

DEPARTMENT OF AGRICULTURE

PLANT INDUSTRIES SECTION

Statutory Authority: 3 Delaware Code, Section 101(2) and (3) (3 **Del.C.** §101(2) & (3))
3 **DE Admin. Code** 805

PROPOSED

PUBLIC NOTICE

805 Rules and Regulations for Delaware Domestic Hemp Production Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 3 of the Delaware Code, Chapter 1, Sections 101(2) & (3), Delaware Department of Agriculture and Plant Industries Section is proposing regulations governing the Delaware Domestic Hemp Production Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Plant Industries Section, 2320 South DuPont Highway, Camden DE 19901, by email to dda_hempprogram@delaware.gov by 4:30 p.m. on June 1, 2021. Please identify in the subject line: Regulations Governing Delaware Domestic Hemp Production Program.

The action concerning the determination of whether to adopt the proposed regulations will be based upon the results of Department and Section staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Department of Agriculture/Plant Industries Section is proposing regulations governing Delaware Domestic Hemp Production Program.

Statutory Authority

3 **Del.C.** §101(2) & (3)

Background

The Delaware Department of Agriculture has been charged by the Delaware legislature pursuant to 3 Del. C. § 101(2) & (3) with the power to devise and execute measures necessary for the development of the agricultural interests of the State and to make and adopt rules for the government of the Department of Agriculture. The Department is developing proposed regulations to establish appropriate procedures, permitting process, and governing measures for the hemp agricultural program within the State of Delaware.

Summary of Proposal

Summary of Proposed Changes

The Plant Industries Section plans to publish the "proposed" amendments to the regulations governing the Delaware Domestic Hemp Production Program and hold them out for public comment per Delaware law. The amendments clearly define the procedures, permitting process, and governing measures for individuals looking to participate in the Delaware Domestic Hemp Production Program as a producer, processor, or handler. The amendments align with the USDA Final Rule for the Domestic Production of Hemp.

Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Department of Agriculture/Plant Industries Section gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on June 1, 2021.

Fiscal Impact

Not applicable

805 Rules and Regulations for Delaware Domestic Hemp Production Program

4.0 Authority

~~These regulations are promulgated pursuant to the authority of 3 **Del.C.** §101(2) & (3). All moneys collected by the~~

Department pursuant to the Program shall be used for the enforcement and administration of the Program. The Department may sample and or test any hemp or hemp products to verify compliance with this chapter.

2.0 Purpose

- 2.1 The passage of the federal Agriculture Improvement Act of 2018 and legalization of *Cannabis sativa* L. offers an economic opportunity for the State of Delaware and its producers, processors, handlers, and consumers. The purpose of these regulations is to establish appropriate standards, definitions, and requirements for the agricultural production of hemp in the State of Delaware.
- 2.2 To establish a Hemp Production Program in the State of Delaware, the following regulations define how the Department will comply with USDA requirements as indicated in 7 CFR Part 990 Domestic Hemp Program, as the regulatory entity of hemp production in the State of Delaware. This administrative regulation establishes procedures and requirements for licensing persons who wish to grow or cultivate hemp as a participant in the Delaware Hemp Production Program.

3.0 Definitions

The following words and terms, when used in this regulation, have the following meaning unless the context clearly indicates otherwise:

"Acceptable hemp THC level" means post decarboxylated delta-9 tetrahydrocannabinol concentration equal to or less than 0.3% on a dry weight basis, as reported by a USDA approved laboratory. The designated laboratory will also report the measurement of uncertainty (MU), 0.3% must fall within the reported MU.

"Applicant" means an individual, or an individual authorized to sign for a business entity, who applies for a license or registration.

"Authorized representative" means an individual designated by a licensed producer to act as a point of contact on behalf of the licensed producer. This individual must be indicated on the Delaware Domestic Hemp Production Program application.

"Cannabis" means any form of the plant in which the delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined or that has been determined to be above the acceptable hemp THC level.

"Composite sample" means a collection of cuttings from an individual lot.

"Corrective action plan" means a plan set forth by the Department for a licensed producer to correct a negligent violation of, or non-compliance with, the State of Delaware hemp production plan. This term is defined in accordance with the Agriculture Improvement Act of 2018, which mandates certain non-compliance actions to be addressed through corrective action plans.

"Criminal History Report" means a report detailing an individual's conviction status related to a controlled substance within the past 10 years at the state or federal level. The report must be dated within 120 days prior to the date of application submission and is required to be renewed every three years. A Criminal History Report is required for all key participants.

"Culpable mental state greater than negligence" means to act intentionally, knowingly, willfully, or recklessly or with criminal negligence.

"Cuttings" means flowering material of cannabis plant material collected for a sample.

"Decarboxylated" means the completion of the chemical reaction that converts THC acid into delta-9-THC. The decarboxylated value may also be calculated using a conversion formula that sums delta-9-THC and THC acid. The Department will consider the THC concentration level after this process, which is the post decarboxylated level.

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

"Department" means the Delaware Department of Agriculture.

"Destruction methods" means the use of farm equipment to mechanically manipulate the soil or the plant to render a cannabis crop non-retrievable within an indoor or outdoor growing site. The Department will not regulate the removal of male plants.

"Dry weight basis" means a method of determining the percentage of a chemical in a substance after removing the moisture from the substance. Percentage of THC on a dry weight basis means the percentage of THC, by weight, in a cannabis item (plant, extract, or other derivative), after excluding moisture from the item.

"Farm service agency" or "FSA" means an agency of the U.S. Department of Agriculture that provides services to farm operations that will assist in information collection on land being used for hemp production.

"Flower material" means the complete inflorescence of the cannabis plant.

"Geospatial location" means a location designated through a global system of navigational satellites used to determine the precise ground position of a place or object.

"Growing site"—

"Indoor Growing Site" means an enclosed building with the same tax identification number, excluding any outdoor growing site, that can be secured and locked, in which cannabis plants are grown. Registration of a site must include a map, which contains a geospatial location of the site where hemp will be grown.

"Outdoor Growing Site" means a field location with the same tax identification number, excluding any indoor growing site, where cannabis seeds or plants are planted in the ground. Registration of a site must include a map, which contains a geospatial location of the site where hemp will be grown.

"Handler" means an individual, other than a producer or processor, transporting or storing hemp or hemp plant parts prior to the delivery of such plant or plant part for processing.

"Hemp" means all parts and varieties of the plant *Cannabis sativa* L. and any part of such plant cultivated or possessed by a license holder or registration holder, whether growing or not, with a post decarboxylated delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis.

"Homogenous" or "homogeneity" means a like plant variety in an individual lot.

"Key participants" means person or persons who have a direct or indirect financial interest in the entity producing or processing hemp, such as an owner or partner in a partnership. A key participant also includes persons in a corporate entity at executive levels including CEO, COO, and CFO. This does not include other management positions like farm, field, or shift managers.

"Laboratory" means a USDA-approved laboratory used by the Department to conduct regulatory testing for THC concentration levels in cannabis.

"License holder" means an individual or business entity authorized by the Department to grow, transport, or store hemp plants or plant parts.

"Lot" means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout. Lot also refers to the batch or contiguous, homogenous whole of a product being sold to a single buyer at a single time. Lot is defined by the producer in terms of farm location, planting date, and variety and is to be reported as such to the FSA.

"Measurement of uncertainty" or "MU", means the parameter associated with the results of a measurements that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement, if a sample measure of 0.3% THC falls within the MU range then the sample meets acceptable hemp THC levels.

"Negligent" means failure to exercise the level of care that a reasonably prudent person would exercise in complying with these regulations. Licensed producers that are found operating negligently will be required to perform a Corrective Action Plan.

"On-site" means a registered growing site as indicated on an Annual Growing Site Registration or Growing Site Modification form.

"Processor" means an individual or business entity that conducts processes that convert hemp in any way, to include drying down and packaging.

"Processor facility" means an enclosed building that can be secured and locked in which hemp is processed. Registration of a facility must include a map, which contains a geospatial location of the site where hemp will be grown.

"Producer" means an individual, who is 18 years of age or older, or business entity possessing a Producer License issued by the Department under the authority of this chapter to grow, cultivate, harvest, store, or transport hemp or hemp products. Including individuals growing transplants, seedlings, or clones. Once licensed the term "licensed producer" shall be used.

"Production" means to grow or cultivate hemp plants for market.

"Program" means the Delaware Domestic Hemp Production Program.

"Sample" means a composite sample collected by the Department.

"Sampling agent" means an individual employed by the Department to collect, label, and submit cannabis samples to a designated testing laboratory.

"USDA" means the United States Department of Agriculture.

4.0 Application, License and Registration

- 4.1 The Department intends to approve or deny applications for producers, handlers, and processors within 30 days of submission. The Department will issue a license number or registration number upon approval. Licenses or registrations issued by the Department are intended to validate growing sites, processing facilities,

or storage facilities within the State of Delaware. Any changes to an applicant's contact information must be submitted to the Department within ten days of the change. The Department will deem persons who materially falsify any information in their application ineligible to participate in the Delaware Domestic Hemp Production Program. Any records of the Department that could provide the name or location of a growing site or producer are excluded from the public record under 29 ~~Del.C.~~ §10002(l) (1), (2), and (17)a. The Department may report information regarding licensees to law enforcement.

4.2 Producers:

- 4.2.1 ~~New applications and renewals, using the Delaware Domestic Hemp Production Program Application, must be submitted between November 1st and February 1st of the given year. Licenses will be valid until December 31st of the year that is three years after the license is issued, unless otherwise revoked.~~
- 4.2.2 ~~An Annual Growing Site Registration must be completed annually and submitted to the Department no later than February 1st.~~
- 4.2.3 ~~A Growing Site Modification form is required to be completed and submitted to the Department if a licensed producer intends to alter the location or size of a growing site as indicated on the Annual Growing Site Registration.~~
- 4.2.4 ~~The Department requires a licensed producer to oversee individuals conducting, but not limited to, the following actions related to their hemp crop acreage: cleaning seed, in-field consulting, custom planting, weed removal, custom harvesting, and storing.~~
- 4.2.5 ~~The Department requires that a licensed producer notifies landowners of the intention to use their land as a hemp growing site, if the licensed producer is not the owner of the land where hemp will be grown.~~
- 4.2.6 ~~The Department allows any licensed producer to designate one individual as an authorized representative. Licensed producers shall ensure that a Criminal History Report is completed by an authorized representative and submitted to the Department.~~

4.3 ~~Processors are required by the Department to complete a Processor Application, Annual Processor Facility Registration and Criminal History Report. New applications and renewals must be submitted by October 31st. Processor Registration Certificates will be valid until December 31st of the year that is three years after the certificate is issued, unless otherwise revoked. Processor facility registrations must be submitted annually no later than October 31st. It is the expectation of the Department that all materials associated with processing and final products are within acceptable hemp THC levels.~~

4.4 ~~Handlers. The Department requires that individuals intending to transport, or store hemp or hemp plant parts complete a Handler Application and Criminal History Report. New applications and renewals must be submitted annually. Licenses will be valid until December 31st of the year that the license is issued, unless otherwise revoked.~~

4.5 ~~Criminal History Report. All applications and license renewals must be accompanied by completed State and Federal Criminal History Reports. If the application is for a business entity, a completed Criminal History Report must be provided for each key participant and authorized representative. Approved applications are subject to revocation pending results of the State and Federal Criminal History Reports.~~

4.6 ~~Individuals shall submit applications to the Department via a physical collection point identified by the Department, or via email. Any questions related to applications must be submitted via email at DDA_HempProgram@delaware.gov. The Department will mail all licenses and registrations via USPS. The Department will maintain a copy of each license and registration for record.~~

4.7 ~~The Department will determine the status of licenses based on the following:~~

4.7.1 ~~Active: A licensed producer that is in good standing with this Program.~~

4.7.2 ~~Suspended: A licensed producer that has engaged in conduct violating this Program.~~

4.7.2.1 ~~A licensed producer whose license has been suspended shall not produce, handle or process hemp during the period of suspension.~~

4.7.2.2 ~~The Department may require that a licensed producer whose license has been suspended complete a Corrective Action Plan to fully restore the license.~~

4.7.3 ~~Revoked: A licensed producer that negligently violates this Program 3 times within a period of 5 years shall have the license revoked and be ineligible to produce, handle or process hemp for a period of 5 years beginning on the date of the third violation. The Department may immediately revoke licenses if:~~

4.7.3.1 ~~A licensed producer pleads guilty to or is convicted of any felony related to a controlled substance.~~

4.7.3.2 ~~A licensed producer makes a materially false statement with regard to this Program to the Department with a culpable mental state greater than negligence.~~

- 4.7.3.3 ~~A licensed producer is found to be growing, handling or processing cannabis exceeding the acceptable hemp THC level with a culpable mental state greater than negligence or has negligently violated this Program 3 times within a period of 5 years.~~
- 4.8 ~~A Delaware institution of higher education that plans to produce and study hemp in the state, is required to complete the appropriate application and obtain a license from the Department.~~
 - 4.8.1 ~~The Department shall charge an institution of higher education sample collection and testing fees. The Department shall conduct regulatory samples and charge an institution of higher education fees associated with a producer, handler, or processor license, should the institution of higher education choose to participate in the Program for purposes other than research.~~
 - 4.8.2 ~~In accordance with the Delaware Domestic Hemp Production Program, a Delaware institution of higher education will not be determined noncompliant if the Delaware institution of higher education grows cannabis that exceeds Acceptable Hemp THC Level, as long as the cannabis crop is grown for research purposes and does not enter the stream of commerce. A Delaware institution of higher education is required to dispose of the cannabis crop that exceeds Acceptable Hemp THC Level within a reasonable timeframe of the conclusion of research.~~

5.0 Fees and Renewal

- 5.1 ~~Producer:~~
 - 5.1.1 ~~Application and Renewal \$300 every three years;~~
 - 5.1.2 ~~Annual Growing Site Registration \$500 per site annually; and~~
 - 5.1.3 ~~Growing Site Modification \$500 per site.~~
- 5.2 ~~Processor:~~
 - 5.2.1 ~~Application and Renewal \$300 every three years;~~
 - 5.2.2 ~~Processor Facility Registration \$1000 per facility annually; and~~
 - 5.2.3 ~~Facility Modification \$1000 per facility.~~
- 5.3 ~~The following have a fee of \$350 each per sample:~~
 - 5.3.1 ~~Pre-harvest Sample Collection;~~
 - 5.3.2 ~~Post-harvest Sample Collection; and~~
 - 5.3.3 ~~Resample Collection, and Testing.~~
- 5.4 ~~Handler Application \$100 annually.~~

6.0 Sampling, Testing Requirements and Inspections

- 6.1 ~~Sampling:~~
 - 6.1.1 ~~Sampling of hemp plants as required by the USDA, will be conducted by a sampling agent designated by the Department. Sampling agents will follow USDA and Department protocol for entering hemp growing sites and collecting the minimum number of plant specimens necessary to represent a homogenous composition of the lot that is to be sampled. The sampling agent will conduct one pre-harvest sample for each lot per licensed producer.~~
 - 6.1.2 ~~The Department requires that a licensed producer submit fees associated with sampling and testing, and if applicable resampling and retesting, at a total of \$350 per sample collected. Fees are to be collected by the Department prior to sampling.~~
 - 6.1.3 ~~If a licensed producer fails to complete harvest within 15 days of sample collection, the Department will collect a second pre-harvest sample of the lot to be submitted for testing.~~
 - 6.1.4 ~~A licensed producer or an authorized representative can request that the sampling process be conducted during a time that they are present at the growing site, however, sampling agents shall be provided complete and unrestricted access during business hours to cannabis plants, whether growing or harvested, and land, buildings, and other structures used for the cultivation, handling, and storage of all cannabis plants, and locations listed in the producer license.~~
 - 6.1.5 ~~Within 30-15 days prior to the anticipated harvest of cannabis plants, a licensed producer or an authorized representative of the licensed producer, as documented on the Delaware Domestic Hemp Production Program Application, shall notify the Department of the anticipated date of harvest via phone or email.~~
 - 6.1.6 ~~Within 15 days prior to the date of harvest, as indicated by the licensed producer or authorized representative of the licensed producer, as documented in the Delaware Domestic Hemp Production Program Application, a sampling agent shall collect representative samples from cannabis plants to submit for testing of THC concentration levels.~~

- 6.1.7 The sampling agent will not collect samples on lots where cannabis plants have not matured to flowering stage, as the USDA requires that samples consist of flower material.
- 6.1.8 A licensed producer or any other individual shall not harvest cannabis plants prior to samples being collected by the Department. A licensed producer or other individual may harvest lots that have been sampled by the Department but shall not remove harvested material from a growing site or comingle harvested lots without written authorization from the Department.
- 6.1.9 The growing site must be surveilled by the sampling agent. The sampling agent shall:
- 6.1.9.1 Verify the GPS coordinates of the growing site and lot as compared with the GPS coordinates submitted by the licensee to FSA;
 - 6.1.9.2 Estimate the average height, appearance, approximate density, condition of the hemp plants, and degree of maturity of the flowering material, meaning inflorescences; and
 - 6.1.9.3 Visually estimate the homogeneity of the lot to be sampled to establish that the lot is of like variety.
- 6.1.10 Cuttings from each individual lot, as identified by a licensed producer, and submitted by the producer to the FSA as per the requirements of the USDA, shall be organized as composite samples. Lots are to be defined by the producer. Producers must utilize guidelines from the Department for identifying lots; identification must be based on farm location, planting date, and variety. Producers are responsible for reporting lot identification to the FSA.
- 6.1.10.1 For purposes of determining the number of individual plants to meet sampling protocol as determined by the USDA sampling protocol document, the size of each individual lot shall be considered by the Department and sampling agent. For sampling purposes, samples from separate lots must remain separated and are not to be comingled.
 - 6.1.10.2 For lots of less than four acres, including indoor growing sites, the sampling agent will collect a minimum of five cuttings to form one composite sample. For lots greater than four and fewer than ten acres, including indoor growing sites, the sampling agent will collect a minimum of one cutting per acre to form a composite sample.
 - 6.1.10.3 For lots larger than 10 acres, including indoor growing sites, the number of plants that will be selected to form a composite sample is based upon the Codex Alimentarius Recommended Methods of Sampling for the Determination of Pesticide Residues for Compliance with MRLS CAC/GL 33-1999, in accordance with USDA.
 - 6.1.10.4 A licensed producer may contact the Department to request that a second sample be collected for retesting if it is believed the original THC concentration level test results were in error.
- 6.1.11 When collecting samples from each lot, the sampling agent must:
- 6.1.11.1 Always walk through the lot following a sawtooth pattern, beginning at one point of the lot and walking towards another point located on the opposite side of the lot.
 - 6.1.11.2 Walk access roads, drainage ditches, or other accessible paths that allow penetration into the lot (stand), in cases where the lot (stand) is determined too dense and walking through is deemed impossible.
 - 6.1.11.3 Cut at least "n" flower material at random distances in the lot, while walking a sawtooth pattern.
 - 6.1.11.4 Avoid collecting too many cuttings from the borders of the field or indoor growing site, high spots or low spots in the lot, and male plants.
 - 6.1.11.5 Make the cut of a cannabis plant just underneath the flower material. Each composite sample will contain cuttings of flower material from the uppermost areas of the plant consistent with a ratio of two-fifths of n. The remainder of the composite sample will be collected from the upper one-third of the plant. The sample size must be of adequate volume, as determined by the Department, to accommodate laboratory tests.
 - 6.1.11.6 Utilize one paper sample bag, per lot, for collecting cuttings.
 - 6.1.11.7 Seal each bag with a laboratory sticker and record the sample identification information and date on the bag.
- 6.1.12 The Department will label samples for submission to the laboratory using the following information:
- 6.1.12.1 Producer license number;
 - 6.1.12.2 Date of sample (month, day, year); and
 - 6.1.12.3 Lot identification as outlined by the Department and reported to FSA.

6.2 Testing:

- 6.2.1 The Department will contract with a USDA approved laboratory to perform THC tests and require that test results be shared with the licensed producer, the Department, and the USDA.

- 6.2.2 A cannabis sample collected and submitted by the Department for testing is required in order to regulate that hemp plants produced in the state of Delaware contain acceptable THC levels. Test results are intended to measure the THC concentration levels of composite cannabis samples collected from individual lots.
- 6.2.3 The laboratory used for testing regulatory samples of cannabis, collected and submitted by the Department, is a USDA approved laboratory and meets testing protocol and compliance standards as required by USDA. (7 CFR Part 990 Domestic Hemp Production Program).
- 6.2.4 The Department will review the measurement of uncertainty to make final determinations regarding acceptable THC levels. (7 CFR Part 990.3a(3) iii (F)).
- 6.2.5 The Department does not guarantee that regulatory sampling and testing conducted by the Department will be in compliance with other State regulatory authorities.
- 6.3 Inspections:
 - 6.3.1 The Department will conduct annual inspections of, at a minimum, a random selection of license holders and registration holders to verify that hemp is not produced or processed in violation of this Program. The Department shall have access, during reasonable business hours, to any premises where hemp plants may be held.
 - 6.3.2 The Department requires that the following records be made available to the Department during reasonable business hours:
 - 6.3.2.1 Acquisition of hemp plants.
 - 6.3.2.2 Production and handling of hemp plants.
 - 6.3.2.3 Storage of hemp plants.
 - 6.3.2.4 Disposal of hemp plants. A producer that disposes of hemp plants is required to notify the Department within ten days of disposal or destruction, using the Disposal Certificate form.
 - 6.3.3 If the Department finds that pesticides are being sprayed, the licensed producer is subject to inspections by pesticide inspectors under the authority of Delaware Pesticide Laws (3 ~~Del.C.~~ Ch. 12).
 - 6.3.4 If the Department finds that hemp plants or hemp nursery stock are being sold, the licensed producer is subject to inspection by nursery inspectors under the authority of Delaware Nursery Laws (3 ~~Del.C.~~ Ch. 13).

7.0 Information Sharing and Record Keeping

- 7.1 Reporting to USDA (as authorized under 7 CFR Part 990 Domestic Hemp Program)
 - 7.1.1 The Department will submit an annual report to the USDA by December 15th of each year using the State and Tribal Hemp Annual Report form (State and Tribal Hemp Annual Report AMS-25).
 - 7.1.2 The Department will submit the following monthly reports to the USDA, AMS:
 - 7.1.2.1 State Hemp Producer Report (State and Tribal Hemp Producer Report, AMS-23);
 - 7.1.2.2 State Hemp Disposal Report using the disposal form (State and Tribal Hemp Disposal Report AMS-24); and
 - 7.1.2.3 State Hemp Test Result Report (Laboratory Test Results Report (AMS-22).
 - 7.1.3 The Department will share information with the USDA on the first day of each month via monthly reports. The Department will gather information related to lots directly from a state of Delaware FSA contact. If the first of the month falls on a weekend or holiday, the Department will submit the report to the USDA on the first business day following the due date.
 - 7.1.4 The Department will submit THC concentration level test results to licensed producers once received from the laboratory. The Department will review test results to make a determination if hemp produced by a licensed producer meets the acceptable hemp TCH concentration level.
- 7.2 Producer Report
 - 7.2.1 The Department requires that all licensed producers report their hemp crop acreage to the FSA using their state of Delaware license number. Licensed producers shall learn information about how to report using the following link: <https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/FactSheets/2019/crop-acreage-reporting-19.pdf>
 - 7.2.2 The Department will require all licensed producers to submit the following information to the Department via email, no later than December 1st of each year:
 - 7.2.2.1 Total acreage planted;
 - 7.2.2.2 Total acreage harvested;
 - 7.2.2.3 Total acreage disposed; and

7.2.2.4 Plant storage records.

7.2.3 The Department will maintain records for a minimum of three years as required by the USDA.

7.2.4 The Department will incorporate information submitted by licensed producers in an Annual Report to be submitted to the USDA.

8.0 Violations

8.1 ~~Destruction. The Department requires the on-site destruction of lots located on outdoor or indoor growing sites that have been determined to have higher than acceptable hemp THC levels. The Department will instruct the licensed producer on acceptable destruction protocol and coordinate with the licensed producer to ensure that lots are destroyed in a manner that renders the lot non-retrievable and unfit to enter the stream of commerce. The Department will require that destruction take place within 72 hours after the Department notifies the licensed producer that destruction is required.~~

8.1.1 ~~It is the responsibility of a licensed producer to destroy lots by using destruction methods that render the lot non-retrievable and unfit to enter the stream of commerce.~~

8.1.2 ~~If the Department determines that a lot has higher than acceptable hemp THC levels, the lot must not be further handled, processed, or enter the stream of commerce.~~

8.1.3 ~~The Department requires that a licensed producer notify the Department if the licensed producer destroys a lot by his or her own determination and independent of a requirement set by the Department.~~

8.2 ~~Disposal. The Department will require the disposal of a lot that has been determined to have higher than acceptable levels of THC, where on-site destruction is not feasible. The Department will require that disposal take place within 72 hours of notification and shall be the sole responsibility and at the expense of the licensed producer. The Department will coordinate with the licensed producer to ensure that lots are disposed of in a manner that renders the lot non-retrievable and unfit to enter the stream of commerce.~~

8.3 ~~Harvesting. The Department prohibits any comingling of harvested lots of cannabis plants with other lots or other material without prior written permission from the Department.~~

8.4 ~~Negligent or Culpable Violations.~~

8.4.1 ~~A hemp producer shall be subject to enforcement for negligently:~~

8.4.1.1 ~~Producing cannabis exceeding the acceptable hemp THC level. Hemp producers do not commit a negligent violation under this paragraph if they make reasonable efforts to grow hemp and the hemp does not have a post-decarboxylated delta-9 tetrahydrocannabinol concentration of more than 0.5% on a dry weight basis. The Department does require the destruction or disposal of cannabis that exceeds the acceptable hemp THC level.~~

8.4.1.2 ~~Producing hemp without a license. A new applicant must submit a Delaware Domestic Hemp Production Program Application to the Department no later than February 1st. A licensed producer must submit for renewal prior to license expiration. Licenses are not automatically renewed. Applications for renewal shall be subject to the same terms, information collection requirements, and approval criteria, as required in the initial application.~~

8.4.1.3 ~~Failing to provide annually, an accurate description of land where hemp is produced using the Annual Growing Site Registration form.~~

8.4.1.4 ~~Failing to have locked entrances on an indoor growing facility.~~

8.4.1.5 ~~Failing to adequately display signage, at each entrance to an indoor or outdoor growing site, to indicate a hemp growing site.~~

8.4.2 ~~Corrective action for negligent violations. For each negligent violation, the Department will issue a Notice of Violation and require a Corrective Action Plan for the licensed producer. The Department shall conduct an inspection to determine if the corrective action plan has been implemented. The licensed producer shall comply with the corrective action plan to cure the negligent violation. Corrective Action Plans will be in place for a minimum of two (2) years from the date of their approval. Corrective Action Plans will, at a minimum, include:~~

8.4.2.1 ~~A reasonable date by which the licensed producer shall correct the negligent violation;~~

8.4.2.2 ~~A requirement that the license holder or registration holder shall periodically report to the Department, as applicable, on compliance with the Corrective Action Plan for a period of not less than the next two years from the date of the negligent violation;~~

8.4.2.3 ~~A description of quality control measures, staff training, and quantifiable action measures taken by the Producer. Producers should document this using the Correction Action Plan template; and~~

- 8.4.2.4 If a subsequent violation occurs while a Corrective Action Plan is in place, a new plan must be submitted with a heightened level of quality control, staff training, and quantifiable action measures as defined by the Department.
- 8.4.3 Negligent violations and criminal enforcement. A licensed producer that negligently violates this part shall not, as a result of that violation be subject to any criminal enforcement action by any federal, state, or local government.
- 8.4.4 Negligent violations and license revocation. A producer that negligently violates the license 3 times in a 5-year period shall have their license revoked and be ineligible to produce hemp for a period of 5 years beginning on the date of the third violation.
- 8.4.5 Culpable mental state greater than negligence. If the Department determines that a license holder has violated the terms of the license or of this part with a culpable mental state greater than negligence:
 - 8.4.5.1 The Department shall immediately report the license holder to:
 - 8.4.5.1.1 The U.S. Attorney General; and
 - 8.4.5.1.2 The chief law enforcement officer of the State, as applicable, where the production is located; and subsections 8.4.1 and 8.4.2 of this regulation shall not apply to culpable violations.
 - 8.4.5.2 The Department shall immediately revoke the license. Licenses will be revoked for a period no less than 5 years.
- 8.5 Licensed producers intending to sell hemp plants or hemp nursery stock must comply with the Delaware Nursery Laws (3 **Del.C.** Ch. 13).
- 8.6 Licensed producers intending to apply pesticides must comply with the Delaware Pesticide Laws (3 **Del.C.** Ch. 12).
- 8.7 Licenses or registrations may not be sold, assigned, transferred, pledged, or otherwise disposed of, alienated or encumbered.
- 8.8 In accordance with the provisions of 3 **Del.C.** §1108 and 3 **Del.C.** §1110, it shall be unlawful to violate or fail to comply with any provisions of these regulations and the person charged with a violation of these regulations shall be assessed a civil penalty, in accordance with 3 **Del.C.** §1110.
 - 8.8.1 Any unlicensed person producing, processing, or handling hemp shall be assessed a penalty of not more than \$500 per offense. Required to complete application process immediately and all associate fees.
 - 8.8.2 Any license holder or registration holder that interferes or refuses to cooperate with inspection or sampling procedures conducted by the Department shall be assessed a penalty of not more than \$500, and not more than \$1,000 for each subsequent offense.
 - 8.8.3 Any licensed producer that fails to submit timely reports to the Department shall be assessed a penalty of not more than \$100 and not more than \$200 for each subsequent offense.
 - 8.8.4 Any license holder or registration holder that fails to respond to the Department's communications within a reasonable amount of time.
 - 8.8.5 No assessment shall be levied until after the party has been notified by certified mail and has been provided an opportunity for a hearing.
- 8.9 Revocation of a license or registration. Any license or registration issued by the Department may be canceled orally or in writing by the Department whenever the Department determines that the holder of the license or registration has not complied with a provision of these regulations or requirements in Sections 6.0 and 7.0. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances allow.
- 8.10 Processors and processor registrations shall be subject to the stipulations in Section 8.0 where applicable.

1.0 Authority

These regulations are promulgated pursuant to the authority of 3 **Del.C.** §101(2) & (3). All moneys collected by the Department pursuant to the Program shall be used for the enforcement and administration of the Program. The Department may sample and or test any hemp or hemp products to verify compliance with this chapter.

2.0 Purpose

- 2.1 The passage of the federal Agriculture Improvement Act of 2018 and legalization of *Cannabis sativa* L. offers an economic opportunity for the State of Delaware and its producers, processors, handlers, and consumers. The purpose of these regulations is to establish appropriate standards, definitions, and requirements for the agricultural production of hemp in the State of Delaware. The Department does not regulate synthetic substances that may be derived from *Cannabis sativa* L., such as delta-8 tetrahydrocannabinol.

- 2.2 To establish a Hemp Production Program in the State of Delaware, the following regulations define how the Department will comply with USDA requirements as indicated in 7 CFR Part 990 Domestic Hemp Program, as the regulatory entity of hemp production in the State of Delaware. This administrative regulation establishes procedures and requirements for licensing persons who wish to grow or cultivate hemp as a participant in the Delaware Hemp Production Program.
- 2.3 Cannabis cultivation sites intended for hemp production and cannabis cultivation sites intended for other production purposes shall not be in close proximity. The Department will assess the location of cannabis cultivation sites on a case by case basis.

3.0 Definitions

The following words and terms, when used in this regulation, have the following meaning unless the context clearly indicates otherwise:

"Acceptable hemp THC level" means post decarboxylated delta-9 tetrahydrocannabinol concentration equal to or less than 0.3% on a dry weight basis, as reported by a USDA-approved laboratory. The designated laboratory will also report the measurement of uncertainty (MU). 0.3% must fall within the reported MU.

"Applicant" means an individual, or an individual authorized to sign for a business entity, who applies for a license or registration.

"Authorized representative" means an individual designated by a licensed producer to act as a point of contact on behalf of the licensed producer. This individual must be indicated on the Delaware Domestic Hemp Production Program Application.

"Cannabis" means any form of the plant in which the post decarboxylated delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined or that has been determined to be above the acceptable hemp THC level.

"Composite sample" means a collection of cuttings from an individual lot.

"Corrective Action Plan" means a plan set forth by the Department for a licensed producer to correct a negligent violation of, or non-compliance with, the State of Delaware hemp production plan. This term is defined in accordance with the Agriculture Improvement Act of 2018, which mandates certain non-compliance actions to be addressed through Corrective Action Plans.

"Criminal History Report" means a report detailing an individual's conviction status related to a controlled substance within the past 10 years at the state or federal level. The report must be dated within 120 days prior to the date of application submission and is required to be renewed every three years.

"Culpable mental state greater than negligence" means to act intentionally, knowingly, willfully, or recklessly or with criminal negligence.

"Cuttings" means flowering material of cannabis plant material collected for a sample.

"Decarboxylated" means the completion of the chemical reaction that converts THC-acid into delta-9-THC. The decarboxylated value may also be calculated using a conversion formula that sums delta-9-THC and THC-acid.

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

"Department" means the Delaware Department of Agriculture.

"Destruction" means the use of farm equipment to mechanically manipulate the soil or the plant to render a cannabis crop non-retrievable within an indoor or outdoor growing site.

"Dry weight basis" means a method of determining the percentage of a chemical in a substance after removing the moisture from the substance. Percentage of THC on a dry weight basis means the percentage of THC, by weight, in a cannabis item (plant, extract, or other derivative), after excluding moisture from the item.

"Farm service agency" or "FSA" means an agency of the U.S. Department of Agriculture that provides services to farm operations that will assist in information collection on land being used for hemp production.

"Flower material" means the complete inflorescence of the cannabis plant.

"Geospatial location" means a location designated through a global system of navigational satellites used to determine the precise ground position of a place or object.

"Growing site" -

"Indoor Growing Site" means an enclosed building with the same tax identification number, excluding any outdoor growing site, that can be secured and locked, in which cannabis plants are grown. Registration of a site must include a map, which contains a geospatial location of the site where hemp will be grown.

"Outdoor Growing Site" means a field location with the same tax identification number, excluding any indoor growing site, where cannabis seeds or plants are planted in the ground. Registration of a site must include a map, which contains a geospatial location of the site where hemp will be grown.

"Handler" means an individual, other than a producer or processor, transporting or storing hemp or hemp plant parts prior to the delivery of such plant or plant part for processing.

"Hemp" means all parts and varieties of the plant *Cannabis sativa* L. and any part of such plant cultivated or possessed by a license holder or registration holder, whether growing or not, with a post decarboxylated delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis.

"Homogenous" or "homogeneity" means a like plant variety in an individual lot.

"Key participants" means person or persons who have a direct or indirect financial interest in the entity producing or processing hemp, such as an owner or partner in a partnership. A key participant also includes persons in a corporate entity at executive levels including CEO, COO, and CFO. This does not include other management positions like farm, field, or shift managers.

"Laboratory" means a USDA-approved laboratory used by the Department to conduct regulatory testing for THC concentration levels in cannabis.

"License holder" means an individual or business entity authorized by the Department to grow, transport, or store hemp plants or plant parts.

"Lot" means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout. Lot also refers to the batch or contiguous, homogenous whole of a product being sold to a single buyer at a single time. Lot is defined by the producer in terms of farm location, planting date, and variety and is to be reported as such to the FSA.

"Measurement of uncertainty" or "MU", means the parameter associated with the results of a measurements that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement, if a sample measure of 0.3% THC falls within the MU range then the sample meets acceptable hemp THC levels.

"Negligent" means failure to exercise the level of care that a reasonably prudent person would exercise in complying with these regulations. Licensed producers that are found operating negligently will be required to perform a Corrective Action Plan.

"On-site" means a registered growing site as indicated on an Annual Growing Site Registration or Growing Site Modification form.

"Processor" means an individual or business entity that conducts processes that convert hemp in any way, to include drying down and packaging.

"Processor facility" means an enclosed building that can be secured and locked in which hemp is processed. Registration of a facility must include a map, which contains a geospatial location of the site where hemp will be grown.

"Producer" means an individual, who is 18 years of age or older, or business entity possessing a Producer License issued by the Department under the authority of this chapter to grow, cultivate, harvest, store, or transport hemp or hemp products. Including individuals growing transplants, seedlings, or clones. Once licensed, the term "licensed producer" shall be used.

"Production" means to grow or cultivate hemp plants for market.

"Program" means the Delaware Domestic Hemp Production Program.

"Remediation" means any process by which noncompliant (THC concentration greater than 0.3%) hemp is rendered compliant (THC concentration less than or equal to 0.3%). Remediation to reduce THC concentration is only applicable if test results are below a THC concentration of 1%.

"Sample" means a composite sample collected by the Department.

"Sampling agent" means an individual employed by the Department to collect, label, and submit cannabis samples to a designated testing laboratory.

"USDA" means the United States Department of Agriculture.

4.0 Application, License and Registration

- 4.1 The Department intends to approve or deny applications for producers, handlers, and processors within 30 days of submission. The Department will issue a license number or registration number upon approval. Licenses or registrations issued by the Department are intended to validate growing sites, processing facilities, or storage facilities within the State of Delaware. Any changes to an applicant's contact information must be submitted to the Department within ten days of the change. The Department will deem persons who materially falsify any information in their application ineligible to participate in the Delaware Domestic Hemp Production

Program. Any records of the Department that could provide the name or location of a growing site or producer are excluded from the public record under 29 Del.C. §10002(l)(1), (2), and (17)a. The Department may report information regarding licensees to law enforcement.

4.2 Producers:

- 4.2.1 New applications and renewals, using the Delaware Domestic Hemp Production Program Application, must be submitted between November 1st and February 1st of the given year. Licenses will be valid until December 31st of the year that is three years after the license is issued, unless otherwise revoked.
- 4.2.2 An Annual Growing Site Registration must be completed annually and submitted to the Department no later than February 1st.
- 4.2.3 A Growing Site Modification form is required to be completed and submitted to the Department if a licensed producer intends to alter the location or size of a growing site as indicated on the Annual Growing Site Registration.
- 4.2.4 The Department requires a licensed producer to oversee individuals conducting, but not limited to, the following actions related to their hemp crop acreage: cleaning seed, in-field consulting, custom planting, weed removal, custom harvesting, and storing.
- 4.2.5 The Department requires that a licensed producer notifies landowners of the intention to use their land as a hemp growing site, if the licensed producer is not the owner of the land where hemp will be grown.
- 4.2.6 The Department allows any licensed producer to designate one individual as an authorized representative. Licensed producers shall ensure that a Criminal History Report is completed by an authorized representative and submitted to the Department.

4.3 Processors are required by the Department to complete a Processor Application, Annual Processor Facility Registration and Criminal History Report. New applications and renewals must be submitted by October 31st. Processor Registration Certificates will be valid until December 31st of the year that is three years after the certificate is issued, unless otherwise revoked. Processor facility registrations must be submitted annually no later than October 31st. It is the expectation of the Department that all materials associated with processing and final products are within acceptable hemp THC levels.

4.4 Handlers. The Department requires that individuals intending to transport, or store hemp or hemp plant parts complete a Handler Application and Criminal History Report. New applications and renewals must be submitted annually. Licenses will be valid until December 31st of the year that the license is issued, unless otherwise revoked.

4.5 Criminal History Report. All applications and license renewals must be accompanied by completed State and Federal Criminal History Reports. If the application is for a business entity, a completed Criminal History Report must be provided for each key participant and authorized representative. Approved applications are subject to revocation pending results of the State and Federal Criminal History Reports.

4.6 Individuals shall submit applications to the Department via a physical collection point identified by the Department, or via email. Any questions related to applications must be submitted via email at DDA.HempProgram@delaware.gov. The Department will mail all licenses and registrations via USPS. The Department will maintain a copy of each license and registration for record.

4.7 The Department will determine the status of licenses based on the following:

- 4.7.1 Active: A licensed producer that is in good standing with this Program.
- 4.7.2 Suspended: A licensed producer that has engaged in conduct violating this Program.
 - 4.7.2.1 A licensed producer whose license has been suspended shall not produce, handle or process hemp during the period of suspension.
 - 4.7.2.2 The Department may require that a licensed producer whose license has been suspended complete a Corrective Action Plan to fully restore the license.
- 4.7.3 Revoked: A licensed producer that negligently violates this Program 3 times within a period of 5 years shall have the license revoked and be ineligible to produce, handle or process hemp for a period of 5 years beginning on the date of the third violation. The Department may immediately revoke licenses if:
 - 4.7.3.1 A licensed producer pleads guilty to or is convicted of any felony related to a controlled substance.
 - 4.7.3.2 A licensed producer makes a materially false statement with regard to this Program to the Department with a culpable mental state greater than negligence.
 - 4.7.3.3 A licensed producer is found to be growing, handling or processing cannabis exceeding the acceptable hemp THC level with a culpable mental state greater than negligence or has negligently violated this Program 3 times within a period of 5 years.

4.8 A Delaware institution of higher education that plans to produce and study hemp in the state, is required to complete the appropriate application and obtain a license from the Department.

- 4.8.1 The Department shall charge an institution of higher education sample collection and testing fees. The Department shall conduct regulatory samples and charge an institution of higher education fees associated with a producer, handler, or processor license, should the institution of higher education choose to participate in the Program for purposes other than research.
- 4.8.2 In accordance with the Delaware Domestic Hemp Production Program, a Delaware institution of higher education will not be determined noncompliant if the Delaware institution of higher education grows cannabis that exceeds acceptable hemp THC level, as long as the cannabis crop is grown for research purposes and does not enter the stream of commerce. A Delaware institution of higher education is required to dispose of the cannabis crop that exceeds acceptable hemp THC level within a reasonable timeframe of the conclusion of research.

5.0 Fees and Renewal

- 5.1 Producer:
 - 5.1.1 Application and Renewal \$300 every three years;
 - 5.1.2 Annual Growing Site Registration \$500 per site annually; and
 - 5.1.3 Growing Site Modification \$500 per site.
- 5.2 Processor:
 - 5.2.1 Application and Renewal \$300 every three years;
 - 5.2.2 Processor Facility Registration \$1000 per facility annually; and
 - 5.2.3 Facility Modification \$1000 per facility.
- 5.3 The following have a fee of \$350 each per sample:
 - 5.3.1 Pre-harvest Sample Collection;
 - 5.3.2 Post-harvest Sample Collection; and
 - 5.3.3 Resample Collection, and Testing.
- 5.4 Handler Application \$100 annually.

6.0 Sampling, Testing Requirements and Inspections

- 6.1 Standard Sampling:
 - 6.1.1 Sampling of hemp plants as required by the USDA, will be conducted by a sampling agent designated by the Department. Only samples collected by a sampling agent will be used for regulatory purposes. Sampling agents will follow USDA and Department protocol for entering hemp growing sites and collecting the minimum number of plant specimens necessary to represent a homogenous composition of the lot that is to be sampled. The sampling agent will conduct one pre-harvest sample for each lot per licensed producer.
 - 6.1.2 The Department requires that a licensed producer submit fees associated with sampling and testing, and if applicable resampling and retesting, including samples collected post-remediation, at a total of \$350 per sample collected. Fees are to be collected by the Department prior to sampling.
 - 6.1.3 If a licensed producer fails to complete harvest within 15 days of sample collection, the Department will collect a second pre-harvest sample of the lot to be submitted for testing.
 - 6.1.4 A licensed producer or an authorized representative can request that the sampling process be conducted during a time that they are present at the growing site, however, sampling agents shall be provided complete and unrestricted access during business hours to cannabis plants, whether growing or harvested, and land, buildings, and other structures used for the cultivation, handling, and storage of all cannabis plants, and locations listed in the producer license.
 - 6.1.5 Within 30-15 days prior to the anticipated harvest of cannabis plants, a licensed producer or an authorized representative of the licensed producer, as documented on the Delaware Domestic Hemp Production Program Application, shall notify the Department of the anticipated date of harvest via phone or email.
 - 6.1.6 Within 15 days prior to the date of harvest, as indicated by the licensed producer or authorized representative of the licensed producer, as documented in the Delaware Domestic Hemp Production Program Application, a sampling agent shall collect representative samples from cannabis plants to submit for testing of THC concentration levels.
 - 6.1.7 The sampling agent will not collect samples on lots where cannabis plants have not matured to flowering stage, as the USDA requires that samples consist of flower material.
 - 6.1.8 A licensed producer or any other individual shall not harvest cannabis plants prior to samples being collected by the Department. A licensed producer or other individual may harvest lots that have been

sampled by the Department but shall not remove harvested material from a growing site or comingle harvested lots without written authorization from the Department.

6.1.9 The growing site must be surveilled by the sampling agent. The sampling agent shall:

6.1.9.1 Verify the GPS coordinates of the growing site and lot as compared with the GPS coordinates submitted by the licensee to FSA;

6.1.9.2 Estimate the average height, appearance, approximate density, condition of the hemp plants, and degree of maturity of the flowering material, meaning inflorescences; and

6.1.9.3 Visually estimate the homogeneity of the lot to be sampled to establish that the lot is of like variety.

6.1.10 Cuttings from each individual lot, as identified by a licensed producer, and submitted by the producer to the FSA as per the requirements of the USDA, shall be organized as composite samples. Lots are to be defined by the producer. Producers must utilize guidelines from the Department for identifying lots, identification must be based on farm location, planting date, and variety. Producers are responsible for reporting lot identification to the FSA.

6.1.10.1 For purposes of determining the number of individual plants to meet sampling protocol as determined by the USDA sampling protocol document, the size of each individual lot shall be considered by the Department and sampling agent. For sampling purposes, samples from separate lots must remain separated and are not to be comingled.

6.1.10.2 For lots of less than four acres, including indoor growing sites, the sampling agent will collect a minimum of five cuttings to form one composite sample. For lots greater than four and fewer than 10 acres, including indoor growing sites, the sampling agent will collect a minimum of one cutting per acre to form a composite sample.

6.1.10.3 For lots larger than 10 acres, including indoor growing sites, the number of plants that will be selected to form a composite sample is based upon the Codex Alimentarius Recommended Methods of Sampling for the Determination of Pesticide Residues for Compliance with MRLS CAC/GL 33-1999, in accordance with USDA.

6.1.10.4 A licensed producer may contact the Department to request that a second sample be collected for retesting if it is believed the original THC concentration level test results were in error.

6.1.11 When collecting samples from each lot, the sampling agent must:

6.1.11.1 Always walk through the lot following a sawtooth pattern, beginning at one point of the lot and walking towards another point located on the opposite side of the lot.

6.1.11.2 Walk access roads, drainage ditches, or other accessible paths that allow penetration into the lot (stand), in cases where the lot (stand) is determined too dense and walking through is deemed impossible.

6.1.11.3 Cut at least "n" flower material at random distances in the lot, while walking a sawtooth pattern.

6.1.11.4 Avoid collecting too many cuttings from the borders of the field or indoor growing site, high spots or low spots in the lot, and male plants.

6.1.11.5 Make the cut of a cannabis plant just underneath the flower material. Each composite sample will contain cuttings of flower material from the uppermost areas of the plant consistent with a ratio of two-fifths of n. The remainder of the composite sample will be collected from the upper one-third of the plant. The sample size must be of adequate volume, as determined by the Department, to accommodate laboratory tests.

6.1.11.6 Utilize one paper sample bag, per lot, for collecting cuttings.

6.1.11.7 Seal each bag with a laboratory sticker and record the sample identification information and date on the bag.

6.1.12 The Department will label samples for submission to the laboratory using the following information:

6.1.12.1 Producer license number;

6.1.12.2 Date of sample (month, day, year); and

6.1.12.3 Lot identification as outlined by the Department and reported to FSA.

6.2 Performance-Based Sampling. The Department will establish performance-based sampling protocols for operations that grow cannabis plants that have not matured to flowering stage. These facilities may grow seedlings, clones, microgreens, or other nonflowering cannabis.

6.3 Testing:

6.3.1 The Department will contract with a USDA approved laboratory to perform THC tests and require that test results be shared with the licensed producer, the Department, and the USDA.

6.3.2 A cannabis sample collected and submitted by the Department for testing is required in order to regulate that hemp plants produced in the state of Delaware contain acceptable THC levels. Test results are

intended to measure the THC concentration levels of composite cannabis samples collected from individual lots.

6.3.3 The laboratory used for testing regulatory samples of cannabis, collected and submitted by the Department, is a USDA approved laboratory and meets testing protocol and compliance standards as required by USDA. (7 CFR Part 990 Domestic Hemp Production Program).

6.3.4 The Department will review the measurement of uncertainty to make final determinations regarding acceptable THC levels. (7 CFR Part 990.3a(3) iii (F)).

6.3.5 The Department does not guarantee that regulatory sampling and testing conducted by the Department will be in compliance with other State regulatory authorities.

6.4 Inspections:

6.4.1 The Department will conduct annual inspections of, at a minimum, a random selection of license holders and registration holders to verify that hemp is not produced or processed in violation of this Program. The Department shall have access, during reasonable business hours, to any premises where hemp plants may be held.

6.4.2 The Department requires that the following records be made available to the Department during reasonable business hours:

6.4.2.1 Acquisition of hemp plants.

6.4.2.2 Production and handling of hemp plants.

6.4.2.3 Storage of hemp plants.

6.4.2.4 Disposal of hemp plants. A producer that disposes of hemp plants is required to notify the Department within ten days of disposal or destruction, using the Disposal Certificate form.

6.4.3 If the Department finds that pesticides are being sprayed, the licensed producer is subject to inspections by pesticide inspectors under the authority of Delaware Pesticide Laws (3 Del.C. Ch. 12).

6.4.4 If the Department finds that hemp plants or hemp nursery stock are being sold, the licensed producer is subject to inspection by nursery inspectors under the authority of Delaware Nursery Laws (3 Del.C. Ch. 13).

6.5 Resampling. The Department will collect a representative sample of the biomass that has undergone remediation. The sampling agent will take biomass material from various depths, locations, and containers in the labeled and demarcated area to collect a representative sample of the material. The sampling agent will collect enough biomass material for a representative sample.

7.0 Information Sharing and Record Keeping

7.1 Reporting to USDA (as authorized under 7 CFR Part 990 Domestic Hemp Program)

7.1.1 The Department will submit an annual report to the USDA by December 15th of each year using the State and Tribal Hemp Annual Report form (State and Tribal Hemp Annual Report AMS-25).

7.1.2 The Department will submit the following monthly reports to the USDA, AMS:

7.1.2.1 State Hemp Producer Report (State and Tribal Hemp Producer Report, AMS-23);

7.1.2.2 State Hemp Disposal Report using the disposal form (State and Tribal Hemp Disposal Report AMS-24); and

7.1.2.3 State Hemp Test Result Report (Laboratory Test Results Report (AMS-22)).

7.1.3 The Department will share information with the USDA on the first day of each month via monthly reports. The Department will gather information related to lots directly from a state of Delaware FSA contact. If the first of the month falls on a weekend or holiday, the Department will submit the report to the USDA on the first business day following the due date.

7.1.4 The Department will submit THC concentration level test results to licensed producers once received from the laboratory. The Department will review test results to make a determination if hemp produced by a licensed producer meets the acceptable hemp TCH concentration level.

7.2 Producer Report

7.2.1 The Department requires that all licensed producers report their hemp crop acreage to the FSA using their state of Delaware license number. Licensed producers shall learn information about how to report using the following link: <https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/FactSheets/2019/crop-acreage-reporting-19.pdf>

7.2.2 The Department will require all licensed producers to submit the following information to the Department via email, no later than December 1st of each year:

7.2.2.1 Total acreage planted;

- 7.2.2.2 Total acreage harvested;
- 7.2.2.3 Total acreage disposed; and
- 7.2.2.4 Plant storage records.
- 7.2.3 The Department will maintain records for a minimum of three years as required by the USDA.
- 7.2.4 The Department will incorporate information submitted by licensed producers in an Annual Report to be submitted to the USDA.

8.0 Violations

- 8.1 Destruction. The Department requires the on-site destruction of lots located on outdoor or indoor growing sites that have been determined to have higher than acceptable hemp THC levels. The Department will instruct the licensed producer on acceptable destruction protocol and coordinate with the licensed producer to ensure that lots are destroyed in a manner that renders the lot non-retrievable and unfit to enter the stream of commerce. The Department will require that destruction take place within 72 hours after the Department notifies the licensed producer that destruction is required.
 - 8.1.1 It is the responsibility of a licensed producer to destroy lots by using destruction methods that render the lot non-retrievable and unfit to enter the stream of commerce.
 - 8.1.2 If the Department determines that a lot has higher than acceptable hemp THC levels, the lot must not be further handled, processed, or enter the stream of commerce.
 - 8.1.3 The Department requires that a licensed producer notify the Department if the licensed producer destroys a lot by his or her own determination and independent of a requirement set by the Department.
- 8.2 Disposal. The Department will require the disposal of a lot that has been determined to have higher than acceptable levels of THC, where on-site destruction is not feasible. The Department will require that disposal take place within 72 hours of notification and shall be the sole responsibility and at the expense of the licensed producer. The Department will coordinate with the licensed producer to ensure that lots are disposed of in a manner that renders the lot non-retrievable and unfit to enter the stream of commerce.
- 8.3 Harvesting. The Department prohibits any comingling of harvested lots of cannabis plants with other lots or other material without prior written permission from the Department.
- 8.4 Remediation. The Department permits licensed hemp producers to separate and destroy noncompliant flowers while retaining stalks, leaves, and seeds; or shred the entire hemp plant to create a homogeneous biomass that can be retested for THC compliance. Remediation does not include the process of combining lots.
- 8.5 Negligent or Culpable Violations.
 - 8.5.1 A hemp producer shall be subject to enforcement for negligently:
 - 8.5.1.1 Producing cannabis exceeding the acceptable hemp THC level. Hemp producers do not commit a negligent violation under this paragraph if they make reasonable efforts to grow hemp and the hemp does not have a post decarboxylated delta-9 tetrahydrocannabinol concentration of more than 1% on a dry weight basis. The Department does require the destruction or disposal of cannabis that exceeds the acceptable hemp THC level.
 - 8.5.1.2 Producing hemp without a license. A new applicant must submit a Delaware Domestic Hemp Production Program Application to the Department no later than February 1st. A licensed producer must submit for renewal prior to license expiration. Licenses are not automatically renewed. Applications for renewal shall be subject to the same terms, information collection requirements, and approval criteria, as required in the initial application.
 - 8.5.1.3 Failing to provide annually, an accurate description of land where hemp is produced using the Annual Growing Site Registration form.
 - 8.5.1.4 Failing to have locked entrances on an indoor growing facility.
 - 8.5.1.5 Failing to adequately display signage, at each entrance to an indoor or outdoor growing site, to indicate a hemp growing site.
 - 8.5.2 Corrective action for negligent violations. For each negligent violation, the Department will issue a Notice of Violation and require a Corrective Action Plan for the licensed producer. The Department shall conduct an inspection to determine if the Corrective Action Plan has been implemented. The licensed producer shall comply with the Corrective Action Plan to cure the negligent violation. Corrective Action Plans will be in place for a minimum of 2 years from the date of their approval. Corrective Action Plans will, at a minimum, include:
 - 8.5.2.1 A reasonable date by which the licensed producer shall correct the negligent violation;

- 8.5.2.2 A requirement that the license holder or registration holder shall periodically report to the Department, as applicable, on compliance with the Corrective Action Plan for a period of not less than the next two years from the date of the negligent violation;
 - 8.5.2.3 A description of quality control measures, staff training, and quantifiable action measures taken by the Producer. Producers should document this using the Correction Action Plan template; and
 - 8.5.2.4 If a subsequent violation occurs while a Corrective Action Plan is in place, a new plan must be submitted with a heightened level of quality control, staff training, and quantifiable action measures as defined by the Department.
- 8.5.3 Negligent violations and criminal enforcement. A licensed producer that negligently violates this part shall not, as a result of that violation be subject to any criminal enforcement action by any federal, state, or local government.
- 8.5.4 Negligent violations and license revocation. A producer that negligently violates the license 3 times in a 5-year period shall have their license revoked and be ineligible to produce hemp for a period of 5 years beginning on the date of the third violation.
- 8.5.5 Culpable mental state greater than negligence. If the Department determines that a license holder has violated the terms of the license or of this part with a culpable mental state greater than negligence:
 - 8.5.5.1 The Department shall immediately report the license holder to:
 - 8.5.5.1.1 The U.S. Attorney General; and
 - 8.5.5.1.2 The chief law enforcement officer of the State, as applicable, where the production is located; and subsections 8.4.1 and 8.4.2 of this regulation shall not apply to culpable violations.
 - 8.5.5.2 The Department shall immediately revoke the license. Licenses will be revoked for a period no less than 5 years.
- 8.6 Licensed producers intending to sell hemp plants or hemp nursery stock must comply with the Delaware Nursery Laws (3 **Del.C.** Ch. 13).
- 8.7 Licensed producers intending to apply pesticides must comply with the Delaware Pesticide Laws (3 **Del.C.** Ch. 12).
- 8.8 Licenses or registrations may not be sold, assigned, transferred, pledged, or otherwise disposed of, alienated or encumbered.
- 8.9 In accordance with the provisions of 3 **Del.C.** §1108 and 3 **Del.C.** §1110, it shall be unlawful to violate or fail to comply with any provisions of these regulations and the person charged with a violation of these regulations shall be assessed a civil penalty, in accordance with 3 **Del.C.** §1110.
 - 8.9.1 Any unlicensed person producing, processing, or handling hemp shall be assessed a penalty of not more than \$500 per offense. Required to complete application process immediately and all associate fees.
 - 8.9.2 Any license holder or registration holder that interferes or refuses to cooperate with inspection or sampling procedures conducted by the Department shall be assessed a penalty of not more than \$500, and not more than \$1,000 for each subsequent offense.
 - 8.9.3 Any licensed producer that fails to submit timely reports to the Department shall be assessed a penalty of not more than \$100 and not more than \$200 for each subsequent offense.
 - 8.9.4 Any license holder or registration holder that fails to respond to the Department's communications within a reasonable amount of time.
 - 8.9.5 No assessment shall be levied until after the party has been notified by certified mail and has been provided an opportunity for a hearing.
- 8.10 Revocation of a license or registration. Any license or registration issued by the Department may be canceled orally or in writing by the Department whenever the Department determines that the holder of the license or registration has not complied with a provision of these regulations or requirements in Sections 6.0 and 7.0. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances allow.
- 8.11 Processors and processor registrations shall be subject to the stipulations in Section 8.0 where applicable.

24 DE Reg. 861 (03/01/21)

24 DE Reg. 967 (05/01/21) (Prop.)