

Ryan F. Quarles
Commissioner

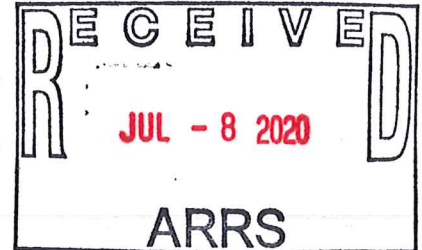


Corporate Drive
Complex
Frankfort, KY 40601
(502) 573-0282

Kentucky Department of Agriculture

July 8, 2020

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601



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

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 302 KAR 50:020 the Kentucky Department of Agriculture proposes the attached amendments to 302 KAR 50:020.

Sincerely,

A handwritten signature in black ink, appearing to read "Clint Quarles".

Clint Quarles
Staff Attorney
Kentucky Department of Agriculture
107 Corporate Drive
Frankfort, KY 40601



SUGGESTED SUBSTITUTE
Final 7/7/2020 12:17 PM

DEPARTMENT OF AGRICULTURE
Office of the Consumer and Environmental Protection

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

RELATES TO: KRS Chapter 217B, 260.850-260.869, 21 U.S.C. Chapter 9~~[, 7 U.S.C. 5940, 21 U.S.C. Chapter 9]~~

STATUTORY AUTHORITY: KRS 260.862

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

Section 1. Definitions. (1) "Agent" means a person who is employed by or working under contract for a license holder~~[,]~~ and who does not have any ownership interest in the hemp.

(2) "Applicant" means a person~~[, or a person]~~ who is authorized to sign for a business entity **and**~~[,]~~ 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," **as defined by KRS 260.850(5)**, 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":

(a) Means an adjudication or finding of guilt, ~~including;~~ ~~it also includes~~ a plea of guilty or nolo contendere; **and**

(b) Does not mean[; -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 **issued[set forth]** by the department for a licensee to correct a negligent violation of, or non-compliance with, KRS 260.850-

260.869 or 302 KAR Chapter 50[~~an administrative regulation promulgated under the authority of those statutes~~].

(10) "Culpable mental state greater than negligence" means to act **committed** 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 **are[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 **particip**~~ant~~**[participants]**":

(a) **Includes**~~[include]~~, without limitation, an entity's chief executive officer, chief operating officer, and chief financial officer; **and**

(b) **Does**~~[" "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. ~~Includes~~***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, **meaning[in the sense]** that the variations in essential and distinctive characteristics are describable;

(b) Stable, **meaning[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, **meaning[in the sense]** that the variety can be differentiated by one (1) or more identifiable morphological, physiological, other characteristics from all other publicly 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, **as established in 302 KAR Chapter 50**, by March 15.

(3) A person who does not hold a license from the department shall not:

(a) Grow, cultivate, handle, or process **hemp or other cannabis**; or

(b) Broker, store, or market hemp or other cannabis that does not fall within the definition of a "publicly marketable hemp product" at any location within the Commonwealth.

(4) A person under the age of eighteen (18) years of age shall not apply for or hold a grower license.

(5) Completed Hemp Grower License Applications **shall[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]:~~

1. ~~(i)~~ The entity's name, Employer Identification Number, business location address in Kentucky, and principal business location;

2. ~~(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

3. ~~(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, **a statement that the**~~[the following requirements for]~~ licensed growers:

(a) Acknowledge that licensed growers shall comply with all administrative regulations in 302 KAR **Chapter** 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, **incorporated by reference in 302 KAR 50:080**, the **applicable[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 **only** in accordance with Section **16[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, **incorporated by reference in 302 KAR 50:080**, and other reports required by the department to which the grower has agreed, on or before the deadlines established in this administrative regulation;

(n) Agree to scout and monitor unlicensed fields for volunteer cannabis plants and to destroy those volunteer cannabis plants for **at least** 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; **and**

(p) Agree to abide by all land use restrictions for licensed growers **established/set forth** in Section 5 of **this administrative regulation/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 **sixty (60)/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; **and**

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 **fifty (50)[50]** miles of at least one **(1)** 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) **A/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 **not** be eligible to obtain a license, **except:**

1. [~~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

2. [(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 **not** have **failed[demonstrated a willingness]** to comply with the department's rules, instructions from department staff, and instructions from representatives of Kentucky State Police and other law enforcement agencies.

(i) The applicant shall not be delinquent in making any required reports or payments to the department in connection with the applicant's participation in the Hemp Licensing Program or other programs within the department.

(j) The applicant shall not have any unpaid fees, fines, or civil penalties owed to the department.

(k) The applicant shall not have and shall not make any false statements or representations to a representative of the department or a law enforcement agency. Any person who materially falsifies any information contained in an application shall be ineligible to obtain a license from the department.

(l) The applicant's proposed growing sites shall comply with the land use restrictions **established[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, **as established in 302 KAR 50:060**, 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 **established in subsection (9) of this section**~~[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, **if**~~[provided that]:~~

(a) The applicant has been designated by a school district superintendent;[;]

(b) The applicant is a vocational agriculture instructor, agriculture teacher, or other qualified person who is employed by a school district; and

(c) the school district's board has voted to approve the applicant's proposal.

(10) An applicant or licensed grower shall not include any property on his or her application or Site Modification Request, incorporated by reference in 302 KAR 50:080, to grow, cultivate, or store hemp that is not owned or completely controlled by the applicant or licensed grower, as evidenced by a written lease or other document that shall be provided to the department upon request.

(11) A licensed grower shall not grow, handle, or store hemp or other cannabis on property owned by, leased from, or previously submitted in a license application by any person who is ineligible or **whose license** was terminated~~[,]~~ or **who was** 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 **shall~~are required to~~** post signage at the plot location. The signage shall include the~~[~~**following information**~~]~~:

(a) The **program title~~[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 ~~Upon~~**[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 **shall** 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, **as established in 302 KAR 50:060.**

(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 **shall[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 **such** 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, **as established in 302 KAR 50:060**, 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, **as established in 302 KAR 50:055**.

(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 in-

door 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, **as established in 302 KAR 50:060.**

(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, **incorporated by reference in 302 KAR 50:080.**

(a) If the variety or strain is listed on the Summary of Varieties List, **incorporated by reference in 302 KAR 50:080, a[no]** pre-approval from the department **shall not be[is]** required.

(b) If the variety or strain is not listed on the Summary of Varieties List, **incorporated by reference in 302 KAR 50:080**, the license holder shall submit a New Hemp Variety or Strain Request Form, **incorporated by reference in 302 KAR 50:080** 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 (**shall[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, **incorporated by reference in 302 KAR 50:080**, prior to its use in crop production.

(3) The department shall not approve a New Hemp Variety or Strain Request, **incorporated by reference in 302 KAR 50:080** 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, **incorporated by reference in 302 KAR 50:080** if a representative of the department has information supporting a belief that the variety or strain will produce plants with delta-9-THC (**shall/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, **incorporated by reference in 302 KAR 50:080**.

(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 ~~through~~**[to]** KRS 250.990) and ~~[administrative regulations (12 KAR 1:116 through~~**[to 12 KAR]** 1:175~~)]~~.

(8) Any person who intends to move transplants or other living plants to a location outside Kentucky ~~shall~~**[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, **incorporated by reference in 302 KAR 50:080**, 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, **incorporated by reference in 302 KAR 50:080**, 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, **incorporated by reference in 302 KAR 50:080** within fifteen (15) days after establishing plants at an indoor location.

(2) Each Greenhouse/Indoor Planting Report, **incorporated by reference in 302 KAR 50:080** 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, **incorporated by reference in 302 KAR 50:080**, 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, **incorporated by reference in 302 KAR 50:080** 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 Pesticide" on its Web site 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, **incorporated by reference in 302 KAR 50:080, [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 **established[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, **incorporated by reference in 302 KAR 50:080**, 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 **(1)** 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 **established[set forth]** in 302 KAR 50:055.

(2) UK DRS shall receive, prepare, and release hemp samples in accordance with the procedures **established[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 **established[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 return-
able. 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 flo-
ral 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 liv-
ing plants, viable seeds, leaf material, or floral material to any person outside the Com-
monwealth who is not authorized to possess such materials under the laws of that juris-
diction.

(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 ze-
ro 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 ~~through[to]~~ 260.869, or **302 KAR Chapter 50**~~[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 **shall[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, **such as "negligence" as defined by 302 KAR 50:030, Section 1**, 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 **shall[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 **zero and three tenths (0.3)** percent with a culpable mental state greater than negligence; or

(e) Failed to comply with an order from a representative of the department or a law enforcement agency with a culpable mental state greater than negligence.

(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 in-

ventory of all cannabis, hemp, and hemp products that are in the licensed grower's pos-
session.

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 **shall/will** occur at
a time and place designated by the commissioner.

(2) License revocation hearings shall be adjudicated by a three (3) person administra-
tive 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 ap-
pear 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 in-
formation and arguments for revoking the hemp grower license.

(6) A person whose hemp grower license has been temporarily suspended shall be al-
lowed 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 **based on the severity of the violation and** 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 **established[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) **A[No]** institution of higher education shall **not allow[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) **An[No]** institution of higher education shall **not allow[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" shall include~~[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; **Minimum** Three **(3)** Year Retention Period. (1) For at least three **(3)** years, license holders shall maintain and make available for inspection by the department during reasonable business hours, **records regarding:**

(a) ~~[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 **that[which]** include confidential data or business information, including, **for example[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 **shall[may]** be shared with applicable federal, state, or local law enforcement agencies or their designees in compliance with applicable law.~~[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. KRS 260.862(1)(c) authorizes the department to license persons who wish to participate in an industrial hemp research pilot program by cultivating, handling, processing, or marketing industrial hemp. This administrative regulation establishes procedures and requirements for licensing persons who wish to grow or cultivate industrial hemp as a participant in the department's industrial hemp research pilot program.~~

~~Section 1. Definitions. (1) "Applicant" means a person, or a person who is authorized to sign for a business entity, who submits an application to participate in the industrial hemp pilot program.~~

~~(2) "Brokering" means engaging or participating in the marketing of hemp by acting as an intermediary or negotiator between prospective buyers and sellers.~~

~~(3) "Cannabis":~~

~~(a) Means all parts of the cannabis plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts; and~~

~~(b) Does not mean "publicly marketable hemp product", as defined by this administrative regulation.~~

~~(4) "CBD" means cannabidiol.~~

~~(5) "Certified seed" means seed for which a certificate or any other instrument has been issued by an agency authorized under the laws of a state, territory, or possession to officially certify seed and that has standards and procedures approved by the United States Secretary of Agriculture to assure the genetic purity and identity of the seed certified.~~

~~(6) "Commissioner" is defined by KRS 260.850(1).~~

~~(7) "Commonwealth" means the Commonwealth of Kentucky.~~

~~(8) "DEA" means the United States Drug Enforcement Administration.~~

~~(9) "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.

(10) "~~delta-9-THC~~" means ~~delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of cannabis).~~

(11) "~~Department~~" or "~~KDA~~" is defined by ~~KRS 260.850(3).~~

(12) "~~Grower licensing agreement~~" means ~~a document executed by a person and the department authorizing the person to grow, handle, and store hemp at one (1) or more specified locations in the Commonwealth under the terms established in the document, KRS 260.850 through 260.863, and this administrative regulation.~~

(13) "~~GPS~~" means ~~Global Positioning System.~~

(14) "~~Handling~~" is defined by ~~KRS 260.850(4).~~

(15) "~~Hemp~~" or "~~industrial hemp~~" is defined by ~~KRS 260.850(5).~~

(16) "~~Hemp product~~" or "~~industrial hemp product~~" is defined by ~~KRS 260.850(6).~~

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

(18) "~~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 grower licensing agreement, KRS 260.850 through 260.859, and this administrative regulation.~~

~~(19) "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 processor licensing agreement, KRS 260.850 through 260.859, and 302 KAR 50:030.~~

~~(20) "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.~~

~~(21) "Nonviable seed" means a seed that has been crushed, dehulled, or otherwise rendered to have a zero percent germination rate.~~

~~(22) "Person" means an individual or business entity.~~

~~(23) "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.~~

~~(24) "Plot" means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of hemp throughout the area.~~

~~(25) "ppm" means parts per million.~~

~~(26) "Post-harvest sample" means a sample taken from the harvested hemp from a particular plot's harvest in accordance with the procedures as established in 302 KAR 50:050. The entire plot's harvest is in the same form (for example, intact plant, flowers,~~

~~ground materials, etc.), homogenous, and not mixed with nonhemp materials or hemp from another plot.~~

~~(27) "Pre-harvest sample" means a composite, representative portion from plants in a hemp plot collected in accordance with the procedures as established in 302 KAR 50:050.~~

~~(28) "Prohibited variety" means a variety or strain of cannabis excluded from the department's program.~~

~~(29) "Processing" is defined by KRS 260.850(9).~~

~~(30) "Processor licensing agreement" means a document executed by a person and the department authorizing the person to process, handle, and store hemp at one (1) or more specified locations in the Commonwealth under the terms established in the document, KRS 260.850 through 260.869, and 302 KAR 50:030.~~

~~(31) "Program" means the department's Industrial Hemp Research Pilot Program.~~

~~(32) "Propagule" means a plant or plant part that can be utilized to grow a new plant.~~

~~(33) "Publicly marketable hemp product" means a hemp product that meets one (1) or more of the following descriptions:~~

~~(a)1. The product 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.~~

~~(34) "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.~~

~~(35) "Seed source" means the origin of the seed or propagules as determined by the department.~~

~~(36) "Signing authority" means an officer or agent of the organization with written authorization to commit the legal entity to a binding agreement.~~

~~(37) "UK DRS" means the Division of Regulatory Services at the University of Kentucky College of Agriculture, Food, and Environment.~~

~~(38) "University" means an accredited institution of higher learning located in the Commonwealth.~~

~~(39) "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.~~

~~(40) "Variety of concern" means any variety of hemp in the department's program that tests above 3,000 ppm or 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.~~

~~(41) "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 annually a completed Grower License Application, incorporated by reference as part of the Grower Licensing Application Packet in 302 KAR 50:080.~~

~~(2) 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.~~

~~(3) A person under the age of eighteen (18) years of age shall not apply for or hold a grower license.~~

~~(4)(a) Completed Grower License Application forms shall be postmarked or received by the department by the end of the application period established in the application.~~

~~(b) Completed Grower License Application forms shall be delivered to KDA Industrial Hemp Research Pilot Program, 111 Corporate Drive, Frankfort, Kentucky 40601.~~

~~(c) The department shall deny any Grower License Application that fails to meet the deadline established in the application.~~

~~(5) Each applicant shall pay a grower application fee in the amount established in 302 KAR 50:060.~~

~~(6) 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 by the department.~~

~~(7) The department shall deny any Grower License Application that is received without the application fee established in 302 KAR 50:060.~~

~~(8) With the Grower License Application form the applicant shall submit, at a minimum:~~

~~(a) Full name, Kentucky residential address, telephone number, and email address, if an email address is available;~~

~~(b) If the applicant represents a business entity, the full name of the business, the principal Kentucky business location address, the full name of the applicant who will have signing authority on behalf of the entity, title, and email address if an email address is available, of the person;~~

~~(c) Research plan, including the proposed acreage or greenhouse or indoor square footage to be planted;~~

~~(d) A statement of previous farming experience;~~

~~(e) Planned source of seeds or propagules;~~

~~(f) Street address; location ID; and GPS coordinates for each field, greenhouse, building, or site where hemp will be grown, handled, or stored;~~

~~(g) Maps depicting each site where hemp will be grown, handled, or stored, with appropriate designations for entrances, field boundaries, and specific locations corresponding to the GPS coordinates; and~~

~~(h) Marketing plan summary.~~

~~(9) Any Grower License Application that is missing required information shall be subject to denial.~~

~~Section 3. Criminal Background Check.~~

~~(1) Each licensed 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 shall, following completion of the background check, ensure delivery of the report to the department not more than fourteen (14) days after the application deadline.~~

~~(3) The department shall not accept a report from a criminal background check that occurred prior to October 1 of the application year.~~

~~(4) Failure to submit the background check by the deadline stated in subsection (2) of this section 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 signing authority.~~

~~Section 4. Application for Grower Licensing Agreement; Criteria and Procedure for Evaluation. (1) The department shall apply the criteria established in paragraphs (a) through (m) of this subsection in evaluating an application for the grower license.~~

~~(a) In accordance with Section 2 of this administrative regulation, the applicant shall submit a complete application with all required components and attachments.~~

~~(b) For an applicant who has been a 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. Production reports, incorporated by reference in 302 KAR 50:080; and~~
~~4. Any other reports deemed necessary by the department to which the applicant has agreed.~~

~~(c) The applicant shall demonstrate farming experience by:~~

~~1. Filing an IRS Schedule F federal tax form at least once in the past three (3) years;~~
~~2. Providing the applicant's farm serial number (FSN) issued by the USDA Farm Service Agency;~~
~~3. Attesting to at least one (1) year of full-time farm work; or~~
~~4. Holding a bachelor's degree in agriculture from an accredited university.~~

~~(d) The applicant's growing sites, handling sites, storage sites, and primary residence shall be located in the Commonwealth of Kentucky.~~

~~(e) The applicant shall affirm that the applicant resides in Kentucky 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) The research plan shall be compliant with state and federal law.~~

~~(h) The applicant shall have a seed or propagule acquisition plan.~~

~~(i) The applicant shall have a marketing plan that is compliant with state and federal law.~~

~~(j) In the past, including those times when the applicant was not a participant in the department's 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.~~

~~(k) 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 program or other programs within the department.~~

~~(l) The applicant shall not have any unpaid fines or civil penalties owed to the department.~~

~~(m) 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.~~

~~(2) The department shall conditionally approve an application for a grower licensing agreement if the application satisfies the criteria established in this administrative regulation.~~

~~(3) The department may approve an applicant to grow an acreage or square footage that is equal to, greater than, or less than the acreage or square footage stated in the application.~~

~~(4) 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~~

~~department's program until the applicant and the department have executed a grower licensing agreement following the applicant's attendance at the department's mandatory orientation session as required by Section 8 of this administrative regulation.~~

~~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 listed in the grower licensing agreement.~~

~~(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 not plant hemp or other cannabis plants in an outdoor growing location of less than one-quarter acre and 1,000 plants unless prior approval is received in writing from the department.~~

~~(7) A licensed grower shall not grow hemp or other cannabis in any outdoor field or site that is located within 1,000 feet of a school or a public recreational area.~~

~~(8) 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 or cultivate hemp that is not owned or completely controlled by the applicant or licensed grower.~~

~~(9) 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 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.~~

~~(10) 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 Industrial Hemp Research Pilot 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 Industrial Hemp Research Pilot 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 research 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. Grower Licensing Agreements.

~~(1) An applicant shall not be a participant in the department's program until the conditionally approved applicant and the department have executed a grower licensing agreement following the applicant's attendance at the department's mandatory orientation session.~~

~~(2) The grower licensing agreement shall establish the terms and conditions governing participation in the department's program.~~

~~(3) The terms and conditions established in the grower licensing agreement shall include, at a minimum, the following requirements for licensed growers:~~

~~(a) Acknowledge that licensed growers shall act as agents of the department and shall comply with instructions from representatives of the department and law enforcement agencies;~~

~~(b) Agree to pay a licensing fee in the amount established in 302 KAR 50:060;~~

~~(c) 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;~~

~~(d) 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;~~

~~(e) Agree to apply for registration of all growing, handling, and storage locations, including GPS coordinates, and receive department approval for those locations prior to having hemp on those premises;~~

~~(f) 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 grower licensing agreement, 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;~~

~~(g) Acknowledge that hemp shall not be grown, handled, or stored in any location other than the location listed in the grower licensing agreement;~~

~~(h) Agree not to interplant hemp with any other crop without express written permission from the department;~~

~~(i) Acknowledge that anyone applying pesticides to hemp shall hold a pesticide license and apply pesticides in accordance with Section 18 of this administrative regulation;~~

~~(j) Acknowledge that licensed growers shall comply with restrictions established by the department limiting the movement of hemp plants and plant parts;~~

~~(k) Acknowledge that the risk of financial or other loss shall be borne solely by the licensed grower;~~

~~(l) Agree that any time hemp is in transit, a copy of the grower licensing agreement shall be available for inspection upon the request of a representative of the department or a law enforcement agency;~~

~~(m) 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 grower licensing agreement for inspection;~~

~~(n) Agree to submit Planting Reports, Harvest/Destruction Reports, and Production Reports, and other reports required by the department to which the grower has agreed, on or before the deadlines established in this administrative regulation;~~

~~(o) Agree to scout and monitor unregistered 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;~~

~~(p) Agree not to employ or rent land to cultivate hemp from any person who was terminated or denied admission to the 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;~~

~~(q) Agree that land used for the cultivation or storage of hemp shall not be owned by or leased from any person who was terminated, or denied admission to the 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;~~

~~(r) Agree to notify the department of any interaction with law enforcement immediately by phone and follow-up in writing within three (3) calendar days of the occurrence; and~~

~~(s) Agree to notify the department of any theft of cannabis materials, whether growing or not.~~

~~(4) Failure to agree or comply with terms and conditions established in the grower licensing agreement or this administrative regulation shall constitute grounds for appropriate departmental action, up to and including termination of the grower licensing agreement and expulsion from the department's program.~~

~~(5) A person who has been expelled from the program shall not be eligible to reapply to the program for a period of five (5) years from the date of expulsion.~~

~~(6) Failure to agree and sign the grower licensing agreement shall terminate conditional approval and a licensing agreement shall not be executed.~~

~~Section 8. Mandatory Orientation Session.~~

~~(1) Conditionally approved applicants shall attend a mandatory orientation session at a location designated by the department.~~

~~(2) The department shall require in-person attendance.~~

~~(a) The department shall not permit any person to attend a mandatory orientation session telephonically or by video.~~

~~(b) The department shall not allow any person to attend in lieu of the conditionally approved applicant.~~

~~Section 9. Licensing Fees; Participation Fee, Secondary Pre-Harvest Sample Fee, Post-Harvest Retest Fee.~~

~~(1) Participation fee.~~

~~(a) The licensed grower shall pay a participation fee.~~

~~(b) The participation fee for each growing address shall be in the amount established in 302 KAR 50:060.~~

~~(c) Participation fees shall be paid in full prior to the execution of the grower licensing agreement with a check or money order payable to the Kentucky State Treasurer.~~

~~(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 three (3) or more harvests are taken from the same plot, the licensed grower may be required to pay a secondary pre-harvest sample fee.~~

~~(c) The secondary pre-harvest sample fee shall be paid to the department with a check or money order payable to the Kentucky State Treasurer 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 grower licensing agreement.~~

~~(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.~~

~~(3) Post-harvest retest fee.~~

~~(a) The department shall order post-harvest THC testing of a plot if the results of an initial THC test on the pre-harvest sample indicate a delta-9-THC concentration in the pre-harvest sample in excess of what is permitted by the department, pursuant to 302 KAR 50:050.~~

~~(b) A licensed grower shall pay the post-harvest retest fee if post-harvest testing is ordered by a representative of the department.~~

~~(c) The post-harvest retest fee shall be as established in 302 KAR 50:060.~~

~~(d) The fee shall be paid prior to the department collecting the post-harvest sample.~~

~~(e) If a licensed grower fails to request a retest or to pay a post-harvest retest fee within fifteen (15) days of notification of pre-harvest results on a floral material harvest from the department, then the pre-harvest sample or secondary pre-harvest test result shall stand, and the department shall destroy or seize, without compensation, all hemp or other cannabis from the plot.~~

~~Section 10. 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 in the grower licensing agreement 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.~~

~~(3) The land or growing structure being requested shall not be owned by or leased from any person who was terminated, or denied admission to the 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.~~

~~(4) The department shall charge a site modification surcharge fee for each new growing location, be it an individual field or greenhouse or indoor structure, where hemp will be planted. 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. Surcharge fees shall be submitted to the department with a check or money order payable to the Kentucky State Treasurer.~~

~~(6) The department shall not assess a site modification surcharge for changes to storage-only locations.~~

~~Section 11. Seed Acquisition From a Source Within the Commonwealth.~~

~~(1) A department pre-approval shall not be required for a transfer of hemp seed or propagules of any variety listed on the department's published summary of varieties list, excluding prohibited varieties, between Kentucky licensed growers and licensed processors or handlers within the Commonwealth of Kentucky.~~

~~(2) A licensed grower or licensed processor or handler shall not buy, sell, possess, or transfer seeds or propagules to or from any person in the Commonwealth without first verifying that the person is licensed by the department.~~

~~(3) A licensed grower or licensed processor or handler shall obtain written approval from the department to change the name of any variety in the department's program.~~

~~(4) A licensed grower shall provide the name of his or her seed or propagule source on the Field Planting Report form or Greenhouse Planting Report form.~~

~~(5) Upon request from a representative of the department, a licensed grower or licensed processor or handler shall provide a distribution list showing locations where and to whom hemp seeds or propagules were distributed.~~

~~Section 12. Seed Acquisition from a Source in a U.S. Territory, Tribal Land, or State other than the Commonwealth of Kentucky.~~

~~(1) A person shall not acquire seeds or propagules from a source in a U.S. territory, tribal land, or state other than the Commonwealth of Kentucky without first:~~

~~(a) Submitting a complete Domestic Seed/Propagule Request form, incorporated by reference in 302 KAR 50:080, and all required attachments; and~~

~~(b) Obtaining written approval of the Domestic Seed/Propagule Request from a representative of the department.~~

~~(2) The department shall not approve a Domestic Seed/Propagule 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.~~

~~(3) A person submitting a Domestic Seed/Propagule Request form shall submit to the department documentation showing that mature plants grown from that seed variety or strain have a floral material delta-9-THC content of not more than 3,000 ppm on a dry weight basis from an independent third-party laboratory.~~

~~(4) A person submitting a Domestic Seed/Propagule Request form shall submit to the department documentation verifying the seed or propagule source as a current legal hemp operation in the state of origin.~~

~~(5) A person acquiring seeds or propagules from a source outside the Commonwealth shall arrange for the seeds or propagules to arrive at the department's facility at 105 Corporate Drive, Frankfort, Kentucky 40601, for inventory and distribution.~~

~~(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 following inventory at the department's facility.~~

~~Section 13. Seed Acquisition from a Source Outside the United States.~~

~~(1) A person seeking to obtain seeds from an international source shall submit a complete International Seed Request form, incorporated by reference in 302 KAR 50:080, to the department.~~

~~(a) If approved, the department shall request the DEA Permit to Import under the department's DEA registration.~~

~~(b) A person shall not acquire seeds from a source outside the United States unless the department first obtains a Permit to Import from the DEA.~~

~~(2) A person shall not acquire propagules other than seeds from outside the United States.~~

~~(3) The department shall not approve an International Seed Request form for any purpose other than seeds for planting in Kentucky. All licensed growers intending to plant the requested seed shall be listed on the request form.~~

~~(4) The department shall not approve an International Seed Request form unless the licensed grower affirms in writing that the licensed grower's planned activities shall not infringe on the intellectual property rights of any person.~~

~~(5) A person submitting an International Seed Request form shall submit to the department documentation showing that mature plants grown from that seed variety have a floral material delta-9-THC content of not more than 3,000 ppm on a dry weight basis.~~

~~(6) A person acquiring seeds or propagules from a source outside the United States shall arrange for the seeds or propagules to arrive at the department's facility at 105 Corporate Drive, Frankfort, Kentucky 40601, for inventory and distribution.~~

~~(7) Upon request from a representative of the department, a licensed grower shall provide a distribution list showing locations where and to whom the imported hemp seeds were distributed following inventory at the department's facility.~~

~~Section 14. 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 15. 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 replanting, of seeds or propagules in an outdoor location.~~

~~(2) Each Field Planting Report shall identify the:~~

~~(a) Correct variety name as designated upon approval of the acquisition request or as approved by the department;~~

~~(b) Field location ID as listed in the grower licensing agreement; and~~

~~(c) Primary intended use of the harvest for each planting.~~

~~(3) A licensed grower who does not plant hemp in an approved outdoor site listed in the grower license agreement shall submit a Field Planting Report, on or before July 31, stating that hemp has not and shall not be planted at that site.~~

~~Section 16. 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 hemp variety name as designated in the Domestic Seed/Propagule Request form or International Seed Request form and approved by the department;~~

~~(b) Greenhouse or indoor growing location ID as listed in the grower licensing agreement; and~~

~~(c) Primary intended use for the harvest of each planting.~~

~~(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 17. 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, DEA,~~

~~and other law enforcement agencies whose representatives request registered 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 grower licensing agreement.~~

~~(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 grower licensing agreement with or without cause and with or without advanced notice.~~

~~Section 18. Pesticide Use.~~

~~(1) A licensed grower who uses a pesticide on hemp shall be certified to apply pesticides by the department pursuant to KRS Chapter 217B.~~

~~(2) A licensed grower who is certified to apply pesticides by the department pursuant to KRS Chapter 217B shall not use, or be eligible to use, a Category 10 license to apply pesticides to hemp in violation of the product label.~~

~~(3) A licensed grower shall not use any pesticide in violation of the product label.~~

~~(4) A licensed grower who uses a pesticide on a site where hemp will be planted shall comply with the longest of any planting restriction interval on the product label prior to planting the hemp.~~

~~(5) The department may perform pesticide testing on a random basis or if representatives of the Department have reason to believe that a pesticide may have been applied to hemp in violation of the product label.~~

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

~~Section 19. Responsibility of a Licensed Grower Prior to Harvest of Hemp Plots.~~

~~(1) The department may collect samples of any cannabis material prior to harvest at any time.~~

~~(2) A licensed grower shall submit a complete and current Harvest/Destruction Report form to the department at least fifteen (15) days prior to the intended harvest date or intended destruction of a failed crop.~~

~~(3) The department's receipt of a Harvest/Destruction Report shall trigger a sample collection by the department.~~

~~(4) During the department's scheduled sample collection, the grower or an authorized representative shall be present at the growing site.~~

~~(5) 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 grower licensing agreement.~~

~~(6) 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.~~

~~(7) If the licensed grower fails to complete harvest within fifteen (15) days, the department may order a secondary pre-harvest sample of the plot, and the licensed grower shall be assessed a secondary pre-harvest sample fee per plot in the amount established in 302 KAR 50:060 prior to the department collecting the sample.~~

~~(8) Harvested materials from varieties of concern shall not be commingled with other harvests without prior written permission from the department.~~

~~(9) Floral materials harvested for phytocannabinoid extraction shall not be moved outside the Commonwealth or beyond a processor, nor commingled, nor extracted, until the department releases the material in writing.~~

~~(10) A licensed grower who fails to submit a Harvest/Destruction Report or who does submit a Harvest/Destruction Report and proceeds to harvest a crop prior to a sample being collected by the department shall be subject to revocation of his or her license.~~

~~Section 20. Collection of Samples; THC Testing; Post-Testing Actions.~~

~~(1) The hemp to be selected for sampling shall be determined by a representative of the department.~~

~~(2) The department shall collect and retain samples from each plot in accordance with the procedures established in 302 KAR 50:050, Section 2.~~

~~(3) UK DRS shall receive, prepare, and release hemp samples in accordance with the procedures established in 302 KAR 50:050, Section 3.~~

~~(4) UK DRS shall measure THC concentration of each hemp sample in accordance with the procedures established in 302 KAR 50:050, Section 4.~~

~~(5) The department shall undertake post-testing actions in accordance with the procedures established in 302 KAR 50:050, Section 5.~~

~~(6) All samples shall become the property of the department and shall not be returnable. Compensation shall not be owed by the department.~~

~~(7) 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.~~

~~Section 21. 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 (but within the United States) who is not authorized by a university or state department of agriculture under the authority of 7 U.S.C. 5940 and the laws of that state. The licensed grower shall ensure that the sale or transfer is lawful in other states.~~

~~(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 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 may transfer up to one (1) pound of hemp per transfer to testing laboratories, both within and outside the Commonwealth, for the purpose of measuring THC, CBD, or other phytocannabinoid profile levels. The licensed grower shall ensure compliance with laws in other states.~~

~~(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 involved in the manufacture of an item named on the prohibited products list established in 302 KAR 50:070.~~

~~Section 22. Other Prohibited Activities.~~

~~(1) A licensed grower shall not plant or grow hemp on any site not listed in the grower licensing agreement.~~

~~(2) A licensed grower shall not transport live hemp plants, viable seeds, leaf materials, or floral materials to unapproved locations including trade shows, county fairs, educational or other events, or any other address not listed on the licensed grower's current grower licensing agreement or within another research program.~~

~~(3) A licensed grower shall not allow unsupervised public access to hemp plots, including activities such as a hemp maze.~~

~~(4) A person shall not ship or transport, or allow to be shipped or transported, live hemp plants, cuttings for planting, or viable seeds from a variety that is currently designated by the department as a prohibited variety or variety of concern to any location outside the Commonwealth of Kentucky.~~

~~(5) A person shall not ship or transport, or allow to be shipped or transported, any hemp product with a delta-9-THC concentration in excess of zero and three-tenths (0.3) percent.~~

~~Section 23. Other Required Reports.~~

~~(1) A licensed grower shall submit a completed Production Report Form annually.~~

~~(2) A licensed grower's failure to submit an accurate and complete report that is required by the department before the deadline established by the department shall con-~~

~~stitute grounds for the department to terminate the grower licensing agreement and deny future applications for licensure.~~

~~Section 24. 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 in connection with the program 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, and email addresses shall be shielded by the department to the maximum extent permitted by law.~~

~~Section 25. Immediate License Suspension.~~

~~(1) The department shall immediately suspend a license, without an opportunity for a hearing, if the licensed person pleads guilty to, or is convicted of, any felony or drug-related misdemeanor or violation in accordance with KRS 260.864.~~

~~(2) The department shall immediately suspend a license, without an opportunity for a hearing, if the licensed person or his or her agent admits to having:~~

~~(a) Violated any provision of KRS 260.850 through 260.869 or an administrative regulation promulgated under the authority of KRS 260.850 through 260.869;~~

~~(b) Made any false statement to the department or its representative; or~~

~~(c) Failed to comply with any instruction or order from the department, a representative of the department, of Kentucky State Police, or any law enforcement officer.~~

~~Section 26. Temporary License Suspension Procedures.~~

~~(1) The department shall notify a licensed grower in writing that the grower licensing agreement has been temporarily suspended if a representative of the department receives information supporting an allegation that a licensed grower has:~~

~~(a) Engaged in conduct violating a provision of this administrative regulation, KRS 260.850 through 260.869, or the grower licensing agreement;~~

~~(b) Made a false statement to a representative of the department or a law enforcement agency;~~

~~(c) Been found to be growing or in possession of cannabis with a measured delta-9-THC concentration at or above 30,000 ppm; or~~

~~(d) Failed to comply with an order from a representative of the department or a law enforcement agency.~~

~~(2) A person whose grower licensing agreement 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.~~

~~(3) 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 in-~~

ventory of all cannabis, hemp, and hemp products that are in the licensed grower's possession.

(4) 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.

Section 27. License Revocation Hearings and Consequences of Revocation.

(1) The department shall notify a person whose grower licensing agreement 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 grower licensing agreement 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 grower licensing agreement.

(5) A representative of the department shall be allowed an opportunity to present information and arguments for revoking the grower licensing agreement.

~~(6) A person whose grower licensing agreement has been temporarily suspended shall be allowed an opportunity to present information and arguments against revoking the grower licensing agreement.~~

~~(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 26(1) of this administrative regulation or violated any provision of the grower licensing agreement, then the grower licensing agreement shall be revoked effective immediately.~~

~~(9) If a majority of the members of the administrative panel vote against revoking the grower licensing agreement, 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 grower licensing agreement, then a representative of the department or a law enforcement agency shall 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) A person whose grower licensing agreement has been revoked shall be barred from participation in the program in any capacity for a minimum period of five (5) years.~~

~~Section 28. Monetary Civil Penalties.~~

~~(1) If 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 this administrative regulation, KRS 260.850 through 260.869, or the grower licensing agreement, 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 Industrial Hemp Research Pilot 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.]~~

Ryan F. Quarles
Commissioner

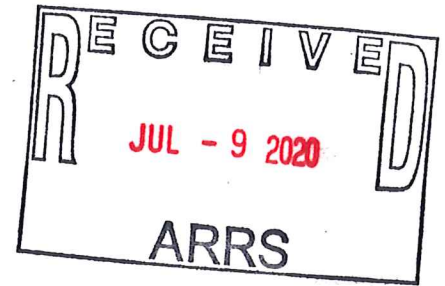


Corporate Drive
Complex
Frankfort, KY 40601
(502) 573-0282

Kentucky Department of Agriculture

July 9, 2020

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601



Re: **302 KAR 50:030**. Policies and procedures for hemp processors and handlers.
302 KAR 50:055. Sampling and THC testing; post-testing actions; disposal of noncompliant harvests.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 302 KAR 50:030 and 302 KAR 50:055, the Kentucky Department of Agriculture proposes the attached amendments to 302 KAR 50:030 and 302 KAR 50:055.

Sincerely,

A handwritten signature in black ink, appearing to read "Clint Quarles".

Clint Quarles
Staff Attorney
Kentucky Department of Agriculture
107 Corporate Drive
Frankfort, KY 40601



Subcommittee Substitute

7/9/2020

DEPARTMENT OF AGRICULTURE
Office of the Consumer and Environmental Protection
(Amendment)

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

RELATES TO: KRS 260.850-260.869[, 7 U.S.C. 5940, 21 U.S.C. Chapter 9]

STATUTORY AUTHORITY: KRS 260.862

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

Section 1. Definitions. (1) "Agent" means a person who is employed by or working under contract for a license holder, and who does not have any ownership interest in the hemp.

(2) "Applicant" means a person, 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, **or [~~]; 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, [1]the primary intoxicating component of cannabis[2]. For compliance purposes, all delta-9-THC concentrations shall [must] be measured post-decarboxylation (a result commonly referred to as total THC).

(13) "Department" or "KDA" is defined by KRS 260.850(3).

(14) "GPS" means Global Positioning System.

(15) "Handling" is defined by KRS 260.850(4).

(16) "Hemp" or "industrial hemp" is defined by KRS 260.850(5).

(17)[(16)] "Hemp Grower License" means a document issued by the department authorizing a [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.

(18) "Hemp Processor/Handler License" means a document issued by the department authorizing a [the] person to process, handle, market, and store hemp in the Commonwealth under the terms established in the document, KRS 260.850 through 260.869, and this administrative regulation [302-KAR-50:030].

(19) "Hemp product" or "industrial hemp products" is defined by KRS 260.850(6).

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

(21) "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.

(22) "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.

(23) "Location ID" means the unique identifier established by an [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.

(24) "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.

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

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

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

(28) "Processing" is defined by KRS 260.850(9).

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

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

(31) "Publicly marketable hemp product" means a hemp product that meets one (1) or more of the following descriptions:

(a) The product:

1. [(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

2. ~~(ii)~~ **Includes**~~[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.

(32) "Signing authority" means an **organization's** officer or agent **who has [of the organization with]** written authorization to commit the **organization or** legal entity to a binding agreement.

(33) "Strain" means a group of hemp with presumed common ancestry and identified physiological distinctions **but[- A strain]** does not meet the uniformity, stability, or distinction requirements to be considered a variety.

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

(35) "Variety" means a subdivision of a species that is:

(a) Uniform, in the sense that the variations in essential and distinctive characteristics are describable;

(b) Stable, in 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.

(36) "Variety of concern" means any variety of hemp that tests above 0.3000 percent delta-9-THC in one (1) or more pre-harvest samples. A hemp variety designated as a **["]**variety of concern~~["]~~ could be subject to restrictions and additional testing.

Section 2. **Processor/Handler [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) **As established in Section 7 of this administrative regulation,** existing **processor/handler [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/handler [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**:

1. **[(i)]** the entity's name, Employer Identification Number, business location address in Kentucky, and principal business location; and

2. **[(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, [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 **completed** 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 **sixty (60) [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/Handler [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, **an [the]** applicant shall submit a complete application with all required components and attachments.

(b) An applicant who has **previously** 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 **or [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) **If the application satisfies the criteria established in this administrative regulation,** the department shall conditionally approve **the [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.

(6) 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.

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 **or handler**.

(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 **for**, 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 **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.

(9) The three (3) members of the administrative panel shall rule on the appeal by a majority vote.

Section 7. Hemp **Processor/Handler [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.

~~(2)~~~~(3)~~ Failure to agree or comply with **the** 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.

(3)[(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.

(4)[(5)] A processor/handler license **shall [will]** remain in force as long as the license holder meets the annual renewal requirements by December 31 of each year.

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

(6)[(7)] The department shall issue processor/handler's license numbers in accordance with **the following [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 **who [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 **and** 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 **shall not be [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, **from an independent third-party laboratory**, for that strain or variety. **The certificate of analysis shall show[, showing]** that mature plants grown from that seed variety or strain have a floral material **post-decarboxylation** delta-9-THC **[(must be measured post-decarboxylation, also referred to as total THC)]** content of not more than **zero and three-tenths (0.3) percent [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 **for approval of the new hemp variety or strain** [;] 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 **post-decarboxylation** delta-9-THC [~~(must be measured post-decarboxylation, also referred to as total THC)~~] content **exceeding [of not more than] zero and three-tenths (0.3) percent [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 **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 **shall [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 **not** have a ~~[no]~~ reasonable expectation of privacy with respect to premises where hemp or other cannabis seeds, plants, or materials are located, **or to [and]** any premises listed in the **processor/handler [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, **or into [and]** any premises listed in the **processor/handler [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, [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, [of]** living plants, viable seeds, leaf material, or floral material to any person outside the Commonwealth who is not authorized to possess **the [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, ~~[f]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, [of]** floral or plant extracts, ~~[f]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 **administrative** 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, [handler]** 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 or handler [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 or handler [processor/handler]**.

(2) Corrective action plans **shall [will]** remain in place for at least two (2) years and **shall include** [~~at a minimum, the following~~]:

(a) The date by which the licensed **processor or handler [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 **entity or law enforcement agency.**

(4) If a subsequent violation occurs while a corrective action plan is in place, a new corrective action plan **shall [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 or handler [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 or handler [processor/handler]** has:

(a) **Pleaded [Plead]** guilty to, or is convicted of, any felony or drug-related misdemeanor or violation in accordance with KRS 260.864;[.]

(b) Engaged in conduct violating a provision of KRS 260.850 through 260.869, 302 KAR Chapter 50, or the processor/handler license with a culpable mental state greater than negligence;

(c) Made a false statement to a representative of the department or a law enforcement agency with a culpable mental state greater than negligence;

(d) Been found to be in possession of cannabis with a measured delta-9-THC concentration above **zero and three-tenths (0.3) [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) **Except as authorized in writing by a representative of the department,** 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 or handler's [processor/handler's]** premises and perform an inventory of all cannabis, hemp, and hemp substances that are in the licensed **processor or handler's [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 **not** 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, **to an appropriate law enforcement agency**, 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/handler [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) ~~An [No]~~ institution of higher education shall **not** permit or authorize its faculty, administration, ~~[or]~~ staff members, or any sponsored student~~[s]~~ to be in possession of, or conduct academic research involving, living hemp plants **or [and]** harvested hemp without ~~[first]~~ completing and submitting a Grower License Application.

(3) An authorized faculty **member**, 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 **or [and]** harvested hemp shall complete and submit a Grower License Application.

(4) ~~An [No]~~ institution of higher education shall **not** permit or authorize its faculty, administration, ~~[or]~~ staff members, or any sponsored student~~[s]~~ to be in possession of, or conduct academic research involving, leaf material~~[s]~~ or floral material from hemp without ~~[first]~~ completing and submitting a Processor/Handler License Application.

(5) An authorized faculty **member**, 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 **member**, 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) **If the harvested material is intended for commerce**, sampling and testing of hemp processed or handled under the authority of this section shall be conducted by the department **[if the harvested material is intended for commerce]**.

(9) **An eligible institution of higher education shall be one that [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.

~~[NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations for the industrial hemp research pilot program in the Commonwealth of Kentucky. KRS 260.862(1)(c) authorizes the department to license persons who wish to participate in an industrial hemp research pilot program by cultivating, handling, processing, or marketing industrial hemp. This administrative regulation establishes rules and procedures for licensing persons who wish to process and handle industrial hemp as a participant in the department's industrial hemp research pilot program.]~~

~~—Section 1. Definitions.~~

~~(1) "Applicant" means a person, or a person who is authorized to sign for a business entity, who submits an application to participate in the industrial hemp pilot program.~~

~~(2) "Brokering" means engaging or participating in the marketing of industrial hemp by acting as an intermediary or negotiator between prospective buyers and sellers.~~

~~(3) "Cannabis":~~

~~(a) Means all parts of the cannabis plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts; and~~

~~(b) Does not mean "publicly marketable hemp product", as defined by this administrative regulation.~~

~~(4) "CBD" means cannabidiol.~~

~~(5) "Certified seed" means seed for which a certificate or any other instrument has been issued by an agency authorized under the laws of a state, territory, or possession to officially certify seed and that has standards and procedures approved by the United States Secretary of Agriculture to assure the genetic purity and identity of the seed certified.~~

~~(6) "Commissioner" is defined by KRS 260.850(1).~~

~~(7) "Commonwealth" means the Commonwealth of Kentucky.~~

~~(8) "DEA" means the United States Drug Enforcement Administration.~~

(9) "~~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.

(10) "~~delta-9-THC~~" means ~~delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of cannabis).~~

(11) "~~Department~~" or "~~KDA~~" is defined by KRS 260.850(3).

(12) "~~Grower licensing agreement~~" means a document executed by a person and the department authorizing the person to grow, handle, and store hemp at one (1) or more specified locations in the Commonwealth under the terms established in the document, KRS 260.850 through 260.863, and 302 KAR 50:020.

(13) "~~GPS~~" means ~~Global Positioning System.~~

(14) "~~Handling~~" is defined by KRS 260.850(4).

(15) "~~Hemp~~" or "~~industrial hemp~~" is defined by KRS 260.850(5).

(16) "~~Hemp product~~" or "~~industrial hemp product~~" is defined by KRS 260.850(6).

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

(18) "~~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 grower licensing agreement, KRS 260.850 through 260.859, and 302 KAR 50:020.

(19) "~~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 processor licensing agreement, KRS 260.850 through 260.859, and this administrative regulation.

(20) "~~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.

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

(22) "~~Person~~" means an individual or business entity.

(23) "~~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.

(24) "~~Plot~~" means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of hemp throughout the area.

(25) "~~ppm~~" means parts per million.

(26) "~~Post-harvest sample~~" means a sample taken from the harvested hemp from a particular plot's harvest in accordance with the procedures as established in 302 KAR 50:050. The entire plot's harvest is in the same form (for example, intact plant, flowers, ground materials, etc.); homogenous, and not mixed with nonhemp materials or hemp from another plot.

(27) "~~Pre-harvest sample~~" means a composite, representative portion from plants in a hemp plot collected in accordance with the procedures as established in 302 KAR 50:050.

(28) "~~Prohibited variety~~" means a variety or strain of cannabis excluded from the department's program.

(29) "~~Processing~~" is defined by KRS 260.850(9).

(30) "~~Processor licensing agreement~~" means a document executed by a person and the department authorizing the person to process, handle, and store hemp at one (1) or more specified locations in the Commonwealth under the terms established in the document, KRS 260.850 through 260.869, and this administrative regulation.

(31) "~~Program~~" means the department's Industrial Hemp Research Pilot Program.

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

(33) "~~Publicly marketable hemp product~~" means a hemp product that meets one (1) or more of the following descriptions:

(a)1. The product 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.

(34) "~~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.

(35) "~~Seed source~~" means the origin of the seed or propagules as determined by the department.

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

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

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

(39) "~~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.

(40) "~~Variety of concern~~" means any variety of hemp in the department's program that tests above 3,000 ppm or 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.

(41) "~~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) Are not intentionally planted.~~

~~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 annually a complete Processor/Handler License Application, incorporated by reference as part of the Processor/Handler License Application Packet in 302 KAR 50:080.~~

~~(2) Any person who does not hold a license from the department shall not:~~

- ~~(a) Grow, cultivate, handle, or process hemp or other cannabis; or~~
- ~~(b) 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.~~

~~(3) A person under the age of eighteen (18) years of age shall not apply for or hold a processor or handler license.~~

~~(4)(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 Industrial Hemp Research Pilot 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.~~

~~(5) The department shall require each applicant to pay a processor or handler application fee in the amount established in 302 KAR 50:060.~~

~~(6) Application fees shall not cover or include the cost of 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 by the department.~~

~~(7) The department may deny any Processor/Handler License Application that is received without the application fee established in 302 KAR 50:060.~~

~~(8) With the Processor/Handler License Application form, the applicant shall submit, at a minimum:~~

~~(a) Full name, mailing address, telephone number, and email address, if an email address is available;~~

~~(b) If the applicant represents a business entity, the full name of the business, the principal Kentucky business location address, the full name of the applicant who will have signing authority on behalf of the entity, title, and email address if an email address is available, of the person;~~

~~(c) Research plan;~~

~~(d) Planned source of hemp; and~~

~~(e) Maps and the street address, location ID, and GPS coordinates for each building or site where hemp will be processed, handled, or stored.~~

~~(9) Any Processor/Handler License Application that is missing required information shall be grounds for license 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 not more than fourteen (14) days following the date the application was received by the department.~~

~~(3) The department shall not accept a report from a criminal background check that occurred prior to October 1 of the application year.~~

~~(4) Failure to submit the background check by the deadline stated in subsection (2) 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 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 (n) of this subsection in evaluating applications for a processor or handler licensing agreement:~~

~~(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 research plan shall be compliant with state and federal law.~~

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

~~(h) The applicant shall have a hemp acquisition plan.~~

~~(i) The applicant shall have a marketing plan that is compliant with state and federal law.~~

~~(j) The applicant shall have adequate facilities, or plans to acquire adequate facilities sufficiently soon enough, to complete the research plan.~~

~~(k) In the past, including those times when the applicant was not a participant in the department's 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.~~

~~(l) 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 program or other programs within the department.~~

~~(m) The applicant shall not have any unpaid fines or civil penalties owed to the department.~~

~~(n) 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.~~

~~(2) The department shall conditionally approve an application for a processor or handler licensing agreement 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 department's program until the applicant and the department have executed a processor or handler licensing agreement following the applicant's attendance at the department's mandatory orientation session.~~

~~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 process hemp or other cannabis in a site that is located within 1,000 feet of a school or a public recreational area.~~

~~(3) 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.~~

~~(4) 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 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 Industrial Hemp Research Pilot 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 research 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.~~

~~(8) An appealing applicant shall be allowed an opportunity to present arguments for reversing the department's denial of the application.~~

~~(9) A representative of the department shall be allowed an opportunity to present arguments for affirming the department's denial of the application.~~

~~(10) The three (3) members of the administrative panel shall rule on the appeal by a majority vote.~~

~~Section 7. Processor or Handler Licensing Agreements.~~

~~(1) An applicant shall not be a participant in the department's program until the conditionally approved applicant and the department have executed a processor or handler licensing agreement following the applicant's attendance at the department's mandatory orientation session.~~

~~(2) The processor or handler licensing agreement shall establish the terms and conditions governing participation in the department's program.~~

~~(3) The terms and conditions established in the processor or handler licensing agreement shall include, at a minimum, the following requirements for licensed processor or handler:~~

~~(a) Acknowledge that licensed processors or handlers are acting as agents of the department and shall comply with instructions from representatives of the department and law enforcement agencies;~~

~~(b) Agree to pay a licensing fee in the amount established in 302 KAR 50:060;~~

~~(c) Consent to entry onto, and inspection of, all premises where hemp or other cannabis 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;~~

~~(d) 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. Material located in an area that is not licensed by the department; or~~

~~3. Material not properly accounted for in required reporting to the department;~~

~~(e) Acknowledge that no hemp shall be processed, handled, or stored in any location other than the location listed in the processor or handler licensing agreement;~~

~~(f) Acknowledge that licensed processors or handlers shall comply with restrictions established by the department limiting the movement of hemp plants and plant parts;~~

~~(g) Acknowledge that the risk of financial or other loss shall be borne solely by the licensed processor or handler;~~

~~(h) Agree that any time the hemp is in transit, a copy of the processor or handler licensing agreement shall be available for inspection upon the request of a representative of the department or a law enforcement agency;~~

~~(i) Agree to immediately produce a copy of the processor or handler licensing agreement for inspection upon request from a representative of the department or a law enforcement agency;~~

~~(j) Agree to submit reports required by the department on or before the deadlines established by the department;~~

~~(k) Agree to notify the department of any interaction with law enforcement immediately by phone and follow-up in writing within three (3) calendar days of the occurrence; and~~

~~(l) Agree to notify the department of any theft of cannabis materials.~~

~~(4) Failure to agree or comply with terms and conditions established in the processor or handler licensing agreement or this administrative regulation shall constitute grounds for appropriate~~

~~departmental action, up to and including termination of the license and expulsion from the department's program.~~

~~(5) A person who has been expelled from the program is not eligible to reapply to the program for a period of five (5) years from the date of expulsion.~~

~~(6) Failure to agree and sign the processor or handler licensing agreement shall terminate conditional approval and no licensing agreement shall be executed.~~

~~(7) A multi-year licensed processor or handler shall:~~

~~(a) Submit to the department an annual criminal background check for the signing authority of record;~~

~~(b) Attend 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 registered addresses, location IDs, and GPS coordinates with the department; and~~

~~(e) Agree to comply with the department's program policies as established in 302 KAR Chapter 50.~~

~~Section 8. Mandatory Orientation Session. (1) Conditionally approved applicants and multi-year licensed processor or handler shall attend an annual mandatory orientation session at a location designated by the department.~~

~~(2) The department shall require in-person attendance.~~

~~(a) The department shall not permit any person to attend a mandatory orientation session telephonically or by video.~~

~~(b) The department shall not allow any person to attend in lieu of the conditionally approved applicant or licensed processor or handler.~~

~~Section 9. Processor or Handler Licensing Fee.~~

~~(1) The licensed processor or handler fee for processing one (1) or more fiber harvests shall be the amount established in 302 KAR 50:060.~~

~~(2) The licensing fee for processing one (1) or more grain harvests shall be the amount established in 302 KAR 50:060.~~

~~(3) The Licensing fee for processing floral material (for example, CBD) shall be the amount established in 302 KAR 50:060.~~

~~(4) A licensed processor or handler that processes more than one (1) crop type (for example, fiber, grain, and CBD) shall pay the licensing fee that is required for each crop type that is applicable.~~

~~(5) A handler that does not engage in processing (for example, a seed cleaner, or laboratory) 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 execution of the processor or handler licensing agreement with a check or money order payable to the Kentucky State Treasurer.~~

~~Section 10. Seed Acquisition from a Source within the Commonwealth.~~

~~(1) A department pre-approval shall not be required for a transfer of hemp seed or propagules of any variety listed on the department's Summary of Varieties list, published at kyagr.com,~~

~~excluding prohibited varieties, between Kentucky licensed growers and licensed processor or handler within the Commonwealth of Kentucky.~~

~~(2) A licensed grower or licensed processor or handler shall not buy, sell, possess, or transfer hemp seeds or propagules to or from any person in the Commonwealth without first verifying that the person is licensed by the department.~~

~~(3) A licensed grower or licensed processor or handler shall obtain written approval from the department to change the name of any variety in the department's program.~~

~~(4) Upon request from a representative of the department, a licensed grower or licensed processor or handler shall provide a distribution list showing locations where and to whom hemp seeds or propagules were distributed.~~

~~Section 11. Seed Acquisition from a Source in a U.S. territory, Tribal Land, or State Other than the Commonwealth of Kentucky.~~

~~(1) A person shall not acquire seeds or propagules from a source in a U.S. territory, tribal land, or state other than the Commonwealth of Kentucky without first:~~

~~(a) Submitting a complete Domestic Seed/Propagule Request form and all required attachments, and~~

~~(b) Obtaining written approval of the Domestic Seed/Propagule Request from a representative of the department.~~

~~(2) The department shall not approve a Domestic Seed/Propagule Request unless the Domestic Seed/Propagule Request form states in writing that the requested seed acquisition plan shall not infringe on the intellectual property rights of any person.~~

~~(3) A person submitting a Domestic Seed/Propagule Request form shall submit to the department THC test results showing that floral material sampled from mature plants grown from that seed or propagule variety or strain has a delta-9-THC content of not more than 3,000 ppm on a dry weight basis from an independent third-party laboratory.~~

~~(4) A person submitting a Domestic Seed/Propagule Request form shall submit to the department documentation verifying the seed or propagule source as a current legal hemp operation in the state of origin.~~

~~(5) A person acquiring seeds or propagules from a source outside the Commonwealth shall arrange for the seeds or propagules to arrive at the department's facility at 105 Corporate Drive, Frankfort, Kentucky 40601, for inventory and distribution.~~

~~(6) Upon request from a representative of the department, a Domestic Seed/Propagule Request form shall provide a distribution list showing locations where and to whom the hemp seeds were distributed following inventory at the department's facility.~~

~~Section 12. Seed Acquisition From a Source Outside the United States.~~

~~(1) A person seeking to obtain seeds from an international source shall submit a complete International Seed Request form, incorporated by reference in 302-KAR 50:080, to the department.~~

~~(a) If approved, the department shall request the DEA Permit to Import under the department's DEA registration.~~

~~(b) A person shall not acquire seeds from a source outside the United States unless the Department first obtains a permit to import from the DEA.~~

~~(2) A person shall not acquire propagules other than seeds from outside the United States.~~

~~(3) The department shall not approve an International Seed Request form for any purpose other than seeds for planting in Kentucky. All licensed growers intending to plant the requested seed shall be listed on the request form.~~

~~(4) The department shall not approve an International Seed Request form unless the licensed processor affirms in writing that the licensed processor's planned activities shall not infringe on the intellectual property rights of any person.~~

~~(5) A person submitting an International Seed Request form shall submit to the department documentation showing that mature plants grown from that seed variety have a floral material delta-9 THC content of not more than 3,000 ppm on a dry weight basis.~~

~~(6) A person acquiring seeds or propagules from a source outside the United States shall arrange for the seeds or propagules to arrive at the department's facility at 105 Corporate Drive, Frankfort, Kentucky 40601, for inventory and distribution.~~

~~(7) Upon request from a representative of the department, a licensed processor or handler shall provide a distribution list showing locations where and to whom the imported hemp seeds were distributed following inventory at the department's facility.~~

~~Section 13. 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 14. 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 registered site location information, including GPS coordinates.~~

~~(2) Licensed processors or handler 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 licensing agreement.~~

~~(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 licensing agreement, with or without cause, and with or without advance notice.~~

~~Section 15. Collection and Retention of Cannabis Samples.~~

(1) The department shall have the authority to collect and retain samples of hemp or other cannabis, and products derived from all 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 16. 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 (but within the United States) who is not authorized by a university or state department of agriculture under the authority of 7 U.S.C. 5940 and the laws of that state. The licensed processor or handler shall be responsible for insuring that such sale or transfer is lawful in other states.

(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 product's 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 or results for at least three (3) years demonstrating that the product's delta-9-THC level is not more than zero and three-tenths (0.3) percent.

(5) The department shall permit a licensed processor or handler to transfer up to one (1) pound of hemp per transfer to testing laboratories, both within and outside the Commonwealth, for the purpose of measuring THC, CBD or other phytocannabinoid profile levels. It shall be the responsibility of the licensed processor or handler to ensure compliance with laws with other states.

(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) A licensed processor or handler shall not knowingly permit hemp to be sold to or used by any person involved in the manufacture of an item named on the prohibited products list in 302 KAR 50:070.

Section 17. Other Prohibited Activities.

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

(2) A person shall not ship or transport, or allow to be shipped or transported, live hemp plants, cuttings for planting, or viable seeds from a variety that is currently designated by the department

~~as a prohibited variety or variety of concern to any location outside the Commonwealth of Kentucky.~~

~~(3) A person shall not ship or transport, or allow to be shipped or transported, any hemp product with a delta-9-THC concentration in excess of zero and three-tenths (0.3) percent.~~

~~(4) A licensed processor or handler shall not transport live hemp plants, viable seeds, leaf materials, or floral materials to unapproved locations including trade shows, county fairs, educational or other events, or any other address not listed on the licensed processor or handler current processor or handler licensing agreement or within another research program.~~

~~(5) A licensed processor or handler shall not allow unsupervised public access to hemp plots, including activities such as a hemp maze.~~

~~(6) A person shall not possess live hemp or other cannabis plants without a grower licensing agreement.~~

~~Section 18. Required Reports.~~

~~(1) A licensed processor or handler shall submit a completed Production Report annually.~~

~~(2) A licensed processor or handler failure to submit an accurate and complete report that is required by subsection (1) of this administrative regulation on or before the deadline established by the department shall constitute grounds for the department to terminate the processor or handler licensing agreement and deny future applications for licensure.~~

~~Section 19. 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 in connection with the program 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, and email addresses shall be shielded by the department to the maximum extent permitted by law.~~

~~Section 20. Immediate License Suspension.~~

~~(1) The department shall immediately revoke a license, without an opportunity for a hearing, if the licensed person pleads guilty to, or is convicted of, any felony or drug-related misdemeanor or violation.~~

~~(2) The department shall immediately revoke a license, without an opportunity for a hearing, if the licensed person or his or her agent admits to having:~~

~~(a) Violated any provision of KRS 260.850 through 260.869 or 302 KAR Chapter 50;~~

~~(b) Made any false statement to the department or its representative; or~~

~~(c) Failed to comply with any instruction or order from the department, a representative of the Kentucky State Police, or any law enforcement officer.~~

~~Section 21. Temporary License Suspension Procedures.~~

~~(1) The department shall notify a licensed processor or handler in writing that the processor or handler licensing agreement has been temporarily suspended if a representative of the department receives information supporting an allegation that a licensed processor or handler has:~~

~~(a) Engaged in conduct violating a provision of this administrative regulation, KRS 260.850 through 260.869, or the processor or handler licensing agreement;~~

~~(b) Made a false statement to a representative of the department or a law enforcement agency;~~

~~(c) Been found to be in possession of cannabis with a measured delta-9-THC concentration at or above 30,000 ppm (3 percent); or~~

~~(d) Failed to comply with an order from a representative of the department or a law enforcement agency.~~

~~(2) A person whose processor or handler licensing agreement 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.~~

~~(3) As soon as possible after the notification of temporary suspension, a representative of the department shall inspect the licensed processor or handler premises and perform an inventory of all cannabis, hemp, and hemp products that are in the licensed processor or handler possession.~~

~~(4) 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.~~

~~Section 22. License Revocation Hearings and Consequences of Revocation.~~

~~(1) The department shall notify a person whose processor or handler licensing agreement 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 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 Kentucky hemp projects.~~

~~(3) License revocation hearings shall be open to the public.~~

~~(4) A person whose processor or handler licensing agreement 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 or handler licensing agreement.~~

~~(5) A representative of the department shall be allowed an opportunity to present information and arguments for revoking the processor or handler licensing agreement.~~

~~(6) A person whose processor or handler licensing agreement has been temporarily suspended shall be allowed an opportunity to present information and arguments against revoking the processor or handler licensing agreement.~~

~~(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 21(1) of this administrative regulation or violated any provision of the processor or handler licensing agreement, then the processor or handler licensing agreement shall be revoked effective immediately.~~

~~(9) If a majority of the members of the administrative panel vote against revoking the processor or handler licensing agreement, 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 or handler licensing agreement, 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) A person whose processor or handler licensing agreement has been revoked shall be barred from participation in the hemp research pilot program in any capacity for a minimum period of five (5) years.~~

~~Section 23. 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 this administrative regulation, KRS 260.850 through 260.869, or the processor or handler licensing agreement, 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 Industrial Hemp Research Pilot 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.]

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

Ryan F. Quarles
Commissioner



Corporate Drive
Complex
Frankfort, KY 40601
(502) 573-0282

Kentucky Department of Agriculture

July 9, 2020

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601



Re: 302 KAR 50:030. Policies and procedures for hemp processors and handlers.
302 KAR 50:055. Sampling and THC testing; post-testing actions; disposal of noncompliant harvests.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 302 KAR 50:030 and 302 KAR 50:055, the Kentucky Department of Agriculture proposes the attached amendments to 302 KAR 50:030 and 302 KAR 50:055.

Sincerely,

A handwritten signature in black ink, appearing to read "Clint Quarles".

Clint Quarles
Staff Attorney
Kentucky Department of Agriculture
107 Corporate Drive
Frankfort, KY 40601



Subcommittee Substitute

7/9/2020

**DEPARTMENT OF AGRICULTURE
Office of the Consumer and Environmental Protection
(New Administrative Regulation)**

302 KAR 50:055. Sampling and THC testing; post-testing actions; disposal of noncompliant harvests.

RELATES TO: KRS Chapter 217B, 260.850-260.869[.]

STATUTORY AUTHORITY: KRS 260.862[.]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)[~~(a)~~] authorizes the department to promulgate administrative regulations for a Hemp Licensing Program in the Commonwealth of Kentucky. KRS 260.862(1)[~~(a)~~]~~(e)~~ authorizes the department to license persons who wish to participate in a Hemp Licensing Program by cultivating, handling, processing, or marketing hemp. This administrative regulation establishes procedures and requirements for sampling and THC testing, and establishes procedures for the movement or disposal of hemp following the completion of THC testing.

Section 1. Definitions. (1) "Acceptable Hemp THC Level" means the application of the Measurement of Uncertainty to the reported [~~(f)~~decarboxylated~~(j)~~] delta-9-THC concentration level on a dry weight basis to the 0.300 **percent[%]** limit set forth in federal [~~law~~] and state law. For 2020, the Acceptable Hemp THC Level shall be 0.3999 **percent[%]**.

(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, [~~(f)~~the primary intoxicating component of cannabis~~(j)~~]. For compliance purposes, all delta-9-THC concentrations ***shall [must]*** be measured post-decarboxylation or by another method ***that includes [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 percent~~[%]~~.

(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 this administrative regulation, and that [302 KAR 50:055.] the entire lot's harvest, whether intact plants, flowers, or ground material, 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 this administrative regulation [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) Hemp plants [No hemp plant] shall not be harvested from any lot before a department inspector completes an inspection and sample-collection visit.

(2) A [The] licensed grower shall submit to the department a completed Harvest/Destruction Report form at least fifteen (15) [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:

(a) All hemp and other cannabis plants, whether growing or harvested;

(b) All land, buildings, and other structures used for the cultivation or [and] storage of hemp or [and] other cannabis plants; and

(c) 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 fifteen (15) [15] days following the date of the inspection and sample-collection visit, unless specifically authorized in writing by the department; provided, however, the [that such] authorization shall

not exceed an additional **five (5) [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 **as** established in 302 KAR 50:060.

(9) **Until the department releases the material in writing, floral material shall not:**

(a) Be moved outside the Commonwealth;

(b) Be moved beyond a processor;

(c) Be commingled;

(d) Be extracted;

(e) Be converted into a consumer-ready product; or

(f) Enter commerce~~**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 **(5)** plants that appear to be representative of the composition of the lot, and **shall not select**~~**avoiding selecting**~~ plants that are close to the perimeter of the lot.

(4) From each individual plant selected for sampling, the inspector shall cut the highest **twenty (20) [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 **(4)** digits of the Grower License number;**[;]**

(b) The date, in MMDDYY format; and

(c) A two **(2)****[-]**digit sample number assigned by the inspector.

(d) Example: For Grower License 21_1234, with a sample collected on October 15, 2020, from the third lot sampled by the inspector on that date, the Sample ID is 1234-101520-03.

(7) The inspector shall complete the [“]Inspection and Sample Collection Form[”] by entering 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) ***Pursuant to KRS 250.355***, THC testing shall be completed by the department’s designated THC testing lab. [“] The department’s primary designated THC testing lab is UK DRS; ***however, [–as mandated in KRS 250.355.]*** the department ***may designate other laboratories for THC testing but*** 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, incorporated by reference in this administrative regulation”]***.

(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, incorporated by reference in this administrative regulation”]***.

(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) A [No] person shall not 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 ***sixty (60) [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 percent[%] delta-9 THC on a dry-weight basis[”]***, ***as*** 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 **and [(i.e.,)]** conforming to the legal definition of hemp~~]~~.

(4) A sample from a lot with a measured THC concentration exceeding the Acceptable Hemp THC Level shall be deemed non-compliant.

(5) Within **seven (7) [7]** days of receiving notice of a measured THC concentration that exceeds the Acceptable Hemp THC Level but is less than 1.000 **percent[%]**, the Licensed Grower **may request a post-harvest re-test, in accordance with the procedures set forth in Section 6 of this administrative regulation, or shall [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 **be** in an amount **as** established in 302 KAR 50:060.

(7) Samples with a measured THC concentration of 1.000 **percent[%]** 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 **shall [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; ~~[(f)]~~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 **the [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:

1. [(i)] Ensure that the entire harvest is accounted for and in the same **intact-plant** form ~~[(i.e., intact plants)]~~.

2. [(ii)] Clip the top **twenty (20) [20]** cm of hemp plant, primary stem, including female floral material, without removing seed, stem, or other material.

3. [(iii)] Take cuttings from at least five (5) hemp plants within the harvest's storage **or [✓]** drying area at the discretion of the inspector.

4. [(iv)] Place the complete sample in a paper bag.

5. [(v)] Seal the paper bag by folding over **its** top once and stapling to keep closed.

(b) For ground plant or ground floral material Post-Harvest Samples:

1. [(i)] Ensure that the entire harvest is accounted for and in the same **ground plant or ground floral material** form **with no intact plant or whole flowers remaining from the harvest [(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)]**.

2. [(ii)] Sample material from bag or container without removing seed, stem, or other material.

3. [(iii)] Sample from a minimum of five **(5)** locations within the containers from at least one **(1)** cup of material from the lot.

4. [(iv)] Place the complete sample in a plastic sample container.

5. [(v)] Seal the plastic sample container.

(c) For Post-Harvest Samples in other forms; **for example, [(i.e.,]** trimmed floral material_; or floral material and stems):

1. [(i)] Ensure that the entire harvest is accounted for and in the same **ground whole plant or ground floral material** form **with no intact plant or whole flowers remaining from the harvest [(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)]**.

2. [(ii)] Sample material from bag or container without removing seed, stem, or other material.

3. [(iii)] Sample from a minimum of five **(5)** locations within the containers from at least one **(1)** cup of material from the lot.

4. [(iv)] Place the complete sample in a plastic sample container.

5. [(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 **(4)** digits of the Grower License number_;

(b) The date, in MMDDYY format; and

(c) A two **(2)** [-]digit sample number assigned by the inspector.

(d) Example: For Grower License 21_1234, with a sample collected on October 15, 2020, from the third lot sampled by the inspector on that date, the Sample ID 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 **(1)** of the procedures set forth in this Section ~~[of this administrative regulation]~~. The costs of disposal, if any ~~[are incurred by the department]~~, shall be charged to the license holder.

(2) Disposal by on-site destruction with department supervision. Without removing the harvested material from the license holder's premises, ~~[(f) or other licensed premises where the harvested material is located]~~, a department employee shall **[personally]** observe the harvested material's destruction, **which shall consist [(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 **by plowing or disking;** 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, ~~[(f) 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, ~~and[:]~~ at the premises of the license holder ~~[(f) 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, ~~and[:]~~ 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, **which shall consist [(i.e., the act)]** of rendering it into a useless and non-retrievable state ~~[using one of these methods]:~~

1. [(f)] By grinding it up and incorporating it ~~[(by plowing or disking) it]~~ into the soil **by plowing or disking;** or

2. [(b)] By controlled incineration.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

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

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

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

Ryan F. Quarles
Commissioner

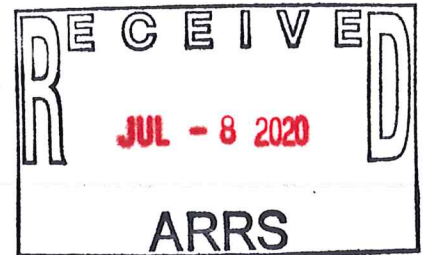


Corporate Drive
Complex
Frankfort, KY 40601
(502) 573-0282

Kentucky Department of Agriculture

July 8, 2020

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601



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

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 302 KAR 50:060 the Kentucky Department of Agriculture proposes the attached amendments to 302 KAR 50:060.

Sincerely,

A handwritten signature in black ink, appearing to read "Clint Quarles".

Clint Quarles
Staff Attorney
Kentucky Department of Agriculture
107 Corporate Drive
Frankfort, KY 40601



**Suggested Amendment
GENERAL GOVERNMENT CABINET
Department of Agriculture
Office of the Consumer and Environmental Protection**

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

Page 1

NECESSITY, FUNCTION, AND CONFORMITY

Line 10

After "Kentucky", insert ", and".

Delete ". KRS 260.862(1)(c)".

Lines 11-12

After "KRS 260.862(1)", insert "(e)".

Delete "(g)".

Lines 13-14

After "schedule of fees for", insert "applicants and licensees".

Delete the following:

the department's industrial hemp research pilot program

Page 1

Section 1

Line 15

After "of Fees for", insert "Hemp".

Page 1

Section 1(1)

Line 16

After "established in", insert "302 KAR 50:020".

Delete "302 KAR 50:021".

Page 2

Section 1(4)

Line 2

After "three", insert "(3)".

Page 2

Section 2

Line 9

After "of Fees for", insert "Hemp".

Page 2

Section 2(1)

Line 10

After "established in", insert "302 KAR 50:030".
Delete "302 KAR 50:031".



JUSTICE AND PUBLIC SAFETY CABINET

Andy Beshear
Governor

Department of Juvenile Justice
1025 Capital Center Drive, 3rd Floor
Frankfort, Kentucky 40601-8205
Phone (502) 573-2738
Fax (502) 573-4308
www.kentucky.gov

Justice Mary C. Noble, Ret.
Secretary

LaShana M. Harris
Commissioner

July 6, 2020

Ms. Emily Caudill,
Regulations Compiler
Legislative Research Commission
029, Capitol Annex
702 Capitol Avenue
Frankfort, Kentucky 40601

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by **505 KAR 1:120**, the Department of Juvenile Justice proposes the attached Suggested Substitute.

Sincerely,

A handwritten signature in black ink that reads "Jeffrey Belt".

Jeffrey Belt, Justice Program Administrator
Department of Juvenile Justice
1025 Capital Center Drive
Frankfort, Kentucky 40601

SUGGESTED SUBSTITUTE

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice**

505 KAR 1:120. Department of Juvenile Justice Policies and Procedures Manual: Health and Safety Services.

RELATES TO: KRS 15A.065, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095 and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The "Department of Juvenile Justice Policy and Procedures Manual: Health and Safety Services", July 13~~April 15~~, 2020 [~~August 14, 2018~~], is incorporated by reference and includes the following:

400	Health Services Definitions (Amended <u>07/13/20</u> 04/15/20) [03/30/18])
400.1	Health Services (Amended <u>04/15/20</u> 03/30/18)
401	Health Services Administration and Personnel (Amended 03/30/18)
402	Access to Treatment and Continuity of Care (Amended <u>04/15/20</u> 07/10/2018)
402.1	Continuity of Care and Medical Discharge (Amended <u>04/15/20</u> 03/30/18)
403	Medical Records (Amended <u>04/15/20</u> 03/30/18)
404.1	Admission Screening for Physical and Behavioral Health Challenges (Amended <u>07/13/20</u> 04/15/20) [3/30/18])
404.2	Ectoparasite Control (Amended 03/30/18)
404.3	Health Assessment and Physical Examination (Amended 03/30/18)

404.4	Sick Call (Amended 03/30/18)
404.5	Access to Diagnostic Services (Amended 03/30/18)
404.6	Emergency Medical Services (Amended 03/30/18)
404.7	First Aid, AED, and First Aid Kits (Amended 03/30/18)
404.8	Hospital Care (Amended 03/30/18)
404.10	Special Needs Treatment Plans (Amended 03/30/18)
404.11	Perinatal Care (Amended 03/30/18)
404.12	Oral Screening and Oral Care (Amended 03/30/18)
404.13	Preventative Health Care (Amended 03/30/18)
404.14	Family Planning Services (Amended 03/30/18)
405	Behavioral Health Services Administration and Personnel (Amended <u>07/13/20[04/15/20]</u> [07/10/18])
405.1	Behavioral Health Screening and Evaluation (Amended <u>04/15/20[07/10/18]</u>)
405.2	Forced Psychotropic Medications (Amended 07/10/18)
405.3	Referral for Behavioral Health Services (Amended <u>07/13/20[04/15/20]</u> [07/10/18])
405.4	Suicide Prevention and Intervention (Amended <u>07/13/20[04/15/20]</u> [03/30/18])
405.5	Behavioral Health Emergencies (Amended <u>04/15/20[07/10/18]</u>)
405.6	Psychiatric Hospitalization (Amended <u>07/13/20[04/15/20]</u> [03/30/18])
406	Therapeutic Restraints (Amended 03/30/18)
407	Pharmaceuticals (Amended 03/30/18)
408.1	Forensic Information (Amended 03/30/18)
409	Substance Abuse and Chemical Dependency (Amended 03/30/18)

410	Orthoses, Prostheses, and Other Aids to Reduce the Effects of Impairment (Amended 08/14/18)
411	Notification in Emergencies (Amended 03/30/18)
414	Environmental Health and Safety (Amended 03/30/18)
415	Occupational Exposure to Bloodborne Pathogens (Amended 03/30/18)
416	HIV/AIDS/STI (Amended 03/30/18)
416.1	Infectious Communicable Disease (Amended 03/30/18)
424	Emergency Plans (Amended 03/30/18)
424.1	Emergency Plans for Central Office (Amended 03/30/18)
426	Dietary Services (Amended 03/30/18)
427	Maintenance (Amended 03/30/18)
427.1	Control and Use of Tools and Sharps (Amended 03/30/18)
428	Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials (Amended 03/30/18)
428.1	Control of Hazardous Materials in Central Office (Amended 03/30/18)
430	Pets and Domestic Animals (Amended 03/30/18)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

LASHANA M. HARRIS, Commissioner

APPROVED BY AGENCY: April 14, 2020

FILED WITH LRC: April 15, 2020 at 9 a.m.

CONTACT PERSON: William Codell, Assistant General Counsel, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836, email William.Codell@ky.gov.

CHANGES TO MATERIAL INCORPORATED BY REFERENCE:

DJJ 400

Page 3, III.S.: Renumber as subsection "R.". Renumbering remaining subsections.

Page 5, III.LL.: After "family therapist", insert a comma.

Page 5, III.NN.: Move term to be in alphabetical order and renumber.

DJJ 404.1

Page 4, IV.F.: After "(Referral for", insert "Behavioral". Delete "Mental".

DJJ 405

Page 1, IV.A.1.: After "designees", insert a semicolon. Delete the period.

Page 2, IV.A.2.: After "designee", insert a semicolon. Delete the period.

Page 4, IV.F.4.: After "sources", insert a semicolon. Delete the period.

DJJ 405.3

Page 1, SUBJECT BOX: After "Behavioral", delete "Mental".

DJJ 405.4

Page 3, IV.F.2.d.: After "d.", delete "Same sex".

Page 3, IV.F.2.e.: After "Any staff", insert "may". Delete "can".

DJJ 405.6

Page 2, IV.I.: Renumber as "H". Renumber remaining subsections.

Andy Beshear
Governor



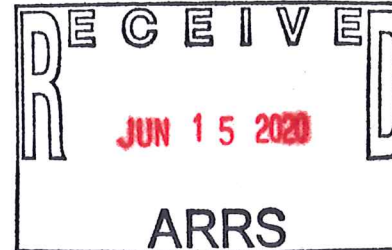
Lt. Gov. Jacqueline Coleman
Secretary
Education and Workforce
Development Cabinet

Kevin C. Brown
Interim Commissioner of Education

KENTUCKY DEPARTMENT OF EDUCATION

300 Sower Boulevard • Frankfort, Kentucky 40601
Phone: (502) 564-3141 • www.education.ky.gov

June 15, 2020



Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: 702 KAR 6:040. Personnel; policies and procedures

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 702 KAR 6:040, the Kentucky Board of Education proposes the attached amendment to 702 KAR 6:040.

Sincerely,

A handwritten signature in cursive script that reads "Todd G. Allen".

Todd G. Allen
Interim General Counsel
502-564-4474

Staff-suggested Amendment

**Final Version 6/15/2020 11:16 a.m.
EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education**

702 KAR 6:040. Personnel; policies and procedures.

Page 1

STATUTORY AUTHORITY paragraph

Line 7

After "AUTHORITY: KRS", insert "156.010".



KENTUCKY LABOR CABINET
Department of Workplace Standards

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 696-1984

Andy Beshear
Governor

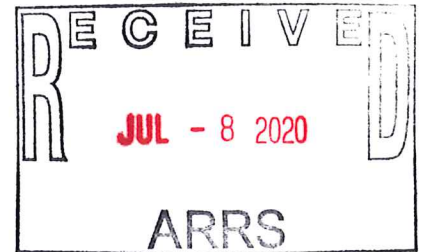
Jacqueline Coleman
Lieutenant Governor

Larry L. Roberts
Secretary

Kimberlee C. Perry
Commissioner

July 7, 2020

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601



Re: **803 KAR 2:301**. Adoption and Extension of federal standards.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:301, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:301.

Sincerely,

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

Suggested Amendment

Final Version: 7/2/2020 1:37 PM

**LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training**

803 KAR 2:301. ~~[Adoption and extension of established]~~ Federal standards for general industry.

Page 1

TITLE

Line 6

After "803 KAR 2:301.", delete the following:
Adoption and extension of established
Capitalize the first letter of "federal".
After "standards", insert "for general industry".

Page 2

Section 1(3)

Line 1

After "(3) "Standard", insert the following:
means "occupational safety and health standard" as defined by
Delete "is defined in".



KENTUCKY LABOR CABINET
Department of Workplace Standards

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 696-1984

Andy Beshear
Governor

Jacqueline Coleman
Lieutenant Governor

Larry L. Roberts
Secretary

Kimberlee C. Perry
Commissioner

July 7, 2020

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601



Re: 803 KAR 2:304. Exit routes and emergency planning.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:304, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:304.

Sincerely,

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

Suggested Amendment

Final Version: 7/2/2020 2:42 PM

**LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training**

803 KAR 2:304. Exit routes and emergency planning.

Page 1

Section 1(1)

Line 17

After ""Employee" is defined", insert "by".
Delete "in".

Page 1

Section 1(2)

Line 18

After ""Employer", is defined", insert "by".
Delete in".

Page 2

Section 1(5)

Line 1

After "(5) "Standard", insert the following:
means "occupational safety and health standard" as defined by
Delete "is defined in".

Page 2

Section 2

Line 4

After "and Records Administration", insert a comma.
Delete the semicolon.



KENTUCKY LABOR CABINET
Department of Workplace Standards

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 696-1984

Andy Beshear
Governor

Jacqueline Coleman
Lieutenant Governor

Larry L. Roberts
Secretary

Kimberlee C. Perry
Commissioner

July 7, 2020

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601



Re: 803 KAR 2:311. Fire protection.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:311, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:311.

Sincerely,

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

Suggested Amendment

Final Version: 7/2/2020 3:00 PM

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training

803 KAR 2:311. Fire protection.

Page 1

Section 1(2)

Line 19

After ""Employee" is defined", insert "by".

Delete "in".

Page 1

Section 1(3)

Line 20

After ""Employer", is defined", insert "by".

Delete in".

Page 2

Section 1(5)

Line 3

After "(5) "Standard", insert the following:

means "occupational safety and health standard" as defined by

Delete "is defined in".



KENTUCKY LABOR CABINET
Department of Workplace Standards

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 696-1984

Andy Beshear
Governor

Jacqueline Coleman
Lieutenant Governor

Larry L. Roberts
Secretary

Kimberlee C. Perry
Commissioner

July 7, 2020

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601



Re: **803 KAR 2:312**. Compressed gas and compressed air equipment.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:312, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:312.

Sincerely,

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

Suggested Amendment

Final Version: 7/7/2020 9:41 AM

**LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training**

803 KAR 2:312. Compressed gas and compressed air equipment.

Page 2

Section 1(3)

Line 2

After ""Employee" is defined", insert "by".
Delete "in".

Page 2

Section 1(4)

Line 4

After ""Employer", is defined", insert "by".
Delete in".

Page 2

Section 1(6)

Line 8

After "standard" as defined", insert "by".
Delete "in".

Page 2

Section 1(7)

After "(7) "Standard", insert the following:
means "occupational safety and health standard" as defined by
Delete "is defined in".

Page 3

Section 3

Lines 15 Through 17

Delete Section 3 in its entirety.



KENTUCKY LABOR CABINET
Department of Workplace Standards

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 696-1984

Andy Beshear
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Jacqueline Coleman
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July 7, 2020

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601



Re: 803 KAR 2:315. Hand and portable powered tools and other hand-held equipment.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:315, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:315.

Sincerely,

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

Suggested Amendment

Final Version: 7/2/2020 3:25 PM

**LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training**

803 KAR 2:315. Hand and portable powered tools and other hand-held equipment.

Page 1

NECESSITY, FUNCTION, AND CONFORMITY

Line 14

After "29 C.F.R. 1910.241", insert "through".

Delete "to".

Page 2

Section 1(5)

Line 3

After ""Employer" is defined", insert "by".

Delete "in".

Page 2

Section 1(6)

Line 4

After "(6) "Standard", insert the following:

means "occupational safety and health standard" as defined by

Delete "is defined in".



KENTUCKY LABOR CABINET
Department of Workplace Standards

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 696-1984

Andy Beshear
Governor

Jacqueline Coleman
Lieutenant Governor

Larry L. Roberts
Secretary

Kimberlee C. Perry
Commissioner

July 7, 2020

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601



Re: 803 KAR 2:316. Welding, cutting, and brazing.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:316, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:316.

Sincerely,

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

Suggested Amendment

Final Version: 7/2/2020 3:34 PM

**LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training**

803 KAR 2:316. Welding, cutting, and brazing.

Page 2

Section 1(4)

Line 3

After ""Employee" is defined", insert "by".
Delete "in".

Page 2

Section 1(5)

Line 3

After "(5) "Employer" is defined", insert "by".
Delete "in".

Page 2

Section 1(6)

Line 4

After "(6) "Standard", insert the following:
means "occupational safety and health standard" as defined by
Delete "is defined in".

Page 2

Section 2

Line 8

After "comply with the", delete "following".

Page 2

Sections 2 and 2(1)

Lines 9 and 10

After "General Services Administration", insert a comma.
Delete ": (1)".



KENTUCKY LABOR CABINET
Department of Workplace Standards

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 696-1984

Andy Beshear
Governor

Jacqueline Coleman
Lieutenant Governor

Larry L. Roberts
Secretary

Kimberlee C. Perry
Commissioner

July 7, 2020

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601



Re: 803 KAR 2:319. Commercial diving operations.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:319, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:319.

Sincerely,

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

Suggested Amendment

Final Version: 7/7/2020 11:15 AM

**LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training**

803 KAR 2:319. Commercial diving operations.

Page 1

Section 1(2)

Line 21

After ""Employee" is defined", insert "by".
Delete "in".

Page 2

Section 1(3)

Line 1

After "(3) "Employer" is defined", insert "by".
Delete "in".

Page 2

Section 1(4)

Line 2

After "(4) "Standard", insert the following:
means "occupational safety and health standard" as defined by
Delete "is defined in".

Page 2

Section 2

Line 4

After "comply with the", delete "following".

Lines 5 and 6

After "and Records Administration", insert a comma.
Delete the semicolon.

Page 2

Section 3

Lines 10 Through 13

Delete Section 3 in its entirety.



ANDY BESHEAR
GOVERNOR

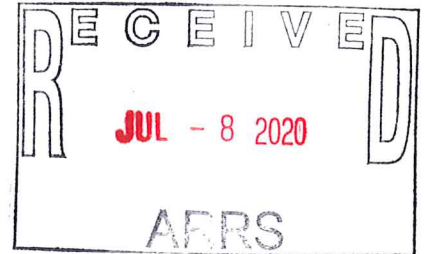
JONATHAN RABINOWITZ
CHAIRMAN

KERRY B. HARVEY
SECRETARY

MARC A. GUILFOIL
EXECUTIVE DIRECTOR

PUBLIC PROTECTION CABINET
KENTUCKY HORSE RACING COMMISSION
ESTABLISHED 1906
4063 IRON WORKS PKWY., BLDG. B
LEXINGTON, KENTUCKY 40511
TELEPHONE: (859) 246-2040 FAX: (859) 246-2039
WEBSITE: [HTTP://KHRC.KY.GOV](http://KHRC.KY.GOV)

July 7, 2020



VIA ELECTRONIC MAIL

Ms. Emily Caudill, Regulations Compiler
Legislative Research Commission
029, Capitol Annex
702 Capitol Avenue
Frankfort, KY 40601

Re: 810 KAR 2:090, Temporary unsuitability of licensed premises

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 810 KAR 2:090, the Kentucky Horse Racing Commission proposes the attached suggested substitute to 810 KAR 2:090.

Sincerely,

Jennifer Wolsing
General Counsel

Version: 7/7/20

SUGGESTED SUBSTITUTE

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission**

810 KAR 2:090. Temporary unsuitability of licensed premises.

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.215(2), 230.225(5), 230.260(8), 230.361(1), 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) ~~authorizes~~**[grants]** the Kentucky Horse Racing Commission ~~[the authority]~~ to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. KRS 230.260(8) ~~authorizes~~**[grants]** the commission ~~[the authority]~~ to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state. This administrative regulation **establishes procedures for use of an off-site facility if a racing association's licensed premises becomes**~~[addresses problems arising from a premises being rendered]~~ temporarily unsuitable for its intended use.

Section 1. If any Kentucky racing association's licensed premises is temporarily rendered unsuitable for its intended use, an association may, with commission **authorization pursuant to KRS 230.300(11)**~~[approval]~~, occupy an alternate facility during the period that its licensed premises is temporarily unsuitable, ~~if~~**[provided that]** the alternate facility meets the following conditions:

(1) The alternate facility ~~shall~~**[must]** be within a sixty (60) mile radius of ~~the~~**[such]** racing association's track but not contiguous to track premises; and

(2) The alternate facility ~~shall~~**[must]** not be within a sixty (60) mile radius of another racing association's licensed premises where live racing is conducted and ~~shall~~**[must]** not be within a forty (40) mile radius of a simulcast facility, unless any affected track or simulcast facility agrees in writing to permit a noncontiguous facility within the protected geographic area.

MARC A. GUILFOIL, Executive Director

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: March 19, 2020

FILED WITH LRC: March 20, 2020 at 11 a.m.

CONTACT PERSON: Jennifer Wolsing, General Counsel, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone +1 (859) 246-2040, fax +1 (859) 246-2039, email jennifer.wolsing@ky.gov.



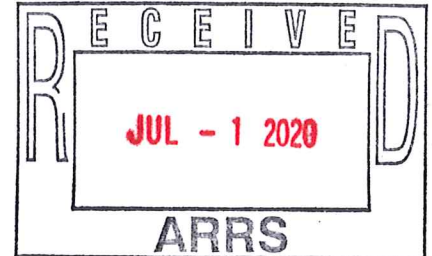
ANDY BESHEAR
GOVERNOR

JONATHAN RABINOWITZ
CHAIRMAN

KERRY B. HARVEY
SECRETARY

MARC A. GUILFOIL
EXECUTIVE DIRECTOR

PUBLIC PROTECTION CABINET
KENTUCKY HORSE RACING COMMISSION
ESTABLISHED 1906
4063 IRON WORKS PKWY., BLDG. B
LEXINGTON, KENTUCKY 40511
TELEPHONE: (859) 246-2040 FAX: (859) 246-2039
WEBSITE: [HTTP://KHRC.KY.GOV](http://KHRC.KY.GOV)



July 1, 2020

VIA ELECTRONIC MAIL

Ms. Emily Caudill, Regulations Compiler
Legislative Research Commission
029, Capitol Annex
702 Capitol Avenue
Frankfort, Kentucky 40601

Re: **810 KAR 8:010**. Medication; Testing Procedures; Prohibited Practices.

Dear Ms. Caudill:

After further internal review relating to 810 KAR 8:010, the Kentucky Horse Racing Commission proposes the attached agency amendment to 810 KAR 8:010.

If you have any questions, please feel free to contact me at (859) 246-2040 or by email at jennifer.wolsing@ky.gov.

Sincerely,

Jennifer Wolsing
General Counsel

07/01/2020

Agency Amendment

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission

810 KAR 8:010. Medication; Testing Procedures; Prohibited Practices.

Page 3

Section 2(4)

Line 17

After "paragraphs (a)" delete "and (b)" and insert ", (b), and (c)"

Page 4

Section 2(4)

Line 3

After "(b)" insert the following:

(c) Free prednisolone shall not be present in a concentration greater than ten (10) nanograms per milliliter in urine.



ANDY BESHEAR
GOVERNOR

JONATHAN RABINOWITZ
CHAIRMAN

KERRY B. HARVEY
SECRETARY

MARC A. GUILFOIL
EXECUTIVE DIRECTOR

PUBLIC PROTECTION CABINET
KENTUCKY HORSE RACING COMMISSION
ESTABLISHED 1906
4063 IRON WORKS PKWY., BLDG. B
LEXINGTON, KENTUCKY 40511
TELEPHONE: (859) 246-2040 FAX: (859) 246-2039
WEBSITE: [HTTP://KHRC.KY.GOV](http://KHRC.KY.GOV)



July 7, 2020

VIA ELECTRONIC MAIL

Ms. Emily Caudill, Regulations Compiler
Legislative Research Commission
029, Capitol Annex
702 Capitol Avenue
Frankfort, KY 40601

Re: 810 KAR 8:010. Medication; testing procedures; prohibited practices.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 810 KAR 8:010, the Kentucky Horse Racing Commission proposes the attached suggested substitute to 810 KAR 8:010.

Sincerely,

Jennifer Wolsing
General Counsel

SUGGESTED SUBSTITUTE

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission**

810 KAR 8:010. Medication; testing procedures; prohibited practices.

RELATES TO: KRS 230.215, 230.225, 230.240, 230.260, 230.265, 230.290, 230.320, 230.370

STATUTORY AUTHORITY: KRS 230.215(2), 230.225, 230.240(2), 230.260(8), 230.320, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), 230.260(8), and 230.320 authorize the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes requirements and controls in the administration of drugs, medications, and substances to horses, governs certain prohibited practices, and establishes trainer responsibilities relating to the health and fitness of horses.

Section 1. Definitions.

(1) "AAS" or "anabolic steroid" means an anabolic androgenic steroid.

(2) "Administer" means to apply to or cause the introduction of a substance into the body of a horse.

(3) "Commission laboratory" means a laboratory chosen by the commission to test biologic specimens from horses taken under the supervision of the commission veterinarian.

(4) "Location under the jurisdiction of the commission" means a licensed race track or a training center as described in KRS 230.260(5).

(5) "~~Permitted NSAIDs" means the following permitted nonsteroidal antiinflammatory drugs: phenylbutazone, flunixin, and ketoprofen, if administered in compliance with Section 8 of this administrative regulation.~~

(6) "~~Positive finding" means the commission laboratory has conducted testing and determined that a drug, medication, or substance, the use of which is restricted or prohibited by this administrative regulation, 810 KAR 8:020, or 810 KAR 8:040, was present in the sample.~~

(a) For the drugs, medications, or substances listed in this administrative regulation or 810 KAR 8:020 for which an established concentration level is provided, it shall be necessary to have a

finding in excess of the established concentration level as provided for the finding to be considered a positive finding.

(b) Positive finding also includes:

1. Substances present in the horse in excess of concentrations at which the substances could occur naturally; and

2. Substances foreign to a horse that cause interference with testing procedures.

~~(6)~~~~(7)~~ "Primary sample" means the primary sample portion of the biologic specimen taken under the supervision of the commission veterinarian to be tested by the commission laboratory.

~~(7)~~~~(8)~~ "Split sample" means the split sample portion of the biologic specimen taken under the supervision of the commission veterinarian to be tested by the split sample laboratory.

~~(8)~~~~(9)~~ "Split sample laboratory" means the laboratory approved by the commission to test the split sample portion of the biologic specimen from horses taken under the supervision of the commission veterinarian.

~~(9)~~~~(10)~~ "Test barn" means a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for obtaining biologic specimens for testing.

Section 2. Use of Medication.

(1) Therapeutic measures and medication necessary to improve or protect the health of a horse shall be administered to a horse in training under the direction of a licensed veterinarian.

(2) Except as expressly permitted in 810 KAR Chapter 8, while participating in a race (betting or non-betting), qualifying race, or time trial, it shall be a violation for a horse to carry in its body any drug, medication, substance, or metabolic derivative, that:

(a) Is foreign to the horse; or

(b) Might mask the presence of a prohibited drug, or obstruct testing procedures.

(3) It shall be a violation for therapeutic medications to be present in excess of established threshold concentrations established in this administrative regulation or in 810 KAR 8:020. The thresholds for permitted NSAIDs are established in Section 8 of this administrative regulation.

(4) Except as provided by paragraphs (a) and (b) of this subsection, it shall be a violation for a substance to be present in a horse in excess of a concentration at which the substance could occur naturally. It shall be the responsibility of the commission to prove that the substance was in excess of normal concentration levels.

(a) Gamma amino butyric acid shall not be present in a concentration greater than 110 nanograms per milliliter in serum or plasma.

(b) Cobalt shall not be present in a concentration greater than twenty-five (25) parts per billion in serum or plasma.

(5) It shall be prima facie evidence that a horse was administered and carried, while running in a race (betting or non-betting), qualifying race, or time trial, a drug, medication, substance, or metabolic derivative thereof prohibited by this section if:

(a) A biologic specimen from the horse was taken under the supervision of the commission veterinarian promptly after a horse ran in a race (betting or non-betting), qualifying race, or time trial; and

(b) The commission laboratory presents to the commission a report of a positive finding.

(6) The commission shall utilize the Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule as provided in 810 KAR 8:020, for classification of drugs, medications, and substances violating this administrative regulation. Penalties for violations of this administrative regulation shall be implemented in accordance with 810 KAR 8:030.

Section 3. Treatment Restrictions.

(1) Except as provided in Section 4 of this administrative regulation, ~~only~~~~[a person other than]~~ a veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall ~~[not]~~ administer by injection a prescription or controlled drug, medication, or other substance to a horse at a location under the jurisdiction of the commission.

(2) The only injectable substance allowed within twenty-four (24) hours prior to post time of the race in which the horse is entered shall be furosemide, as established in Section 6 of this administrative regulation.

(3) Except as provided by subsection (5) of this section, ~~only~~~~[a person other than]~~ a veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission ~~may~~~~[shall]~~ ~~[not]~~ possess a hypodermic needle, syringe, or injectable of any kind at a location under the jurisdiction of the commission.

(4) A veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall use only single-use disposable needles and syringes, and shall dispose of them in a container approved by the commission veterinarian.

(5) If a person regulated by the commission has a medical condition that makes it necessary to possess a needle and syringe at a location under the jurisdiction of the commission, the person shall request prior permission from the stewards or judges and furnish a letter from a licensed physician explaining why it is necessary for the person to possess a needle and syringe. The stewards or judges may grant approval for a person to possess and use a needle and syringe at a location under the jurisdiction of the commission, but may also establish necessary restrictions and limitations.

(6) A commission employee may accompany a veterinarian at a location under the jurisdiction of the commission and take possession of a syringe, needle, or other device used to administer a substance to a horse.

(7) Electronic therapeutic treatments, other than nebulization, shall not be administered to a horse within twenty-four (24) hours prior to post time of a race in which the horse is entered.

Section 4. Certain Permitted Substances. Liniments, antiseptics, antibiotics, ointments, leg paints, washes, and other products commonly used in the daily care of horses may be administered by a person, other than a licensed veterinarian if:

- (1) The treatment does not include any drug, medication, or substance otherwise prohibited by this administrative regulation;
- (2) The treatment is not injected; and
- (3) The person is acting under the direction of a licensed trainer or veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission.

Section 5. Anti-ulcer Medications. The following anti-ulcer medications may be administered orally, at the dosage stated in this section, up to twenty-four (24) hours prior to post time of the race in which the horse is entered:

- (1) Cimetidine (Tagamet): eight (8) to twenty (20) milligrams per kilogram;
- (2) Omeprazole (Gastrogard): two and two-tenths (2.2) grams;
- (3) Ranitidine (Zantac): eight (8) milligrams per kilogram; and
- (4) Sucralfate: two (2) to four (4) grams.

Section 6. Furosemide Use on Race Day.

(1) Furosemide may be administered, in accordance with this section, to a horse that is entered to compete in a race, qualifying race, or time trial, except as provided in subsection (6) of this section[-:

~~(2)(a) Only the commission veterinarian shall administer furosemide prior to a race, qualifying race, or time trial.~~

~~(2)(b) If the commission veterinarian is unavailable to administer~~ Furosemide shall only be administered~~[to a horse]~~ prior to a race, qualifying race, or time trial~~[-]~~ by:

(a) The commission veterinarian; or

~~(b)[shall approve]~~ A licensed veterinarian approved by the commission to perform~~[to perform the administration. The approved licensed veterinarian shall agree to comply with this administrative regulation regarding]~~ the administration if the commission veterinarian is unavailable~~[-]~~of furosemide on race day.

~~(c) If the furosemide is administered by an approved licensed veterinarian, the administering veterinarian shall provide a written report to the commission veterinarian no later than two (2) hours prior to post time of the race in which the horse receiving the furosemide is competing.~~

~~(3) Except as provided in subsection (6) of this section,~~Furosemide may be used under the circumstances established in this subsection.

~~(a) furosemide may be used if~~shall be administered;

(a) At a location under the jurisdiction of the commission where the horse is scheduled to race;~~[-]~~

(b) ~~Furosemide shall be administered~~ By a single intravenous injection, not less than four (4) hours prior to post time for the race, qualifying race, or time trial in which the horse is entered; ~~and~~;

(c) ~~In a dosage not less than 150~~~~The furosemide dosage administered shall not exceed 500~~ milligrams~~]~~ ~~and not more~~~~[nor be less]~~ than ~~500~~~~[150]~~ milligrams.

(4)~~(d)~~ The specific gravity of a post-race urine sample shall not be below one and one one-hundreths (1.010). If the specific gravity of the post-race urine sample is determined to be below one and one one-hundreths (1.010), a quantification of furosemide in serum or plasma shall be performed by the commission laboratory. If a horse fails to produce a urine specimen, the commission laboratory shall perform a quantification of furosemide in the serum or plasma sample. Concentrations above 100 nanograms of furosemide per milliliter of serum or plasma shall constitute a violation of this section.

(5)~~(4)~~ The initial cost of administering the furosemide shall be twenty (20) dollars per administration. The commission shall monitor the costs associated with administering furosemide and consult with industry representatives to determine if the cost should be lowered based on prevailing veterinarian services and supplies. The commission shall maintain records documenting the basis for its determination, and if the cost is determined to be less than twenty (20) dollars per administration, then the commission shall lower the cost accordingly. The cost shall be prominently posted in the racing office.

(6)(a) A two (2) year old or stakes horse shall not be administered any drug, medication or other substance, including furosemide, within twenty-four (24) hours of the post time of the race in which the horse is entered. Participation by the horse shall not affect the status of the participating horse on the official authorized bleeder medication list.

(b) The implementation and enforcement of the prohibition in paragraph (a) of this subsection shall begin on:

1. January 1, 2020 for all two (2) year olds; and

2. January 1, 2021 for all horses entered to run in a stakes race; including the races comprising the Breeders' Cup World Championships and the races designated as graded stakes by the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association.

(c) A concentration of furosemide greater than one and zero-tenths (1.0) ~~nanograms~~~~[nanograms]~~ per milliliter in serum in a post-race sample shall constitute a violation of this **administrative** regulation.

Section 7. Furosemide Eligibility.

(1)(a) Except as provided in **Section 6(6)**~~[subsection (6) of section 6]~~ of this administrative regulation,~~[Section 7. Furosemide Eligibility.~~

(4)~~(a)~~ a horse shall be eligible to race with furosemide if the licensed trainer or a licensed veterinarian determines that it would be in the horse's best interests to race with furosemide.

Notice that a horse eligible to receive furosemide will race with or without furosemide shall be made at the time of entry to ensure public notification, including publication in the official racing program.

(b) It shall constitute a violation of this administrative regulation if notice is made pursuant to this section that a horse will race with furosemide, and the post-race urine, serum, or plasma does not show a detectable concentration of furosemide in the post-race urine, serum, or plasma.

(2) After a horse has been determined to no longer be required to receive furosemide, the horse shall not be eligible to receive furosemide unless the licensed trainer or a licensed veterinarian determines that it would be in the horse's best interest to race with furosemide and the licensed trainer or a licensed veterinarian complies with the requirements of this section.

Section 8. Permitted Non-steroidal Anti-inflammatory Drugs (NSAIDs).

~~(1) [Nonsteroidal Antiinflammatory Drugs (NSAIDs)].~~

~~(1) One (1) of the following] NSAIDs shall [may be used by a single intravenous injection] not be administered within forty-eight (48) [less than twenty-four (24)] hours prior to post time for the race in which the horse is entered. [if] The detection [concentration] in a [the horse's specimen does not exceed the following levels when tested] post-race sample of blood of a detectable concentration of an NSAID, except as allowed by subsection (2) of this section, shall constitute a violation of this administrative regulation. The detection in a post-race sample of blood of more than one (1) of phenylbutazone, [:~~

~~(a) Phenylbutazone— not to exceed two (2.0) micrograms per milliliter of serum or plasma;~~

~~(b) Flunixin— not to exceed twenty (20) nanograms per milliliter of serum or plasma; and~~

~~(c) Ketoprofen— not to exceed two (2) nanograms per milliliter of serum or plasma.~~

~~(2) NSAIDs, including the permitted NSAIDs, shall not be administered within twenty-four (24) hours prior to post time for the race in which the horse is entered. However, as provided in 810 KAR 8:020, the recommended withdrawal guideline for] flunixin, and ketoprofen in excess of the concentrations [is thirty-two (32) hours prior to post time for the race in which the horse is entered.~~

~~(3)(a) The use of any NSAID other than the] permitted by subsection (2) of this section shall constitute a violation of this administrative regulation.~~

~~(2)(a) [NSAIDs, and the use of multiple permitted NSAIDs shall be discontinued at least forty-eight (48) hours prior to post time for the race in which the horse is entered.~~

~~(b)] A finding of phenylbutazone below a concentration of three-tenths (0.3) microgram per milliliter of serum or plasma shall not constitute a violation of this section.~~

~~(b) [(e)] A finding of flunixin below a concentration of five (5) [three (3)] nanograms per milliliter of serum or plasma shall not constitute a violation of this section.~~

~~(c) [(d)] A finding of ketoprofen below a concentration of two (2) nanograms [one (1) nanogram] per milliliter of serum or plasma shall not constitute a violation of this section.~~

Section 9. Anabolic Stéroïds.

(1) An exogenous AAS shall not be present in a horse that is racing. The detection of an exogenous AAS or metabolic derivative in a post-race sample shall constitute a violation of this administrative regulation.

(2) The detection in a post-race sample of an endogenous AAS or metabolic derivative where the concentration of the AAS or metabolic derivative exceeds naturally occurring physiological levels shall constitute a violation of this administrative regulation. The following shall be deemed to be naturally occurring physiological levels:

(a) Boldenone:

1. In male horses other than geldings, free and conjugated boldenone fifteen (15) nanograms per milliliter in urine or free boldenone twenty-five (25) picograms per milliliter in serum or plasma; and

2. In geldings and female horses, free and conjugated boldenone one (1) nanogram per milliliter in urine or free boldenone twenty-five (25) picograms per milliliter in serum or plasma.

(b) Nandrolone:

1. In geldings, free and conjugated nandrolone one (1) nanogram per milliliter in urine or free nandrolone ~~twenty-five~~[~~twenty-five~~] (25) picograms per milliliter in serum or plasma;

2. In fillies and mares, free and conjugated nandrolone one (1) nanogram per milliliter in urine or free nandrolone ~~twenty-five~~[~~twenty-five~~] (25) picograms per milliliter in serum or plasma; and

3. In male horses other than geldings, forty-five (45) nanograms per milliliter of metabolite, 5 α -estrane-3 β , 17 α -diol in urine or a ratio in urine of 5 α -estrane-3 β , 17 α -diol to 5 α -estrane-3 β , 17 α -diol of > 1:1.

(c) Testosterone:

1. In geldings, free and conjugated testosterone twenty (20) nanograms per milliliter in urine or free testosterone one hundred (100) picograms per milliliter in serum or plasma; and

2. In fillies and mares (unless in foal), free and conjugated testosterone fifty-five (55) nanograms per milliliter in urine or free testosterone one hundred (100) picograms per milliliter in serum or plasma.

(3) The gender of the horse from which a post-race biologic specimen is collected shall be identified to the commission veterinarian and the testing laboratory.

Section 10. Test Barn.

(1) A licensed association shall provide and maintain a test barn on association grounds.

(2) The test barn shall be a fenced enclosure sufficient:

(a) In size and facilities to accommodate the stabling of horses temporarily detained for the taking of biologic specimens; and

(b) In structural design to prevent entry by unauthorized persons.

(3) The test barn shall be under the supervision and control of the Chief Racing Veterinarian or his or her designee, and no access to individuals other than commission personnel shall be permitted unless with the permission of the Chief Racing Veterinarian or his or her designee. If association personnel require immediate access to the test barn due to fire or other emergency, the association shall report the access to commission officials as soon as possible after the emergency.

Section 11. Sample Collection, Testing and Reporting.

(1) Sample collection shall be done in accordance with the procedures provided in this administrative regulation, 810 KAR 8:060, and under the instructions provided by the commission veterinarian.

(2) The commission veterinarian, in consultation with the commission laboratory shall determine a minimum sample requirement which shall be uniform for each horse and which shall be separated into primary and split samples.

(3) An owner or trainer may request that a split sample be tested by a split sample laboratory approved by the commission.

(4) The cost of testing under subsection (3) of this section, including shipping, shall be borne by the owner or trainer requesting the test.

(5) (a) Stable equipment other than that necessary for washing and cooling out a horse shall not be permitted in the test barn.

(b) Buckets and water shall be furnished by the commission veterinarian.

(c) If a body brace is to be used on a horse, it shall:

1. Be supplied by the trainer; and

2. Applied only with the permission and in the presence of the commission veterinarian or his designee.

(d) A licensed veterinarian may attend to a horse in the test barn only with the permission of and in the presence of the commission veterinarian or his designee.

(6) Within five (5) business days of receipt of notification by the commission laboratory of a positive finding, the stewards and judges shall notify the owner and trainer orally or in writing of the positive finding.

(7) The stewards or judges shall conduct a hearing as soon as possible after the conclusion of an investigation of a positive finding. A person charged with a violation may request a continuance, which the stewards or the judges may grant for good cause shown.

Section 12. Storage and Shipment of Split Samples.

(1) Split samples shall be secured and made available for further testing in accordance with the procedures established in this subsection:

(a) Split samples shall be secured in the test barn in the same manner as the primary samples for shipment to the commission laboratory, as established in Section 11 of this administrative regulation, until the primary samples are packed and secured for shipment to the commission laboratory. Split samples shall then be transferred to a freezer or refrigerator at a secure location approved and chosen by the commission.

(b) A freezer or refrigerator for storage of split samples shall be equipped with a lock. The lock shall be secured to prevent access to the freezer or refrigerator at all times except as specifically provided by paragraph (c) of this subsection.

(c) A freezer or refrigerator for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of samples.

(d) A log shall be maintained by the commission veterinarian that shall be used each time a split sample freezer or refrigerator is opened to specify each person in attendance, the purpose for opening the freezer or refrigerator, identification of split samples deposited or removed, the date and time the freezer or refrigerator was opened, the time the freezer or refrigerator was closed, and verification that the lock was secured prior to and after opening of the freezer or refrigerator. A commission veterinarian or his designee shall be present when the freezer or refrigerator is opened.

(e) Evidence of a malfunction of a split sample freezer or refrigerator shall be documented in the log.

(f) The commission shall be considered the owner of a split sample.

(2)(a) A trainer or owner of a horse receiving notice of a positive finding may request that a split sample corresponding to the portion of the sample tested by the commission laboratory be sent to the split sample laboratory. The party requesting the split sample shall select a laboratory solicited and approved by the commission to perform the analysis.

(b) The request shall be made in writing and delivered to the stewards or judges within three (3) business days after the trainer or owner of the horse receives oral or written notice of the positive finding by the commission laboratory.

(c) A split sample so requested shall be shipped as expeditiously as possible.

(3) (a) The owner or trainer requesting testing of a split sample shall be responsible for the cost of the testing, including the cost of shipping.

(b) Failure of the owner, trainer, or a designee to appear at the time and place designated by the commission veterinarian in connection with securing, maintaining, or shipping the split sample shall constitute a waiver of any right to be present during split sample testing procedures.

(c) Prior to shipment of the split sample, the commission shall confirm:

1. That the split sample laboratory has agreed to provide the testing requested;
2. That the split sample laboratory has agreed to send results to the commission; and
3. That arrangements for payment satisfactory to the split sample laboratory have been made.

Section 13. Split Sample Chain of Custody.

(1) Prior to opening the split sample freezer or refrigerator, the commission shall provide a split sample chain of custody verification form. The form to be used shall be the Split Sample Chain of Custody Form. The form shall be fully completed during the retrieval, packaging, and shipment of the split sample and shall contain the following information:

- (a) The date and time the sample is removed from the split sample freezer or refrigerator;
- (b) The sample number; and
- (c) The address where the split sample is to be sent.

(2) A split sample shall be removed from the split sample freezer or refrigerator by a commission employee after notice to the owner, trainer, or designee thereof and a commission-designated representative shall pack the split sample for shipment in accordance with the packaging procedures directed by the commission. The Split Sample Chain of Custody Form shall be signed by both the owner's representative, if present, and the commission representative to confirm the proper packaging of the split sample for shipment. The exterior of the package shall be secured and sealed to prevent tampering with the package.

(3) The owner, trainer, or designee, if present, may inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(4) The Split Sample Chain of Custody Form shall be completed and signed by the representative of the commission and the owner, trainer, or designee, if present.

(5) The commission representative shall retain the original Split Sample Chain of Custody Form and provide a copy to the owner, trainer, or designee, if requested.

Section 14. Medical Labeling.

(1) A drug or medication ***that[which]***, by federal or state law, requires a prescription shall not be used or kept on association grounds unless validly prescribed by a duly licensed veterinarian.

(2) A drug or medication shall bear a prescription label ***that[which]*** is securely attached and clearly ascribed to show the following:

- (a) The name of the product;
- (b) The name, address, and telephone number of the veterinarian prescribing or dispensing the product;
- (c) The name of the horse for which the product is intended or prescribed;
- (d) The dosage, duration of treatment, and expiration date of the prescribed or dispensed product; and
- (e) The name of the trainer to whom the product was dispensed.

Section 15. Trainer Responsibility.

(1) In the absence of substantial evidence to the contrary, a trainer shall be responsible for the condition of a horse in his or her care.

(2) In the absence of substantial evidence to the contrary, a trainer shall be responsible for the presence of a prohibited drug, medication, substance, or metabolic derivative, including permitted medication in excess of the maximum allowable concentration, in a horse in his or her care.

(3) A trainer shall prevent the administration of a drug, medication, substance, or metabolic derivative that may constitute a violation of this administrative regulation.

(4) A trainer whose horse has been claimed shall remain responsible for a violation of this administrative regulation regarding that horse's participation in the race in which the horse is claimed.

(5) A trainer shall be responsible for:

(a) Maintaining the assigned stable area in a clean, neat, and sanitary condition at all times;

(b) Using the services of those veterinarians licensed by the commission to attend to horses that are on association grounds;

(c) The proper identity, custody, care, health, condition, and safety of horses in his or her care;

(d) Promptly reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

(e) Promptly reporting to the racing secretary and the commission veterinarian if a posterior digital neurectomy (heel nerving) is performed on a horse in his or her care and ensuring this fact is designated on its certificate of registration;

(f) Promptly reporting to the racing secretary the name of a mare in his or her care that has been bred and is entered to race;

(g) Promptly notifying the commission veterinarian of a reportable disease or communicable illness in a horse in his or her care;

(h) Promptly reporting the serious injury or death of a horse in his or her care at a location under the jurisdiction of the commission to the stewards or judges and the commission veterinarian and ensuring compliance with Section 22 of this administrative regulation and 810 KAR 4:010, Section 14, governing postmortem examinations;

(i) Complying with the~~Maintaining a~~ medication and recordkeeping requirements in subsection (6) of this section~~record and medication status of horses in his or her care~~;

(j) Promptly notifying the stewards or judges and the commission veterinarian if the trainer has knowledge or reason to believe that there has been an administration to a horse of a drug, medication, or other substance prohibited by this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as established in Section 20 of this administrative regulation;

(k) Ensuring the fitness of every horse in his or her care to perform creditably at the distance entered;

(l) Ensuring that every horse he or she has entered to race is present at its assigned stall for a pre-race soundness inspection as prescribed by 810 KAR 2:010, Section 4(1)(l);

(m) Ensuring proper bandages, equipment, and shoes;

(n) Ensuring the horse's presence in the paddock at the time prescribed by racing officials before the race in which the horse is entered;

(o) Personally attending in the paddock and supervising the saddling or preparation of a horse in his or her care, unless an assistant trainer fulfills these duties or the trainer is excused by the judges or stewards pursuant to 810 KAR 4:100, Section 3(2)(f); and

(p) Attending the collection of a biologic specimen taken from a horse in his or her care or delegating a licensed employee or the owner to do so.

(6)(a) A trainer shall maintain a clear and accurate record of any treatment administered to a horse in his or her care.

(b) A trainer shall ensure the transfer of copies of all medical records to the subsequent owner and trainer of a horse.

(c) Failure to comply with this subsection may result in the imposition of penalties pursuant to 810 KAR 8:030.

(d) The stewards and judges may at any time require presentation of a horse's medical records.

Section 16. Licensed Veterinarians.

(1) A veterinarian licensed by the commission and practicing at a location under the jurisdiction of the commission shall be considered under the supervision of the commission veterinarian and the stewards or judges.

(2) A veterinarian shall report to the stewards, judges or the commission veterinarian a violation of this administrative regulation by a licensee.

Section 17. Veterinary Reports.

(1) A veterinarian who treats a horse at a location under the jurisdiction of the commission shall submit a Veterinary Report of Horses Treated to be Submitted Daily form to the commission veterinarian containing the following information:

(a) The name of the horse treated;

(b) The type and dosage of drug or medication administered or prescribed;

(c) The name of the trainer of the horse;

(d) The date and time of treatment; and

(e) Other pertinent treatment information requested by the commission veterinarian.

(2) The Veterinary Report of Horses Treated to be Submitted Daily form shall be signed by the treating practicing veterinarian.

(3) The Veterinary Report of Horses Treated to be Submitted Daily form shall be on file not later than the time prescribed on the next race day by the commission veterinarian.

(4) The Veterinary Report of Horses Treated to be Submitted Daily form shall be confidential, and its content shall not be disclosed except in the course of an investigation of a possible violation of this administrative regulation or in a proceeding before the stewards, judges or the commission, or to the trainer or owner of record at the time of treatment.

(5) A timely and accurate filing of a Veterinary Report of Horses Treated to be Submitted Daily form by the veterinarian or his designee that is consistent with the analytical results of a positive test reported by the commission laboratory may be used as a mitigating factor in determining the appropriate penalties pursuant to 810 KAR 8:030.

(6) A veterinarian having knowledge or reason to believe that a horse entered in a race has received a drug, medication, or substance prohibited under this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as established in Section 20 of this administrative regulation shall report this fact immediately to the commission veterinarian or to the stewards or judges.

(7) A practicing veterinarian shall maintain records of all horses treated and of all medications sold or dispensed. The records shall include:

- (a) The name of the horse;
- (b) The trainer of the horse;
- (c) The date, time, amount, and type of medication administered;
- (d) The drug or compound administered;
- (e) The method of administration; and
- (f) The diagnosis.

(8) The records shall be retained for at least sixty (60) days after the horse has raced and shall be available for inspection by the commission.

Section 18. Veterinarian's List.

(1) The commission veterinarian shall maintain a list of horses determined to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity, or other medical condition.

(2) A horse may be removed from the veterinarian's list when, in the opinion of the commission veterinarian, the horse is capable of competing in a race.

(3) The commission shall maintain a bleeder list of all horses that have demonstrated external evidence of exercise-induced pulmonary hemorrhage during or after a race or workout as observed by the commission veterinarian.

(4) Every horse that is a confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to participate in a race (betting or non-betting), qualifying race, time trial, or for the following time periods:

- (a) First incident - fourteen (14) days;
- (b) Second incident within a 365-day period - thirty (30) days;

(c) Third incident within a 365-day period - 180 days; and

(d) Fourth incident within a 365-day period - barred from racing for life.

(5) For the purpose of counting the number of days a horse is ineligible to run, the day after the horse bled externally shall be the first day of the recovery period.

(6) The voluntary administration of furosemide without an external bleeding incident shall not subject a horse to the initial period of ineligibility as established in this section.

Section 19. Distribution of Purses, Barn Searches, and Retention of Samples.

(1) For all races, purse money in thoroughbred and other flat racing shall be paid or distributed pursuant to the process provided in 810 KAR 2:070, Section 27(3), and in standardbred racing, no later than twenty-four (24) hours after notice from the commission that a final laboratory report has been issued.

(2) The distribution of purse money prior to the issuance of a final laboratory report shall not be considered a finding that no prohibited drug, medication, substance, or metabolic derivative has been administered to a horse.

(3) After the commission laboratory issues a positive finding the executive director of the commission or the stewards or judges may authorize and execute an investigation into the circumstances surrounding the incident that is the subject of the positive finding.

(4) If the purse money has been distributed, the stewards or judges shall order the money returned immediately to the association upon notification from the commission laboratory that a prohibited drug, medication, substance, or metabolic derivative was administered to a horse eligible for purse money.

(5) At the conclusion of testing by the commission laboratory and split sample laboratory, the remaining portion of the samples at the commission laboratory and split samples remaining at the test barn may be retained at a proper temperature at a secure facility approved and chosen by the commission. If a report indicating a positive finding has been issued, the commission shall use its best reasonable efforts to retain any remaining portion of the sample until legal proceedings have concluded. The commission may freeze samples.

Section 20. Other Prohibited Practices Constituting a Violation of this Administrative Regulation.

(1) A drug, medication, substance, or device shall not be possessed or used by a licensee, or his designee or agent, within a nonpublic area at a location under the jurisdiction of the commission:

(a) The use of which may endanger the health and welfare of the horse; or

(b) The use of which may endanger the safety of the rider or driver.

(2) Without the prior permission of the commission or its designee, a drug, medication, or substance that has never been approved by the United States Food and Drug Administration

(USFDA) for use in humans or animals shall not be possessed or used at a location under the jurisdiction of the commission. The commission shall determine whether to grant prior permission after consultation with the Equine Drug Research Council.

(3) The following blood-doping agents shall not be possessed or used at a location under the jurisdiction of the commission:

- (a) Erythropoietin;
- (b) Darbepoietin;
- (c) Oxyglobin;
- (d) Hemopure; or
- (e) Any substance that abnormally enhances the oxygenation of body tissue.

(4) A treatment, procedure, or therapy shall not be practiced, administered, or applied **that[which]** may:

- (a) Endanger the health or welfare of a horse; or
- (b) Endanger the safety of a rider or driver.

(5) Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy shall not be used unless the conditions established in this subsection are met.

(a) A treated horse shall not race for a minimum of ten (10) days following treatment.

(b) A veterinarian licensed to practice by the commission shall administer the treatment.

(c) The commission veterinarian shall be notified prior to the delivery of the machine on association grounds.

(d) Prior to administering the treatment, a report shall be submitted by the veterinarian administering the treatment to the commission veterinarian on the Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy.

(6) Other than furosemide, an alkalizing substance that could alter the serum or plasma pH or concentration of bicarbonates or carbon dioxide in a horse shall not be used within twenty-four (24) hours prior to post time of the race in which the horse is entered.

(7) Without the prior permission of the commission veterinarian or his designee, based on standard veterinary practice for recognized conditions, a nasogastric tube which is longer than six (6) inches shall not be used for the administration of any substance within twenty-four (24) hours prior to post time of the race in which the horse is entered.

(8) A serum or plasma total carbon dioxide (TCO₂) level shall not exceed thirty-seven (37.0) millimoles per liter; except, a violation shall not exist if the TCO₂ level is found to be normal for the horse following the quarantine procedure established in Section 21 of this administrative regulation.

(9) A blood gas machine shall not be possessed or used by a person other than an authorized representative of the commission at a location under the jurisdiction of the commission.

(10) A shock wave therapy machine or radial pulse wave therapy machine shall not be possessed or used by anyone other than a veterinarian licensed by the commission at a location under the jurisdiction of the commission.

Section 21. TCO₂ Testing and Procedures.

(1)(a) The stewards, judges, or commission veterinarian may order the pre-race or post-race collection of blood specimens from a horse to determine the total carbon dioxide concentration in the serum or plasma of the horse. The winning horse and other horses, as selected by the stewards or judges, may be tested in each race to determine if there has been a violation of this administrative regulation.

(b) Pre-race sampling shall be done at a reasonable time, place, and manner directed by the chief state steward in consultation with the commission veterinarian.

(c) A specimen consisting of at least two (2) blood tubes shall be taken from a horse to determine the TCO₂ concentration in the serum or plasma of the horse. If the commission laboratory determines that the TCO₂ level exceeds thirty-seven (37.0) millimoles per liter plus the laboratory's measurement of uncertainty, the executive director of the commission shall be informed of the positive finding.

(d) Split sample testing for TCO₂ may be requested by an owner or trainer in advance of the collection of the specimen by the commission veterinarian; however, the collection and testing of a split sample for TCO₂ testing shall be done at a reasonable time, place, and manner directed by the commission veterinarian.

(e) The cost of split sample testing, including the cost of shipping, shall be borne by the owner or the trainer.

(2)(a) If the level of TCO₂ is determined to exceed thirty-seven (37.0) millimoles per liter plus the laboratory's measurement of uncertainty and the licensed owner or trainer of the horse certifies in writing to the stewards or judges within twenty-four (24) hours after the notification of the test result that the level is normal for that horse, the owner or trainer may request that the horse be held in quarantine. If quarantine is requested, the licensed association shall make guarded quarantine available for that horse for a period of time to be determined by the steward or judges, but in no event for more than seventy-two (72) hours.

(b) The expense for maintaining the quarantine shall be borne by the owner or trainer.

(c) During quarantine, the horse shall be retested periodically by the commission veterinarian.

(d) The horse shall not be permitted to race during a quarantine period, but it may be exercised and trained at times prescribed by the licensed association and in a manner that allows monitoring of the horse by a commission representative.

(e) During quarantine, the horse shall be fed only hay, oats, and water.

(f) If the commission veterinarian is satisfied that the horse's level of TCO₂, as registered in the original test, is physiologically normal for that horse, the stewards or judges:

1. Shall permit the horse to race; and
2. May require repetition of the quarantine procedure established in paragraphs (a) through (f) of this subsection to reestablish that the horse's TCO₂ level is physiologically normal.

Section 22. Postmortem Examination.

(1) A horse that dies or is euthanized on the grounds of a licensed association or training center under the jurisdiction of the commission shall undergo a postmortem examination at the discretion of the commission and at a facility designated by the commission, through its designee, as provided in 810 KAR 4:010, Section 14.

(2) The commission shall bear the cost of an autopsy that is required by the commission.

(3) The presence of a prohibited drug, medication, substance, or metabolic derivative thereof in a specimen collected during the postmortem examination of a horse may constitute a violation of this administrative regulation.

Section 23. Corticosteroids.

(1) A corticosteroid shall not be administered intra-articularly within fourteen (14) days before post time for the race in which the horse is entered.

(2) The presence of a detectable concentration of more than one (1) corticosteroid in a post-race sample of blood, urine, or any combination of blood and urine shall constitute a violation of this section.

Section 24. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Veterinary Report of Horses Treated to be Submitted Daily", KHRC 8-010-1, 11/2018;

(b) "Split Sample Chain of Custody Form", KHRC 8-010-2, 11/2018; and

(c) "Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy", KHRC 8-010-3, 11/2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the commission's Web site at <http://khrc.ky.gov>.

FRANKLIN S. KLING JR., Chairman

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: February 13, 2020

FILED WITH LRC: February 14, 2020 at 9 a.m.

CONTACT PERSON: Jennifer Wolsing, General Counsel, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone +1 (859) 246-2040, fax +1 (859) 246-2039, email jennifer.wolsing@ky.gov.



ANDY BESHEAR
GOVERNOR

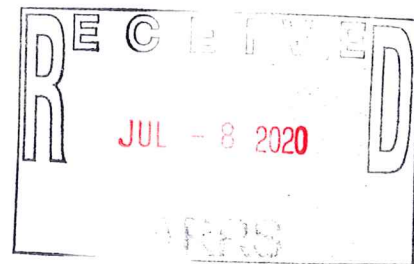
JONATHAN RABINOWITZ
CHAIRMAN

KERRY B. HARVEY
SECRETARY

MARC A. GUILFOIL
EXECUTIVE DIRECTOR

PUBLIC PROTECTION CABINET
KENTUCKY HORSE RACING COMMISSION
ESTABLISHED 1906
4063 IRON WORKS PKWY., BLDG. B
LEXINGTON, KENTUCKY 40511
TELEPHONE: (859) 246-2040 FAX: (859) 246-2039
WEBSITE: [HTTP://KHRC.KY.GOV](http://KHRC.KY.GOV)

July 7, 2020



VIA ELECTRONIC MAIL

Ms. Emily Caudill, Regulations Compiler
Legislative Research Commission
029, Capitol Annex
702 Capitol Avenue
Frankfort, KY 40601

Re: 810 KAR 8:030. Disciplinary measures and penalties.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 810 KAR 8:030, the Kentucky Horse Racing Commission proposes the attached suggested amendments to 810 KAR 8:030.

Sincerely,

Jennifer Wolsing
General Counsel

Version 7/6/20

SUGGESTED AMENDMENT

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission**

810 KAR 8:030. Disciplinary measures and penalties.

Page 1

NECESSITY, FUNCTION, AND CONFORMITY

Line 10

After "authorize the", insert "Kentucky Horse Racing".
Capitalize "commission".

Page 2

Section 1(9)

Lines 15-16

After "(9)", delete the remainder of this subsection in its entirety.

Page 2

Section 1(10)

Line 17

Before "Schedule", delete "(10)".

Page 2

Section 1(11)

Line 19

Before "(11)", insert "(10)".
Delete "(11)".

Page 12

Section 4(4)(a)2.

Line 13

After "than those", insert the following:
identified in subparagraph 1. of this
Delete the following:
set forth in the preceding

Page 20

Section 7(3)(d)

Line 12

After "of the commission.", insert a return.



CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary

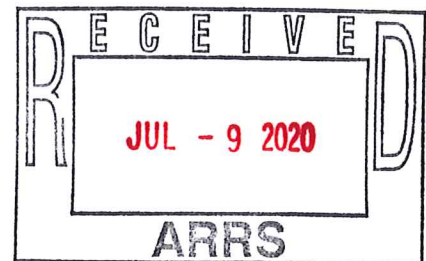
Andy Beshear
Governor

275 East Main Street, 5W-A
Frankfort, KY 40621
502-564-7042
502-564-7091
www.chfs.ky.gov

Eric C. Friedlander
Secretary

July 9, 2020

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601



Re: Suggested amendment for 921 KAR 3:025

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 921 KAR 3:025, the Department for Community Based Services requests the enclosed amendments be made.

Sincerely,

A handwritten signature in cursive script that reads "Donna Little".

Donna Little
Deputy Executive Director
Office of Legislative and Regulatory Affairs

Enclosure

SUGGESTED AMENDMENT

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support**

921 KAR 3:025. Technical requirements.

Page 1

RELATES TO

Line 6

After "7 C.F.R.", insert "Parts 271-285".

Page 1

STATUTORY AUTHORITY

Line 8

After "271.4,", insert "Part".

After "272,", insert "Part".

Page 1

NECESSITY, FUNCTION, AND CONFORMITY

Line 10

After "secretary", insert the following:
of the Cabinet for Health and Family Services

Line 14

After "7 C.F.R.", insert "Parts".

Page 2

Section 1(1)

Lines 1-2

After "(1)", delete the remainder of this subsection in its entirety.

Page 2

Section 1(2)

Line 3

Before ""Exempt"", delete "(2)".

Renumber remaining subsections accordingly.

Page 2

Section 2

Line 9

After "In accordance with", insert the following:

7 C.F.R. Parts 271 through 285

Delete "federal regulations".

Page 2

Section 3

Line 14

After "consist of", insert the following:

the criteria established in this section.

Delete the colon.

Page 4

Section 3(5)(f)1.

Line 14

After "1.", insert "7 C.F.R. 273.5(a)".

Delete "29 U.S.C. 2801".

Page 4

Section 3(5)(f)2.

Line 15

After "45", insert "C.F.R.".

Delete "U.S.C.".

Page 5

Section 3(8)(a)

Line 12

After "in accordance with", insert the following:

paragraph (e) of this subsection

Delete the following:

Section 4 of this administrative regulation

Page 5

Section 3(8)(a)3.a.

Line 20

After "a.", insert "7 C.F.R. 273.5(a)".

Delete the following:

29 U.S.C. 2801 to 2945