

DEPARTMENT OF AGRICULTURE
Office of Agricultural Marketing
(Amendment)

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

RELATES TO: KRS 61.870 - 61.844, 260.850-260.869, 7 U.S.C. 1739p, 21 U.S.C. Chapter 9

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

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 process or handle hemp as a participant in the department's Hemp Licensing Program.

Section 1. Definitions.

- (1) "Agent" means a person who is employed by or working under contract for a license holder, and who does not have any ownership interest in the hemp.
- (2) "Applicant" means a person who submits an application on his or her behalf or on behalf of a business entity to participate in the Hemp Licensing Program.
- (3) "Brokering" means engaging or participating in the marketing of industrial hemp by acting as an intermediary or negotiator between prospective buyers and sellers
- (4) "Cannabis":
 - (a) Means the plant that, depending on its THC concentration level, is defined as either "hemp" or "marijuana." Cannabis is a genus of flowering plants in the family Cannabaceae of which Cannabis sativa is a species, and Cannabis indica and Cannabis ruderalis or subspecies thereof. Cannabis includes all parts of the plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts; and
 - (b) Does not mean a "publicly marketable hemp product," as defined by subsection (31) 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 delta-9-THC-acid into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven tenths (87.7) percent of delta-9-THC-acid.
- (12) "delta-9-THC" means delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of cannabis). For compliance purposes, all delta-9-THC

concentrations are measured post- decarboxylation (result commonly referred to as total THC).

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

(14) "GPS" means Global Positioning System.

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

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

(17) "Hemp Grower License" means a document issued by the department authorizing the person to grow, handle, and store hemp in the Commonwealth under the terms established in the document, KRS 260.850 through 260.863, and this administrative regulation.

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

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

(20) "Key participant":

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

(b) Does not mean facility managers or shift managers.

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

(22) "Licensed grower" means a person authorized in the commonwealth by the department to grow, handle, store, and market hemp under the terms established in a hemp grower license, KRS 260.850 through ~~260.869~~~~[260.859]~~, and 302 KAR 50:021.

(23) "Licensed processor" means a person in the Commonwealth authorized by the department to process, handle, store, and market hemp under the terms established in a hemp processor/handler license, KRS 260.850 through ~~260.869~~~~[260.859]~~, and this administrative regulation.

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

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

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

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

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

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

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

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

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

(a) The product:

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 (16) of this section; or
- (c) The product is CBD that is approved as a prescription medication by the United States Food and Drug Administration.
- (33) "Signing authority" means an officer or agent of the organization with written authorization to commit the legal entity to a binding agreement.
- (34) "Strain" means a group of hemp with presumed common ancestry and identified physiological distinctions. A strain does not meet the uniformity, stability, or distinction requirements to be considered a variety.
- (35) "Variety" means a subdivision of a species that is:
 - (a) Uniform, in that the variations in essential and distinctive characteristics are describable;
 - (b) Stable, in that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity if reproduced or reconstituted as required by the different categories of varieties; and
 - (c) Distinct, in that the variety can be differentiated by one (1) or more identifiable morphological, physiological, other characteristics from all other publically known varieties, or other characteristics from all other publicly known varieties.
- (36) "Variety of concern" means any variety of hemp that tests above 0.3000 percent delta 9-THC in one (1) or more pre-harvest samples. A hemp variety designated as a "variety of concern" could be subject to restrictions and additional testing.

Section 2. Processor or Handler License Application.

- (1) Any person who wishes to engage in the processing, handling, brokering, or marketing of hemp that does not fall within the definition of a "publicly marketable hemp product" at any location in the Commonwealth shall submit to the department a complete Processor/Handler License Application, or annual license renewal, incorporated by reference as part of the Processor/Handler License Application ~~[Packet]~~ in 302 KAR 50:080.
- (2) Existing processor or handler license holders shall complete the department's requirements for license renewal by December 31.
- (3) Any person who does not hold a grower license from the department shall not grow, cultivate, or handle living hemp plants or other cannabis.
- (4) Any person who does not hold a processor/handler license from the department shall not process, handle, broker, or market hemp or other cannabis that does not fall within the definition of a "publicly marketable hemp product" at any location within the commonwealth.
- (5) A person under the age of eighteen (18) years of age shall not apply for or hold a processor or handler license.
- (6) Application deadlines.
 - (a) Completed Processor/Handler License Application forms shall be postmarked or received by the department by the end of the application period established in the application.
 - (b) Completed Processor/Handler License Application forms shall be delivered to KDA Hemp Licensing Program, 111 Corporate Drive, Frankfort, Kentucky 40601.
 - (c) The department shall deny any Processor/Handler License Application that is not received by the deadline established in the application.
- (7) The department shall require each applicant to pay a processor or handler application fee in the amount established in 302 KAR 50:060.
- (8) Application fees shall not cover or include the cost of the criminal background checks required by KRS 260.862(2)(d) and Section 3 of this administrative regulation.

Applicants and license holders shall pay criminal background check fees directly to the Kentucky State Police or other law enforcement agency.

(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:

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

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);

(c) Complete and accurate responses to each request for information on the application form; and

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

(11) Any Processor/Handler License Application that is missing required information shall be subject to denial.

Section 3. Criminal Background Check.

(1) Each licensed processor/handler or applicant shall undergo and pay for an annual criminal background check as required by KRS 260.862(2)(d).

(2) A licensed processor/handler or applicant, or key participant within an entity that is a processor/handler or applicant, shall, following completion of the background check, ensure delivery of the report to the department with the application or renewal.

(3) The department shall not accept a report from a criminal background check that occurred more than 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 Processor or Handler Licensing; Criteria and Procedure for Evaluation.

(1) The department shall apply the criteria established in paragraphs (a) through (m)~~(l)~~ of this subsection in evaluating applications for a processor/handler license.

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

(b) An applicant who has been a program participant previously, the applicant shall comply with the responsibility to submit any reports required by 302 KAR Chapter 50.

(c) All involved business entities shall be registered and in good standing with the Kentucky Secretary of State.

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

(e) The criminal background check report indicates that, within ten (10) years from the date when the background check was issued, the applicant shall not have:

1. A felony conviction; or

2. A drug-related misdemeanor conviction or violation.

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

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

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

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

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

(k) The applicant shall not have made and shall not make any false statements or representations to a representative of the department or a law enforcement agency.

(l) The applicant's proposed sites shall comply with the land use restrictions established in Section 5 of this administrative regulation. Denial of all proposed processing and handling sites shall constitute grounds for denial of the application.

(m) The applicant shall not have had a hemp license revoked within 5 years previous to the date of this application.

(2) The department shall conditionally approve an application for a processor/handler license if the application satisfies the criteria established in this administrative regulation.

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

(4) Applicants shall pay licensing fees prior to receiving a processor/handler license.

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

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

(1) A licensed processor or handler shall not process or store leaf or floral material from hemp or other cannabis in or adjacent to any structure that is used for residential purposes without first obtaining written permission from the department.

(2) A licensed processor or handler shall not apply to process, handle, or store hemp on any property that is not owned or completely controlled by the applicant or licensed processor.

(3) A licensed processor or handler shall not process, handle, or store hemp on property owned by, leased from, or previously submitted in an application by any person who is ineligible or was terminated or denied admission to the Hemp Licensing Program for:

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

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

(c) Both.

Section 6. Administrative Appeal from Denial of Application.

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

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

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

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

Section 7. Hemp Processor or Handler Licenses.

- (1) An applicant shall not be a participant in the Hemp Licensing Program until the department has issued a processor/handler license following the applicant's completion of the department's mandatory orientation session and payment of licensing fees.
- (2) The processor/handler license application shall establish the terms and conditions governing participation in the Hemp Licensing Program.
- (3) Failure to agree or comply with terms and conditions established in the processor/handler license application or this administrative regulation shall constitute grounds for appropriate departmental action, up to and including termination of the license and expulsion from the Hemp Licensing Program.
- (4) Annual renewal of a processor/handler license shall require the license holder to:
 - (a) Submit to the department an annual criminal background check for the signing authority of record;
 - (b) Complete a mandatory, annual program orientation session hosted by the department;
 - (c) Pay annual fees in the amount established in 302 KAR 50:060;
 - (d) Update all licensed addresses, location IDs, and GPS coordinates with the department; and
 - (e) Agree to comply with the policies established in 302 KAR Chapter 50.
- (5) A processor/handler license shall remain in force as long as the license holder meets the annual renewal requirements by December 31 of each year.
- (6) A processor/handler license may be terminated by the license holder or the department upon thirty (30) days prior written notice.
- (7) The department shall issue processor/handler's license numbers in accordance with this format: "P_0001" through "P_9999."

Section 8. Processor or Handler Licensing Fee.

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

Section 9. Seed and Propagule Acquisition.

(1) A license holder intending to acquire seeds or propagules first shall determine whether or not the variety or strain intended for purchase is listed on the department's current Summary of Varieties List.

(a) If the variety or strain is listed on the Summary of Varieties List, a pre-approval from the department shall not be required.

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

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

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

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

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

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

(7) Any person engaging in the distribution of hemp seeds shall adhere to all applicable Kentucky seed laws (KRS 250.010 through 250.990) and 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 10. Seeds of Wild, Landrace, or Unknown Origin.

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

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

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

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

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

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

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

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

Section 12. Collection and Retention of Cannabis Samples.

(1) The department may collect, test, and retain samples of hemp or other cannabis, and substances derived from hemp or cannabis in the possession of a licensed processor or handler.

(2) All samples collected by the department shall become the property of the department and shall be nonreturnable. Compensation shall not be owed by the department.

(3) The material to be collected for sampling shall be determined by the department inspector.

Section 13. Restrictions on Sale or Transfer.

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

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

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

(4) A licensed processor or handler selling, transferring, or allowing the sale or transfer of floral or plant extracts (including CBD), shall conduct and retain testing data reflecting the decarboxylated delta-9-THC level for at least three (3) years.

(5) A licensed processor or handler shall not sell or transfer floral extracts containing a decarboxylated delta-9-THC concentration in excess of zero and three-tenths (0.3) percent except that pursuant to KRS 260.8635, a licensed processor, or a person acting as a representative of a licensed processor, may move or transport hemp extract material having a delta-9 tetrahydrocannabinol concentration in excess of three-tenths of one percent (0.3%) from one (1) licensed processing location in the Commonwealth to another licensed processing location in the Commonwealth, if:

(a) The hemp extract material shall move directly from one (1) licensed processing location to another; and

(b) The licensed processor shall provide written notice to the department of the planned movement at least twenty-four (24) hours in advance by submitting to the department a completed Hemp Concentrate Transport Notification Form.

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

(7) Any person making human-consumable products, or substances that will be used to make human-consumable products, shall be Good Manufacturing Practices-compliant and permitted by the Department of Public Health within the Cabinet for Health and Family Services.

(8) Any person packaging a product prior to sale shall comply with the Uniform Packaging and Labeling Regulations as established in 302 KAR 75:130.

(9) Any person packaging a hemp-derived cannabinoid product shall comply with 902 KAR 45:190, Hemp-derived cannabinoid products; packaging and labeling requirements.

~~(10) {(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.

~~(11) {(10)}~~ 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.

(12) A licensed processor or handler shall only purchase or receive harvested hemp plant material that has been determined compliant and released for sale or transfer by the appropriate hemp regulatory program in the grower's area of jurisdiction.

Section 14. Other Requirements.

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

(2) A person shall not convert a substance that was extracted or derived from hemp or other cannabis into a Schedule I controlled substance.

(3) A license holder shall not make, manufacture, or distribute any of the prohibited products listed in 302 KAR 50:070.

(4) A person shall not possess living hemp or other cannabis plants without a hemp grower license.

(5) A licensed processor or handler shall not allow another person, other than an agent of the licensed processor or handler, to process, handle or store hemp under their license in lieu of obtaining a separate hemp processor/handler license.

(6) Processors using hazardous materials or flammable solvents (for example, ethanol) shall comply with the requirements of the State Fire Marshal.

(7) Any person owning or operating an analytical laboratory offering third-party testing services shall report post-decarboxylated delta-9-THC on a 100% dry weight basis.

(8) Any person owning or operating an analytical laboratory offering third-party testing services shall participate in the University of Kentucky's Hemp Proficiency Testing Program.

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

(1) Except as 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. The department shall provide this information to law enforcement agencies and other regulatory agencies upon request.

Section 16. Violations Requiring Temporary License Suspension Procedures.

(1) The department shall notify a licensed processor/handler in writing that the Processor/Handler License has been temporarily suspended if a representative of the

department receives information supporting an allegation that a licensed processor/handler has:

- (a) Plead guilty to, or is convicted of, any felony or drug-related misdemeanor or violation in accordance with KRS 260.864;
 - (b) Engaged in conduct violating a provision of KRS 260.850 through 260.869, 302 KAR Chapter 50, or the processor/handler license with a culpable mental state greater than negligence;
 - (c) Made a false statement to a representative of the department or a law enforcement agency with a culpable mental state greater than negligence;
 - (d) Been found to be in possession of cannabis with a measured delta-9-THC concentration above zero and three tenths (0.3) percent with a culpable mental state greater than negligence;
 - (e) Been found to be growing hemp or cannabis without a hemp grower license with a culpable mental state greater than negligence; or
 - (f) Failed to comply with an order from a representative of the department or a law enforcement agency with a culpable mental state greater than negligence.
 - (g) Been found to be in possession of cannabis plant material with a measured THC concentration of 3.000% or greater.
- (2) The department shall schedule a license revocation hearing for a date as soon as practicable after the notification of temporary suspension, but in any event not later than sixty (60) days following the notification of temporary suspension.
 - (3) A person whose processor/handler license has been temporarily suspended shall not process or remove cannabis from the premises where hemp or other cannabis was located at the time the department issued its notice of temporary suspension, except as authorized in writing by a representative of the department.
 - (4) As soon as possible after the notification of temporary suspension, a representative of the department shall inspect the licensed processor/handler's premises and perform an inventory of all cannabis, hemp, and hemp substances that are in the licensed processor/handler's possession.

Section 17. License Revocation Hearings and Consequences of Revocation.

- (1) The department shall notify a person whose processor/handler license has been temporarily suspended of the date the person's license revocation hearing will occur at a time and place designated by the commissioner.
- (2) License revocation hearings shall be adjudicated by a three (3) person administrative panel in accordance with KRS 260.864.
- (3) License revocation hearings shall be open to the public.
- (4) A person whose processor/handler license has been temporarily suspended shall appear in person at the assigned hearing time. Failure to appear on time shall constitute a waiver of the person's right to present information and arguments against revoking the processor/handler license.
- (5) A representative of the department shall be allowed an opportunity to present information and arguments for revoking the processor/handler license.
- (6) A person whose processor/handler license has been temporarily suspended shall be allowed an opportunity to present information and arguments against revoking the processor/handler license.
- (7) The three (3) members of the administrative panel shall rule on the question of revocation by a majority vote.
- (8) If a majority of the three (3) members of the administrative panel find that it is more likely than not that a licensed processor or handler has committed any of the acts listed in Section 16(1) of this administrative regulation then the processor/handler license shall be revoked effective immediately.

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

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

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

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

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

Section 18. Monetary Civil Penalties.

(1) If a representative of the department receives information supporting a finding that it is more likely than not that a person has engaged in conduct violating a provision of KRS 260.850 through 260.869, 302 KAR Chapter 50, or the processor or handler license application, then the department shall assess a monetary civil penalty 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 appellant shall be allowed an opportunity to present arguments for reversing the assessed monetary civil penalty.

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

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

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

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

Section 19. Licensing for Representatives of Universities and Colleges.

- (1) Except as established in this section, faculty members, administrators, and staff members of an institution of higher education shall be subject to all requirements of this administrative regulation.
- (2) An institution of higher education shall not allow or authorize its faculty, administration, or staff members, or any sponsored student, to be in possession of, or conduct academic research involving living hemp plants, leaf material, floral material, or viable seeds of hemp without first completing and submitting a Hemp License Application.
- (3) An authorized faculty, administrator, or staff member of an eligible institution of higher education who wishes to be in possession of, or conduct an academic research project involving living hemp plants, leaf material, floral material, or viable seeds of hemp shall complete and submit a Hemp License Application.
- (4) If a university applicant's research plan includes growing hemp, then a Hemp Grower License shall be issued.
- (5) If a university applicant's research plan does not include growing hemp, then a Hemp Processor/Handler License shall be issued.
- (6) The department shall accept applications from an authorized faculty, administrator, or staff member of an eligible institution of higher education at any time of the year.
- (7) The department shall not collect fees for licenses issued to a faculty member, administrator, or staff member of an institution of higher education if the project is for research only and that is, not intended for commerce.
- (8) Sampling and testing of hemp processed or handled under the authority of this section shall be conducted by the department if the harvested material is intended for commerce.
- (9) An eligible institution of higher education shall:
 - (a) Be accredited by, and in good standing with, a regional or national higher education accreditation agency;
 - (b) 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 20. Corrective Action Plans for Negligent Violations.

- (1) If the department determines that a processor or handler committed a negligent violation of any provision within KRS Chapter 260.850 through 260.869 or 302 KAR Chapter 50, then the department shall devise and implement a corrective action plan for the processor or handler.
- (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 processor or handler shall correct each negligent violation;
 - (b) Steps to correct each negligent violation; and
 - (c) A description of the procedures to demonstrate compliance.
- (3) A processor or handler who commits a negligent violation shall not, as a result of that violation, be subject to any criminal enforcement action by any government.
- (4) If a subsequent violation occurs while a corrective action plan is in place, a new corrective action plan shall be submitted with a heightened level of quality control, staff training, and quantifiable action measures.
- (5) A processor or handler who commits three (3) negligent violations within a 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 21. Mandatory Reports to Law Enforcement Agencies for Violations with a Culpable Mental State Greater than Negligence.

(1) In addition to being subject to the license suspension, license revocation, and monetary civil penalty procedures established in 302 KAR 50:021 and this administrative regulation, a person who is found by the department to have violated a requirement of KRS Chapter 260 or 302 KAR Chapter 50 with a culpable mental state greater than negligence shall be subject to the reporting requirements established in this section.

(2) The department shall immediately report a person who is found by the department to have violated any statute or administrative regulation governing that person's participation in the hemp program with a culpable mental state greater than negligence to the commander of the Kentucky State Police's Cannabis Suppression Branch.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: October 13, 2021

FILED WITH LRC: October 13, 2021 at 1:21 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2021, at 1:00 p.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601, phone (502) 782-0284 fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This regulation established the guidelines for participation in the Hemp Program administered by the Kentucky Department of Agriculture.

(b) The necessity of this administrative regulation:

This regulation is necessary to establish provisions for movement, processing and possession of hemp.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 260.850-260.869 requires the Kentucky Department of Agriculture to regulate hemp. This administrative regulation satisfies this mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This program that has been administered by the KDA since the 2014 growing season. This administrative regulation and creates the rules for processors.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

This filing undated items to address current events and federal requirements.

(b) The necessity of the amendment to this administrative regulation:

This regulation is necessary to establish provisions for growing, movement, processing and possession of industrial hemp by laying out the rules required for the program.

(c) How the amendment conforms to the content of the authorizing statutes:

KRS 260.850-260.869 requires the Kentucky Department of Agriculture to regulate industrial hemp. This administrative regulation satisfies this mandate by creating easy to understand rules.

(d) How the amendment will assist in the effective administration of the statutes:

This program that has been administered by the KDA since the 2014 growing season. This administrative regulation and creates the rules for processors.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

The Kentucky Department of Agriculture, 970 growers, 12 Universities and 170 processors.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Entities will be required to follow the instructions in the filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

Likely no modification of current actions would be needed, so little to no costs would be incurred.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Administrative ease on behalf of the KDA and clear guidance for entities.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

Expenses for the entire hemp program for 2019 were approximately \$1,156,000.

(b) On a continuing basis:

Market forces will determine participation levels for 2020 and beyond. Ongoing costs will be a function of grower and processor numbers and location modifications.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

The hemp program is funded by the fees set for in 302 KAR 50:060.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

No increases in funding are required currently.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

This filing does not contain fees. The hemp program is funded by the fees set for in 302 KAR 50:060.

(9) TIERING: Is tiering applied?

No. All regulated entities have the same requirements..

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

7 U.S.C. 1739p.

(2) State compliance standards.

KRS 260.850-260.869

(3) Minimum or uniform standards contained in the federal mandate.

7 U.S.C. 1739p. establishes requirements for hemp programs. This administrative regulation establishes the requirements for participation in Kentucky.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

No, this administrative regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

This administrative regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

No answer provided.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 260.682

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

Income for the entire hemp program for 2021 was approximately \$482,000

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

Even with a fixed fee structure, revenue is almost entirely determined by participation. Market forces will dictate revenue to a point the KDA cannot guess with any certainty.

(c) How much will it cost to administer this program for the first year?

Expenses for the entire hemp program for 2020 were \$947,712

(d) How much will it cost to administer this program for subsequent years?

The KDA expects this spending trendline to continue for the hemp program as a whole, but based on producer participation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):2020=\$1,067,000, 2021=\$482,000

Expenditures (+/-):2020= \$947,000, 2021 no estimate yet

Other Explanation: