

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

RELATES TO: KRS 61.870 – 61.844, Chapter 217B, 260.850-260.869, 7 U.S.C. 1639p, 5940, 21 U.S.C. Chapter 9

STATUTORY AUTHORITY: KRS 260.862

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

#### Section 1. Definitions.

- (1) "Agent" means a person who is employed by or working under contract for a license holder, and who does not have any ownership interest in the hemp.
- (2) "Applicant" means a person who submits an application on his or her behalf or on behalf of a business entity to participate in the Hemp Licensing Program.
- (3) "Broker" means to engage or participate in the marketing of hemp by acting as an intermediary or negotiator between prospective buyers and sellers.
- (4) "Cannabis":
  - (a) Means the plant that, depending on its THC concentration level, is either "hemp" or "marijuana." Cannabis is a genus of flowering plants in the family Cannabaceae of which Cannabis sativa is a species, and Cannabis indica and Cannabis ruderalis or subspecies thereof. Cannabis includes all parts of the plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts; and
  - (b) Does not mean a "publicly marketable hemp product," as defined by subsection (37) of this section.
- (5) "CBD" means cannabidiol.
- (6) "Commissioner" is defined by KRS 260.850(1).
- (7) "Commonwealth" means the Commonwealth of Kentucky.
- (8) "Conviction":
  - (a) Means an adjudication or finding of guilt, including a plea of guilty or nolo contendere; and
  - (b) Does not mean a conviction subsequently overturned on appeal, pardoned, or expunged.
- (9) "Corrective action plan" means a document established by the department for a licensee to correct a negligent violation of, or non-compliance with, KRS 260.850-260.869 or a requirement of 302 KAR Chapter 50.
- (10) "Culpable mental state greater than negligence" means to act intentionally, knowingly, willfully, or with criminal negligence.
- (11) "Decarboxylation" means the completion of the chemical reaction that converts the delta-9 THC-acid into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven-tenths (87.7) percent of delta-9 THC-acid.
- (12) "delta-9-THC" means delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of cannabis). For compliance purposes, all delta-9-THC concentrations are 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 50:031.

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

(21) "Key participant":

(a) Means a person who has a direct or indirect financial interest in the entity producing hemp, such as an owner or a partner in a partnership and includes an entity's chief executive officer, chief operating officer, and chief financial officer; and

(b) Does not mean farm managers, field 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 50:031.

(25) "Location ID" means the unique identifier established by the applicant for each unique set of GPS coordinates where hemp will be grown, handled, stored, or processed, which can include a field name or building name.

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

(27) "Negligence" means failure to exercise the level of care that a reasonably prudent person would exercise in complying with an administrative regulation, rule, or instruction.

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

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

(30) "Pesticide" means any substance or mixture of substances intended to:

(a) Prevent, destroy, control, repel, attract, or mitigate any pest;

(b) Be used as a plant regulator, defoliant, or desiccant; or

(c) Be used as a spray adjuvant, once mixed with a U.S. Environmental Protection Agency registered product.

(31) "Post-harvest sample" means a sample taken from the harvested hemp from a particular lot's harvest in accordance with the procedures as established in 302 KAR 50:056. The entire lot's harvest is in the same form (for example, intact-plant, flowers, ground materials), homogenous, and not mixed with non-hemp materials or hemp from another lot.

(32) "Pre-harvest sample" means a composite, representative portion from living plants in a hemp lot collected in accordance with the procedures as established in 302 KAR 50:056.

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

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

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

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

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

(a) The product:

1. Does not include any living hemp plants, viable seeds, leaf materials, floral materials, or delta-9-THC content above zero and three-tenths (0.3) percent; and

2. Does include, without limitation, the following products: bare stalks, bast fiber, hurd fiber, nonviable roots, nonviable seeds, seed oils, and plant extracts (excluding products containing delta-9-THC above zero and three-tenths (0.3) percent);

(b) The product is CBD that was derived from "hemp", as defined by subsection (17) of this section; or

(c) The product is CBD that is approved as a prescription medication by the United States Food and Drug Administration.

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

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

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

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

(b) Stable, in that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity if reproduced or reconstituted as required by the different categories of varieties; and

(c) Distinct, in that the variety can be differentiated by one (1) or more identifiable morphological, physiological, other characteristics from all other publicly known varieties, or other characteristics from all other publicly known varieties.

(43) "Variety of concern" means any variety of hemp that tests above 0.3000 percent delta9-THC in one (1) or more pre-harvest samples. A hemp variety designated as a "variety of concern" could be subject to restrictions and additional testing.

(44) "Volunteer cannabis plant" means any cannabis plant that:

(a) Grows of its own accord from seeds or roots in the years following an intentionally planted cannabis crop; and

(b) Is not intentionally planted.

## Section 2. Grower License Application.

(1) Any person who wishes to grow hemp at any location in the Commonwealth shall submit to the department a completed Hemp Grower License Application, or annual license renewal, incorporated by reference as part of the Hemp Grower Licensing Application Packet in 302 KAR 50:080.

(2) Existing grower license holders shall annually complete the department's requirements for license renewal by March 15.

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

- (a) Grow, cultivate, handle, or process; or
  - (b) Broker, store, or market hemp or other cannabis that does not fall within the definition of a "publicly marketable hemp product" at any location within the Commonwealth.
- (4) A person under the age of eighteen (18) years of age shall not apply for or hold a grower license.
- (5) Completed Hemp Grower License Applications shall be received by the department by the end of the application period established in the application.
- (6) Completed Hemp Grower License Application forms shall be delivered to KDA Hemp Licensing Program, 111 Corporate Drive, Frankfort, Kentucky 40601.
- (7) The department shall deny any Hemp Grower License Application that fails to meet the deadline established in the application.
- (8) Each applicant shall pay a grower application fee in the amount established in 302 KAR 50:060.
- (9) Application fees shall not cover or include the cost of the criminal background checks required by KRS 260.862(2)(d) and Section 3 of this administrative regulation. Applicants and license holders shall pay criminal background check fees.
- (10) The department shall deny any Hemp Grower License Application that is received without the application fee established in 302 KAR 50:060.
- (11) With the Hemp Grower License Application form, the applicant shall submit, at a minimum:
- (a) If the applicant is an individual, the individual's full name, residential address, telephone number, and email address (if available);
  - (b) If the applicant is a business entity:
    - 1. the entity's name, Employer Identification Number, business location address in Kentucky, and principal business location;
    - 2. 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. for each key participant, his or her full name, title within the entity, business address, telephone number, and email address (if available);
  - (c) The proposed acreage or greenhouse or indoor square footage to be planted;
  - (d) Street address, location ID, and GPS coordinates for each field, greenhouse, building, or site where hemp will be grown, handled, or stored;
  - (e) Maps depicting each site where hemp will be grown, handled, or stored, with appropriate designations for field boundaries, and Location IDs corresponding to the GPS coordinates; and
  - (f) Agreement to all terms and conditions established in the hemp grower application.
- (12) Any Grower License Application that is missing required information shall be subject to denial.
- (13) The terms and conditions established in the hemp grower application shall include for a licensed grower, at a minimum:
- (a) Acknowledgement that licensed growers shall comply with all requirements established in 302 KAR 50;
  - (b) Agreement to pay a licensing fee in the amount established in 302 KAR 50:060;
  - (c) Acknowledgement that licensed growers shall comply with instructions from representatives of the department and law enforcement agencies;
  - (d) A consent to entry onto, and inspection of, all premises where hemp or other cannabis plants or materials are located or licensed to be located, by representatives of the department and law enforcement agencies, with or without cause and with or without advance notice;
  - (e) A 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) Agreement to apply for licensing of all growing, handling, and storage locations, including GPS coordinates, and receive department approval for those locations prior to having hemp on those premises;
- (g) Acknowledgement that licensed growers shall submit:
1. A Site Modification Request, incorporated by reference in 302 KAR 50:080;
  2. The appropriate fees based on the requested changes; and
  3. Prior written approval from a representative of the department before implementing any change to the licensed sites stated in the hemp grower license and an acknowledgement that growing site changes shall be subject to a site modification surcharge in the amount established in 302 KAR 50:060 for a new set of GPS coordinates;
- (h) Acknowledgement that anyone applying pesticides to hemp shall hold a pesticide license and apply pesticides in accordance with Section 16 of this administrative regulation;
- (i) Acknowledgement that the risk of financial or other loss shall be borne solely by the licensed grower;
- (j) Acknowledgement that licensed growers shall comply with restrictions established by the department limiting the movement of hemp plants and plant parts;
- (k) Agreement that any time hemp is in transit, a copy of the hemp grower license shall be available for inspection upon the request of a representative of the department or a law enforcement agency;
- (l) Agreement that, upon request from a representative of the department or a law enforcement agency, a licensed grower shall immediately produce a copy of his or her hemp grower license for inspection;
- (m) Agreement to submit Field Planting Reports and Harvest Reports incorporated by reference in 302 KAR 50:080, and other reports required by the department to which the grower has agreed, on or before the deadlines established in this administrative regulation;
- (n) Agreement to scout and monitor unlicensed fields for volunteer cannabis plants and to destroy those volunteer cannabis plants for three (3) years past the last date of planting reported to the department;
- (o) Agreement not to employ or rent land to cultivate hemp from any person whose employment was terminated or denied admission to the Hemp Licensing Program for:
1. Failure to obtain an acceptable criminal background check;
  2. Failure to comply with an order from a representative of the department; or
  3. Both; and
- (p) Agreement to abide by all land use restrictions for licensed growers established in Section 5 of this administrative regulation.

### Section 3. Criminal Background Check.

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

(4) Failure to submit the background check with the application shall be grounds for license denial.

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

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

(1) The department shall apply the criteria established in paragraphs (a) through (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 Report, incorporated by reference in 302 KAR 50:080;

3. Any other reports deemed necessary by the department to which the applicant has agreed.

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

(d) The applicant's primary residence shall be located in Commonwealth of Kentucky or within fifty (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 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.

1. 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.

2. A person who was lawfully growing hemp before December 20, 2018 and was convicted prior to December 20, 2018 shall be eligible to obtain a license.

(h) Including those times when the applicant was not a participant in the department's Hemp Licensing Program, the applicant shall have demonstrated a willingness to comply with the department's rules, instructions from department staff, and instructions from representatives of Kentucky State Police and other law enforcement agencies.

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

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

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

(l) The applicant's proposed growing sites shall comply with the land use restrictions estab-

lished 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 complies with this administrative regulation.

(3) The department shall notify applicants by letter or email whether the application has been denied or conditionally approved. A person shall not be a participant in the Hemp Licensing Program until the applicant has received a hemp grower license from the department.

(4) Applicants shall pay licensing fees prior to receiving a hemp grower license.

(5) Applicants shall complete a mandatory orientation session at a location designated by the department. The department shall not allow any person to complete orientation in lieu of the applicant.

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

(1) A licensed grower shall not plant or grow any cannabis that is not hemp.

(2) A licensed grower shall not plant or grow hemp or other cannabis on any site not licensed.

(3) A licensed grower shall not grow hemp or other cannabis in or within 100 feet of any structure that is used for residential purposes without first obtaining written permission from the department.

(4) A licensed grower shall not handle or store leaf or floral material from hemp or other cannabis in or adjacent to any structure that is used for residential purposes.

(5) Hemp shall be physically segregated from other crops unless prior approval is obtained in writing from the department.

(6) A licensed grower shall plant a minimum of 1,000 plants in each growing site unless prior approval is received in writing from the department.

(7) A licensed grower shall plant a minimum of one-quarter (0.25) acre in each outdoor growing site unless prior approval is received in writing from the department.

(8) Except as established in subsection (9) of this section, a licensed grower shall not grow hemp or other cannabis in any outdoor field that is located within 1,000 feet of a school or a public recreational area.

(9) Notwithstanding the prohibition in subsection (8) of this section, hemp may be grown within 1,000 feet of a school, if:

(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 employment terminated, or denied admission to the Hemp Licensing Program for:

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

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

(c) Both.

(12) Licensed growers with plots of one (1) acre or less shall post signage at the plot loca-

tion. The signage shall include the:

- (a) Agency title, "Kentucky Department of Agriculture Hemp Licensing Program";
- (b) License holder's name;
- (c) License holder's license number; and
- (d) Department's telephone number.

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

(1) An applicant wishing to appeal the department's denial or partial denial of an application shall submit a written request for a hearing postmarked within fifteen (15) days of the date of the department's notification letter or email.

(2) An appealing applicant shall mail a hearing request letter to KDA Hemp Licensing Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(3) Appeals shall be heard by a three (3) person administrative panel whose members shall be designated by the commissioner. The panel shall include at least one (1) person who is a department employee and at least one (1) person who is not a department employee and not involved or invested in any hemp projects in Kentucky.

(4) The members of the administrative panel shall not be required to accept or consider information or documents that were not compliant with application deadlines established in this administrative regulation.

(5) The members of the administrative panel shall apply the same standards established in this administrative regulation to determine if the department's action in denying the application was arbitrary or capricious.

(6) Hearings on appeals shall be open to the public and occur at a time and date and location designated by the commissioner.

(7) An appealing applicant shall appear in person at the assigned hearing time. Failure to appear on time shall constitute grounds for dismissal of the appeal.

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

#### Section 7. Hemp Grower Licenses.

(1) An applicant shall not be a participant in the Hemp Licensing Program until the department has issued a hemp grower license following the applicant's completion of the department's mandatory orientation session and payment of licensing fees.

(2) The grower license application shall establish the terms and conditions, pursuant to KRS Chapter 260 and 302 KAR Chapter 50, governing participation in the Hemp Licensing Program.

(3) Failure to agree or comply with terms and conditions established in the hemp grower license application or this administrative regulation shall constitute grounds for appropriate departmental action, up to and including termination of the grower license and expulsion from the Hemp Licensing Program.

(4) A Hemp Grower License shall remain in force as long as the license holder meets annual renewal requirements by March 15 of each year.

(5) A Hemp Grower License may be terminated by the license holder or the department upon thirty (30) days prior written notice.

(6) A Hemp Grower License authorizes the license holder to grow hemp; handle his or her own hemp, including drying, grinding, separating foliage from stem, storing, and packaging; and market his or her own hemp. A Hemp Grower License shall not authorize the grower to process hemp, handle other person's hemp, or market another person's hemp.

(7) The department shall issue grower's license numbers in accordance with this format:



"21\_0001" through "21\_9999."

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

##### (1) Licensing fee.

(a) The conditionally approved applicant or license holder shall pay a licensing fee prior to the issuance of a new license or an annual license renewal.

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

##### (2) Secondary Pre-Harvest Sample fee.

(a) If a licensed grower fails to complete the harvest within fifteen (15) days after the department collects the pre-harvest sample, the licensed grower shall submit a new Harvest Report and may be required to pay a secondary pre-harvest sample fee.

(b) If four (4) or more samples are taken from the same address, then the licensed grower shall be required to pay a secondary pre-harvest sample fee for each sample taken from that address in excess of three (3) samples.

(c) The secondary Pre-Harvest sample fee shall be paid to the department within fifteen (15) days of invoice by the department. The secondary pre-harvest sample fee shall be as established in 302 KAR 50:060.

(d) The licensed grower shall pay the secondary pre-harvest sample fee within fifteen (15) days of invoice.

(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, incorporated by reference in 302 KAR 50:080, and obtain written approval from a representative of the department, prior to planting or storing at the proposed location.

(2) Any request for a new growing location shall comply with the land use restrictions established in Section 5 of this administrative regulation.

(3) The department shall charge a site modification surcharge fee for each new Location ID, (specifically, a GPS coordinate for each new individual field or greenhouse or indoor structure) where hemp will be grown. The amount of the site modification surcharge fee shall be as established in 302 KAR 50:060.

(4) The department shall not approve a site modification request for a new growing location until the department has received the site modification surcharge fee.

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

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

(1) A license holder intending to acquire seeds or propagules first shall determine whether or not the variety or strain intended for purchase is listed on the department's current Summary of Varieties List, which is in the application packet incorporated by reference in 302 KAR 50:080.

(a) If the variety or strain is listed on the Summary of Varieties List, no pre-approval from the department shall be required.

(b) If the variety or strain is not listed on the Summary of Varieties List, the license holder

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

(2) A license holder who develops a new hemp variety or strain shall submit the New Hemp Variety or Strain Request form, prior to its use in crop production.

(3) The department shall not approve a New Hemp Variety or Strain Request unless the licensed grower affirms in writing that the requested seed acquisition plan does not infringe on the intellectual property rights of any person and that the seed or propagule source is a current legal hemp operation.

(4) The department shall not approve a New Hemp Variety or Strain Request if a representative of the department has information supporting a belief that the variety or strain will produce plants with delta-9-THC (measured post-decarboxylation, also referred to as total THC) content of more than 0.300% on a dry weight basis.

(5) A license holder shall not buy, sell, possess, or transfer seeds or propagules of any variety or strain designated as a Prohibited Variety on the department's published Summary of Varieties list.

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

(7) Any person engaging in the distribution of hemp seeds shall adhere to the applicable Kentucky seed laws (KRS 250.010 through 250.990) and administrative regulations (12 KAR 1:116 through 1:175).

(8) Any person who intends to move transplants or other living plants to a location outside Kentucky shall obtain a Class A Nursery License from the Kentucky Office of the State Entomologist.

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

(1) A person shall not acquire or grow hemp or cannabis seeds or propagules of wild, landrace, or unknown origin without first obtaining written approval from a representative of the department.

(2) The department shall not permit hemp or cannabis seeds or propagules of wild, landrace, or unknown origin to be planted, cultivated, or replicated by any person without the department first arranging for replication and THC testing of mature plants grown from the seeds or propagules by the department or its designee.

(3) Any licensed grower or licensed processor found to have saved seed, propagules, or cuttings, or cultivated seeds, propagules, or cuttings from a cannabis plant of wild, landrace, or unknown origin, without advance written permission from the department shall be subject to suspension or revocation of his or her license and forfeiture without compensation of his or her materials.

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

(1) Prior to the submission of Planting Reports, a licensed grower shall report hemp crop acreage to USDA's Farm Service Agency (FSA) including, at a minimum, the:

(a) Street address and, to the extent practicable, geospatial location for each lot or greenhouse where hemp will be produced;

(b) 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) 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 13. Planting Reports for Outdoor Plantings.

(1) A licensed grower shall submit to the department a complete and current Field Planting Report, within fifteen (15) days after every planting, including complete replanting, of seeds or propagules in an outdoor location.

(2) Each Field Planting Report shall identify the:

(a) Correct variety or strain name;

(b) Address and Field location ID as listed on the hemp grower's license;

(c) Lot number provided by the USDA FSA Office; and

(d) Amount planted and the primary intended use of the harvest.

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

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

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

(2) Each Greenhouse/Indoor Planting Report shall identify the:

(a) Correct variety or strain name;

(b) Address and Greenhouse or indoor growing location ID as listed in the hemp grower license;

(c) Lot number provided by the USDA FSA Office; and

(d) Amount planted and the primary intended use of the harvest or of the hemp plants.

(3) In addition to the initial Greenhouse/Indoor Planting Report, a licensed grower with an approved greenhouse or indoor growing site shall submit quarterly reports, which are in the application packet incorporated by reference in 302 KAR 50:080, for each location ID to the department. Greenhouse/Indoor Planting Reports shall be due no later than March 31, June 30, September 30, and December 31.

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

(1) The department shall provide information about approved growing, handling, and storage site locations to representatives of the Kentucky State Police, USDA, DEA, and other law enforcement agencies whose representatives request licensed site information, including GPS coordinates.

(2) Licensed growers shall have no reasonable expectation of privacy with respect to premises where hemp or other cannabis seeds, plants, or materials are located, and any premises listed in the hemp grower license.

(3) A licensed grower, whether present or not, shall permit a representative of the department or a law enforcement agency to enter into premises where hemp or other cannabis seeds, plants, or materials are located, and any premises listed in the hemp grower's license, with or without cause and with or without advanced notice.

### Section 16. Pesticide Use.

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

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

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

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

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

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

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

(1) The department may inspect a Licensed Grower's premise 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) At least fifteen (15) days prior to the anticipated harvest of hemp plants, the grower shall submit to the department a completed and current Harvest Report form identifying the intended date of harvest (or date of destruction, in the case of a failed crop).

(4) The department's receipt of a Harvest Report shall trigger a sample collection by a representative of the department in accordance with the procedures established in 302 KAR 50:056.

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

(6) Representatives of the department shall be provided with complete and unrestricted access to all hemp and other cannabis plants, whether growing or harvested, and all land, buildings, and other structures used for the cultivation, handling, and storage of all hemp and other cannabis plants, and all locations listed in the hemp grower's license.

(7) The licensed grower shall harvest the crop not more than 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 Report and may be required to pay a secondary pre-harvest sample fee in the amount established in 302 KAR 50:060.

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

(10) Harvested materials from one (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 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 in 302 KAR 50:056.

(2) The designated laboratory shall receive, prepare, and release hemp samples in accordance with the procedures established in 302 KAR 50:056.

(3) The designated laboratory shall measure delta-9-THC concentration of each hemp sample (postdecarboxylation, often referred to as total THC) in accordance with the procedures established in 302 KAR 50:056.

(4) The department shall undertake post-testing actions in accordance with the procedures established in 302 KAR 50:056.

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

(6) If the designated laboratory is not able to provide THC testing services required by the department, the department may identify and contract with a third party lab to perform THC testing services.

(7) The department may collect samples of hemp or other cannabis material at any time.

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

(1) A licensed grower shall not sell or transfer, or allow the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person in the Commonwealth who does not hold a license issued by the department.

(2) A licensed grower shall not sell or transfer, or allow the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person outside the Commonwealth who is not authorized to possess such materials under the laws of that jurisdiction.

(3) The department shall allow the sale or transfer of stripped stalks, fiber, dried roots, non-viable seeds, seed oils, floral and plant extracts (excluding THC in excess of zero and three-tenths (0.3) percent) and other marketable hemp products to members of the general public, both within and outside the Commonwealth, if the marketable hemp product's decarboxylated delta-9-THC level is not more than zero and three-tenths (0.3) percent.

(4) A licensed grower selling or transferring, or permitting the sale or transfer, of floral or plant extracts (including CBD), shall retain testing data or results for at least three (3) years demonstrating that the extract's delta-9-THC level is not more than zero and three-tenths (0.3) percent.

(5) A licensed grower shall not sell or transfer floral extracts containing a decarboxylated delta-9 THC concentration in excess of zero and three-tenths (0.3) percent.

(6) Licensed growers shall comply with the federal Food Drug and Cosmetic Act, 21 U.S.C. Chapter 9, and all other applicable local, state, and federal laws and regulations relating to product development, product manufacturing, consumer safety, and public health.

(7) A licensed grower shall not knowingly permit hemp to be sold to or used by any person in the Commonwealth, who is involved in the manufacture of an item named on the prohibited products list established in 302 KAR 50:070.

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

#### Section 20. Other Prohibited Activities.

(1) A licensed grower shall not allow another person, other than an agent of the licensed grower, to grow, handle, or store hemp under their license in lieu of obtaining a separate hemp grower license.

(2) A license holder shall not make, manufacture, or distribute in the Commonwealth any of

the prohibited products listed in 302 KAR 50:070.

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

(1) Except as established in subsection (2) of this section, information and documents generated or obtained by the department shall be subject to disclosure pursuant to the Kentucky Open Records Act, KRS 61.870 through 61.884.

(2) Personally identifiable information including physical address, mailing address, driver's license numbers, background checks, GPS coordinates, telephone numbers, and email addresses shall be shielded from disclosure to the maximum extent permitted by law, except that the department shall provide this information to law enforcement agencies and other regulatory agencies upon request.

Section 22. Violations Requiring Temporary License Suspension Procedures.

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

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

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

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

(d) Been found to be growing or in possession of cannabis with a measured delta-9-THC concentration above zero and three-tenths (0.3) percent with a culpable mental state greater than negligence; or

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

(2) The department shall schedule a license revocation hearing for a date as soon as practicable after the notification of temporary suspension, but not later than sixty (60) days following the notification of temporary suspension.

(3) A person whose Hemp Grower License has been temporarily suspended shall not harvest, process, or remove cannabis from the premises where hemp or other cannabis was located at the time the department issued its notice of temporary suspension, except as authorized in writing by a representative of the department.

(4) As soon as possible after the notification of temporary suspension, a representative of the department shall inspect the licensed grower's premises and perform an inventory of all cannabis, hemp, and hemp products that are in the licensed grower's possession.

Section 23. License Revocation Hearings and Consequences of Revocation.

(1) The department shall notify a person whose Hemp Grower License has been temporarily suspended of the date the person's license revocation hearing will occur at a time and place designated by the commissioner.

(2) License revocation hearings shall be adjudicated by a three (3) person administrative panel in accordance with KRS 260.864.

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

(4) A person whose Hemp Grower License has been temporarily suspended shall appear in person at the assigned hearing time. Barring unexpected events, such as inclement weather, failure to appear on time shall constitute a waiver of the person's right to present information

and arguments against revoking the hemp grower license.

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

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

(7) The three (3) members of the administrative panel shall rule on the question of revocation by a majority vote.

(8) If a majority of the three (3) members of the administrative panel find that it is more likely than not that a licensed grower has committed any of the acts listed in subsection (1) of this section, then the hemp grower license shall be revoked effective immediately.

(9) If a majority of the members of the administrative panel vote against revoking the hemp grower license, the department shall lift the temporary suspension within twenty-four (24) hours of the vote.

(10) If a majority of the members of the administrative panel vote in favor of revoking the hemp grower license, then a representative of the department or a law enforcement agency shall have authority to destroy or confiscate all cannabis, hemp, and hemp products that are in the person's possession.

(11) A person whose property is destroyed or confiscated by a representative of the department or a law enforcement agency shall be owed no compensation or indemnity for the value of the cannabis, hemp, or hemp products that were destroyed or confiscated.

(12) The department shall immediately report any person whose license has been revoked on the grounds that he or she violated a provision of KRS 260.850 through 260.869, 302 KAR Chapter 50, or violated the grower license with a culpable mental state greater than negligence, to an appropriate law enforcement agency.

(13) A person whose grower license has been revoked shall not be eligible for licensure for a period of five (5) years from the date of the most recent violation.

#### Section 24. Monetary Civil Penalties.

(1) If a representative of the department receives information supporting a finding that it is more likely than not that a person has engaged in conduct violating a provision of KRS 260.850 through 260.869, 302 KAR Chapter 50, or the hemp grower license application, then the department shall assess a monetary civil penalty not to exceed \$2,500 per violation.

(2) A person wishing to appeal the department's assessment of a monetary civil penalty shall submit a written request for a hearing within fifteen (15) days of the notification date.

(3) A person wishing to appeal the department's assessment of a monetary civil penalty shall mail a hearing request letter to KDA Hemp Licensing Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(4) Appeals shall be heard by a three (3) person administrative panel whose members shall be designated by the commissioner. The administrative panel shall include at least one (1) person who is a department employee and at least one (1) person who is not a department employee and not involved or invested in any Kentucky hemp projects.

(5) The members of the administrative panel shall determine if the department's action in assessing the monetary civil penalty was arbitrary or capricious.

(6) Hearings on the appeal shall be open to the public and occur at a time, date, and location designated by the commissioner.

(7) An appealing person shall appear in person at the assigned hearing time. Barring unexpected events, such as inclement weather, failure to appear on time shall constitute grounds for dismissal of the appeal.

(8) An appealing person shall be allowed an opportunity to present arguments for reversing the assessed monetary civil penalty.

(9) A representative of the department shall be allowed an opportunity to present arguments for affirming the assessed monetary civil penalty.

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

(11) A majority of the three (3) members of the administrative panel may affirm the assessed monetary civil penalty, affirm and increase or decrease the assessed monetary civil penalty or reverse the assessed monetary civil penalty.

(12) The department shall have the authority to pursue unpaid monetary civil penalties by filing a civil cause of action in the Franklin Circuit Court.

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

(1) Except as established in this section, faculty members, administrators, and staff members of an institution of higher education shall be subject to all requirements of this administrative regulation.

(2) An institution of higher education shall not allow its faculty, administration or staff members, or any sponsored student to be in possession of, or conduct academic research involving, living hemp plants, leaf material, floral material, or viable seeds of hemp without first completing and submitting a Hemp License Application.

(3) An authorized faculty, administrator, or staff member of an eligible institution of higher education who wishes to be in possession of, or conduct an academic research project involving living hemp plants, leaf material, floral material, or viable seeds of hemp shall complete and submit a Hemp License Application.

(4) If a university applicant's research plan includes growing hemp, then a Hemp Grower License shall be issued by the department.

(5) If a university applicant's research plan does not include growing hemp, then a Hemp Processor/Handler License shall be issued by the department. An authorized faculty, administrator, or staff member of an eligible institution of higher education who wishes to be in possession of, or conduct an academic research project involving, leaf material or floral material from hemp shall complete and submit a Processor/Handler License Application.

(6) The department shall accept applications from an authorized faculty, administrator, or staff member of an eligible institution of higher education at any time of the year.

(7) The department shall not collect fees for licenses issued to a faculty member, administrator, or staff member of an institution of higher education if the project is for research only and not intended for commerce.

(8) Sampling and testing of hemp grown under the authority of this section shall be conducted by the department if the harvested material is intended for commerce.

(9) An eligible institution of higher education shall:

(a) Be accredited by, and in good standing with, a regional or national higher education accreditation agency;

(b) Confer academic degrees at the associate, bachelor, master, or doctoral level; and

(c) Have a principal campus or office that is located at a site within the Commonwealth of Kentucky.

#### Section 26. Record Keeping Requirements; Three (3) Year Retention Period.

(1) For at least three (3) years, license holders shall maintain and make available for inspection by the department during reasonable business hours, records regarding:

(a) Acquisition of hemp plants;



- (b) Production and handling of hemp plants;
- (c) Storage of hemp plants; and
- (d) Disposal of all cannabis plants that do not meet the definition for "hemp".

(2) The department shall have access to any premises where hemp plants could be held during reasonable business hours.

(3) All reports and records required to be submitted to the department as part of participation in the program in this part, which include confidential data or business information, such as information constituting a trade secret or disclosing a trade position, financial condition, or business operations of the particular licensee or their customers, shall be received by, and at all times kept in the custody and control of, one (1) or more employees of the department or their representatives. Confidential data or business information may be shared with applicable federal, state, or local law enforcement agencies or their designees in compliance with applicable law.

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

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

(2) Corrective action plans shall remain in place for at least two (2) years and include, at a minimum:

- (a) The date by which the grower shall correct each negligent violation;
- (b) Steps to correct each negligent violation; and
- (c) A description of the procedures to demonstrate compliance.

(3) A grower who commits a negligent violation shall not, as a result of that violation, be subject to any criminal enforcement action by any government.

(4) If a subsequent violation occurs while a corrective action plan is in place, a new corrective action plan shall be submitted with a heightened level of quality control, staff training, and quantifiable action measures.

(5) A grower who commits three negligent violations within a five (5) year period shall have his or her license revoked and be ineligible to obtain a license for a period of five (5) years beginning on the date of the third violation. A violation that occurred prior to January 1, 2021 shall not count toward the three (3) violations referred to in this subsection.

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

(1) In addition to being subject to the license suspension, license revocation, and monetary civil penalty procedures established in this administrative regulation and 302 KAR 50:031, a person who is found by the department to have violated any statute or administrative regulation governing that person's participation in the hemp program with a culpable mental state greater than negligence shall be subject to the reporting requirements established in this section.

(2) The department shall immediately report a person who is found by the department to have violated any statute or administrative regulation governing that person's participation in the hemp program with a culpable mental state greater than negligence to the:

- (a) Attorney General of the United States;
- (b) Commissioner of the Kentucky State Police; and
- (c) Commander of the Kentucky State Police's Cannabis Suppression Branch. (47 Ky.R. 643, 1196; eff. 3-2-2021.)