this administrative regulation.

(2) No institution of higher education shall permit 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 and harvested hemp without first completing and submitting a Grower 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 and harvested hemp shall complete and submit a Grower License Application.

(4) No institution of higher education shall permit or authorize its faculty, administration, or staff members, or any sponsored student, to be in possession of, or conduct academic research involving, leaf material, or floral material from hemp without first completing and submitting a Processor/Handler License Application.

(5) 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 (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) As used in this section, “eligible institution of higher education” means an institution of higher education that is:

(a) Is 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.

**GENERAL GOVERNMENT**  
**Department of Agriculture**  
**Office of Agricultural Marketing**  
**(as filed February 13, 2020)**

**302 KAR 50:055. Sampling and THC Testing; Post-Testing Actions; Disposal of Noncompliant Harvests**

**Section 1. Definitions.**

- (1) "Acceptable Hemp THC Level" means the application of the Measurement of Uncertainty to the reported (decarboxylated) delta-9-THC concentration level on a dry weight basis to the 0.300% limit set forth in federal law and state law. For 2020, the Acceptable Hemp THC Level shall be 0.3999%.
- (2) "Cannabis" 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 are subspecies thereof. Cannabis includes all parts of the plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts; and does not include a "publicly marketable hemp product," as defined by this administrative regulation.
- (3) "CBD" means cannabidiol.
- (4) "Decarboxylated" means the completion of the chemical reaction that converts 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 THC-acid.
- (5) "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).
- (6) "Department" or "KDA" is defined by KRS 260.850(3).
- (7) "Hemp" or "industrial hemp" is defined by KRS 260.850(5).
- (8) "Inspector" means an employee or other representative of the department sent to collect samples and perform inspections.
- (9) "Lot" means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of hemp throughout.
- (10) "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. For samples collected in 2020, the Measurement of Uncertainty shall be 0.0999%.
- (11) "Person" means an individual or business entity.
- (12) "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 50:055. The entire lot's harvest is in the same form (for example, intact-plant, flowers, ground materials, etc.), homogenous, and not mixed with non-hemp materials or hemp from

another lot.

(13) "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 50:055.

(14) "Program" means the department's Hemp Licensing Program.

(15) "Propagule" means a plant or plant part that can be utilized to grow a new plant.

(16) "UK DRS" means the Division of Regulatory Services at the University of Kentucky College of Agriculture, Food, and Environment.

## **Section 2. Procedures for inspection and sample-collection visits.**

(1) No hemp plant shall 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/Destruction Report form at least 15 days prior to the grower's expected harvest date.

(3) Upon receiving a completed Harvest/Destruction 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.

(7) The licensed grower shall complete the harvest of the crop from a lot not more than 15 days following the date of the inspection and sample-collection visit, unless specifically authorized in writing by the department; provided, however, that such authorization shall not exceed an additional 5 days and shall not be granted by the department without its determination that the cause for delay was inclement weather or another circumstance beyond the licensed grower's control.

(8) If the licensed grower fails to complete the harvest of the crop from a lot within fifteen (15) days following the date of sample collection, then the licensed grower shall submit a new Harvest/Destruction 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, nor extracted, nor converted into a consumer-ready product, nor enter commerce, until the department releases the material in writing.

## **Section 3. Procedure for collecting samples.**

(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;
  - (e) a permanent marker;
  - (f) security tape or a stapler;
  - (g) a bucket;
  - (h) a GPS unit, or a device with GPS-capable technology; and
  - (i) nitrile disposable gloves.
- (2) The inspector shall take cuttings from at least plants in each lot to be sampled.
- (3) The inspector shall select the individual plants to be sampled from each lot by selecting at random at least five 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 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 the following format:
- (a) the last four digits of the Grower License number,
  - (b) the date, in MMDDYY format; and
  - (c) a two-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 the following information:
- (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 4. Procedure for THC testing.**

- (1) THC testing shall be completed by the department's designated THC testing lab; the department's primary designated THC testing lab is UK DRS, as mandated in KRS 250.355. The department shall not use THC testing services of any lab without a DEA registration.
- (2) Upon receipt of a sealed sample-collection bag from the department, UK DRS 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).
- (3) Hemp material not used by UK DRS for delta-9-THC testing shall be stored as a retained

sample.

(4) UK DRS 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).

(5) The following material is incorporated by reference:

(a) UK DRS SOP# HMP-LB-002 (Procedures for Measuring Delta 9 THC Content in Industrial Hemp by Gas Chromatography with Flame Ionization Detection); and

(b) UK DRS SOP# HM-LB-001 (Procedures for Receiving, Preparing and Releasing Hemp Samples).

(6) No person shall be permitted to add to, amend, or in any way alter the composition of the retained sample.

### **Section 5. 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 (0.3000% delta-9 THC on a dry-weight basis) set forth in federal law and state law, the department shall evaluate it against the Acceptable Hemp THC Level that is applicable for the current year.

(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 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 must consent to the destruction of all material and floral material, or he or she may request a post-harvest re-test in accordance with the procedures set forth in Section 6 of this administrative regulation.

(6) The retest fee shall 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.

### **Section 6. Procedure for collecting samples for post-harvest retests.**

(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 bucket;

- (i) a GPS unit, or a device with GPS-capable technology; and
  - (j) 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 (for example, in an intact-plant state or in a ground-up state, or in another 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 post-harvest processing activities 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) Floral harvested material selected for Post-Harvest Sampling shall be taken in the state (for example, in an intact-plant state or in a ground-up state, or in another state) in which the license holder plans to sell or send the material to a processor, in accordance with the following instructions.
  - (a) For intact-plant post-harvest samples:
    - (i) Ensure that the entire harvest is accounted for and in the same form (i.e., intact plants).
    - (ii) Clip the top 20 cm of hemp plant, primary stem, including female floral material, without removing seed, stem, or other material.
    - (iii) Take cuttings from at least five (5) hemp plants within the harvest's storage/drying area at the discretion of the inspector.
    - (iv) Place the complete sample in a paper bag.
    - (v) Seal the paper bag by folding over top once and stapling to keep closed.
  - (b) For ground plant or ground floral material Post-Harvest Samples:
    - (i) Ensure that the entire harvest is accounted for and in the same form (i.e., all harvested material whether whole plant or floral material only must 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 locations within the containers from at least one cup of material from the lot.
    - (iv) Place the complete sample in a plastic sample container.
    - (v) Seal the plastic sample container.
  - (c) For Post-Harvest Samples in other forms (e.g., trimmed floral material, or floral material and stems):
    - i) Ensure that the entire harvest is accounted for and in the same form (i.e., all harvested material whether whole plant or floral material only must 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 locations within the containers from at least one cup of material from the lot.
  - (iv) Place the complete sample in a plastic sample container.
  - (v) Seal the plastic sample container.
- (5) 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.
- (6) 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 digits of the Grower License number,
  - (b) the date, in MMDDYY format; and
  - (c) a two-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 would be 1234-101520-03.
- (7) 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.
- (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.
- (10) The procedure for THC testing used by UK DRS shall be the same for post-harvest retests as those set forth in Section 4 of this administrative regulation.
- (11) A lot having a post-harvest sample with a measured THC concentration exceeding the Acceptable Hemp THC Level shall be deemed non-compliant.

## **Section 7. 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 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 (i.e., 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 (by plowing or disking) 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 (i.e., the act of rendering it into a useless and non-retrievable state) using one of these methods:

- (i) by grinding it up and incorporating it (by plowing or disking) it into the soil; or
- (ii) by controlled incineration.

## **Section 8. Incorporation by Reference.**

(1) The following material is incorporated by reference:

(a) UK DRS SOP# HMP-LB-002 (Procedures for Measuring Delta 9 THC Content in Industrial Hemp by Gas Chromatography with Flame Ionization Detection), July 2019 edition; and

(b) SOP# HM-LB-001 (Procedures for Receiving, Preparing and Releasing Hemp Samples), August 2019 edition.

(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**  
**(as filed February 13, 2020)**

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

**Section 1. Schedule of Fees for 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 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 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.

**GENERAL GOVERNMENT  
Department of Agriculture  
Office of Agricultural Marketing  
(As Amended at ARRS, February 12, 2018)**

**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 industrial 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.

APPROVED BY AGENCY: December 15, 2017.

FILED WITH LRC: December 15, 2017 at noon.

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