

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

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

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

STATUTORY AUTHORITY: KRS 260.862

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

Section 1. Definitions.

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

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

(3) "Cannabis":

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

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

(4) "CBD" means cannabidiol.

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

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

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

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

(9) "Decarboxylated" means the completion of the chemical reaction that converts THC-acid into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-

seven and seven tenths (87.7) percent of THC-acid.

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

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

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

(13) "GPS" means Global Positioning System.

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

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

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

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

(18) "Licensed grower" means a person authorized in the Commonwealth by the department to grow, handle, store, and market hemp under the terms established in a grower licensing agreement, KRS 260.850 through 260.859, and this administrative regulation.

(19) "Licensed processor" means a person in the Commonwealth authorized by the department to process, handle, store, and market hemp under the terms established in a processor licensing agreement, KRS 260.850 through 260.859, and 302 KAR 50:030.

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

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

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

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

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

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

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

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

(25) "ppm" means parts per million.

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

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

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

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

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

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

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

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

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

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

(b) The product is CBD that was derived from hemp, as defined by this administrative regulation; or

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

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

(a) In a given plot after the first pre-harvest sample is taken; and

(b) On a different day than the initial pre-harvest sample.

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

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

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

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

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

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

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

(c) Distinct, in the sense that the variety can be differentiated by one (1) or more

identifiable morphological, physiological, other characteristics from all other publically known varieties, or other characteristics from all other publicly known varieties.

(40) "Variety of concern" means any variety of hemp in the department's program that tests above 3,000 ppm or 0.3000 percent delta-9-THC in one (1) or more pre-harvest samples. A hemp variety designated as a "variety of concern" could be subject to restrictions and additional testing.

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

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

(b) Is not intentionally planted.

Section 2. Grower License Application.

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

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

(a) Grow, cultivate, handle, or process; or

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

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

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

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

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

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

(6) Application fees shall not cover or include the cost of the criminal background checks required by KRS 260.862(2)(d) and Section 3 of this administrative regulation. Applicants and license holders shall pay criminal background check fees directly to the Kentucky State Police or other law enforcement agency designated by the department.

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

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

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

(b) If the applicant represents a business entity, the full name of the business, the

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

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

(d) A statement of previous farming experience;

(e) Planned source of seeds or propagules;

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

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

(h) Marketing plan summary.

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

Section 3. Criminal Background Check.

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

(2) A licensed grower or applicant shall, following completion of the background check, ensure delivery of the report to the department not more than fourteen (14) days after the application deadline.

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

(4) Failure to submit the background check by the deadline stated in subsection (2) of this section shall be grounds for license denial.

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

Section 4. Application for Grower Licensing Agreement; Criteria and Procedure for Evaluation.

(1) The department shall apply the criteria established in paragraphs (a) through (m) of this subsection in evaluating an application for the grower license.

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

(b) For an applicant who has been a program participant previously, the applicant shall comply with the responsibility to submit:

1. Field Planting Report and Greenhouse/Indoor Planting Report, incorporated by reference in 302 KAR 50:080;

2. Harvest/Destruction Report, incorporated by reference in 302 KAR 50:080;

3. Production reports, incorporated by reference in 302 KAR 50:080; and
4. Any other reports deemed necessary by the department to which the applicant has agreed.

(c) The applicant shall demonstrate farming experience by:

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

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

(e) The applicant shall affirm that the applicant resides in Kentucky at the primary residence listed on the Grower License Application form from May 1 to September 30.

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

1. A felony conviction; or
2. A drug-related misdemeanor conviction or violation.

(g) The research plan shall be compliant with state and federal law.

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

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

(j) In the past, including those times when the applicant was not a participant in the department's program, the applicant shall have demonstrated a willingness to comply with the department's rules, instructions from department staff, and instructions from representatives of Kentucky State Police and other law enforcement agencies.

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

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

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

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

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

(4) The department shall notify applicants by letter or email whether the application has been denied or conditionally approved. A person shall not be a participant in the

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

Section 5. Land Use Restrictions for Licensed Growers.

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

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

(3) A licensed grower shall not grow hemp or other cannabis in or adjacent to any structure that is used for residential purposes.

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

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

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

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

(8) An applicant or licensed grower shall not include any property on his or her application or Site Modification Request, incorporated by reference in 302 KAR 50:080, to grow or cultivate hemp that is not owned or completely controlled by the applicant or licensed grower.

(9) A licensed grower shall not grow, handle, or store hemp or other cannabis on property owned by, leased from, or previously submitted in a license application by any person who is ineligible or was terminated, or denied admission to the program for one (1) or both of the following reasons:

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

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

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

(a) The statement, "Kentucky Department of Agriculture Industrial Hemp Research Pilot Program";

(b) License holder's name;

(c) License holder's license number; and

(d) The department's telephone number.

Section 6. Administrative Appeal from Denial of Application.

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

days of the date of the department's notification letter or email.

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

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

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

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

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

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

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

Section 7. Grower Licensing Agreements.

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

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

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

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

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

(c) Consent to entry onto, and inspection of, all premises where hemp or other cannabis plants or materials are located, or licensed to be located, by representatives of the Department and law enforcement agencies, with or without cause, with or without advance notice;

(d) Consent to forfeiture and destruction, without compensation, of:

1. Material found to have a measured delta-9-THC content in excess of zero and three-tenths (0.3) percent on a dry weight basis;

2. Plants located in an area that is not licensed by the department; and
 3. Plants not accounted for in required reporting to the department;
- (e) Agree to apply for registration of all growing, handling, and storage locations, including GPS coordinates, and receive department approval for those locations prior to having hemp on those premises;
- (f) Acknowledge that licensed growers shall submit a Site Modification Request Form, the appropriate fees based on the requested changes, and obtain prior written approval from a representative of the department before implementing any change to the licensed sites stated in the grower licensing agreement, and that growing site changes shall be subject to a site modification surcharge in the amount established in 302 KAR 50:060 for a new set of GPS coordinates;
- (g) Acknowledge that hemp shall not be grown, handled, or stored in any location other than the location listed in the grower licensing agreement;
- (h) Agree not to interplant hemp with any other crop without express written permission from the department;
- (i) Acknowledge that anyone applying pesticides to hemp shall hold a pesticide license and apply pesticides in accordance with Section 18 of this administrative regulation;
- (j) Acknowledge that licensed growers shall comply with restrictions established by the department limiting the movement of hemp plants and plant parts;
- (k) Acknowledge that the risk of financial or other loss shall be borne solely by the licensed grower;
- (l) Agree that any time hemp is in transit, a copy of the grower licensing agreement shall be available for inspection upon the request of a representative of the department or a law enforcement agency;
- (m) Agree that, upon request from a representative of the department or a law enforcement agency, a licensed grower shall immediately produce a copy of his or her grower licensing agreement for inspection;
- (n) Agree to submit Planting Reports, Harvest/Destruction Reports, and Production Reports, and other reports required by the department to which the grower has agreed, on or before the deadlines established in this administrative regulation;
- (o) Agree to scout and monitor unregistered fields for volunteer cannabis plants and to destroy those volunteer cannabis plants for three (3) years past the last date of planting reported to the department;
- (p) Agree not to employ or rent land to cultivate hemp from any person who was terminated or denied admission to the program for one (1) or both of the following reasons:
1. Failure to obtain an acceptable criminal background check; or
 2. Failure to comply with an order from a representative of the department;
- (q) Agree that land used for the cultivation or storage of hemp shall not be owned by or leased from any person who was terminated, or denied admission to the program for

one (1) or both of the following reasons:

1. Failure to obtain an acceptable criminal background check; or
2. Failure to comply with an order from a representative of the department;
- (r) Agree to notify the department of any interaction with law enforcement immediately by phone and follow-up in writing within three (3) calendar days of the occurrence; and
- (s) Agree to notify the department of any theft of cannabis materials, whether growing or not.
- (4) Failure to agree or comply with terms and conditions established in the grower licensing agreement or this administrative regulation shall constitute grounds for appropriate departmental action, up to and including termination of the grower licensing agreement and expulsion from the department's program.
- (5) A person who has been expelled from the program shall not be eligible to reapply to the program for a period of five (5) years from the date of expulsion.
- (6) Failure to agree and sign the grower licensing agreement shall terminate conditional approval and a licensing agreement shall not be executed.

Section 8. Mandatory Orientation Session.

- (1) Conditionally approved applicants shall attend a mandatory orientation session at a location designated by the department.
 - (2) The department shall require in-person attendance.
 - (a) The department shall not permit any person to attend a mandatory orientation session telephonically or by video.
 - (b) The department shall not allow any person to attend in lieu of the conditionally approved applicant.

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

- (1) Participation fee.
 - (a) The licensed grower shall pay a participation fee.
 - (b) The participation fee for each growing address shall be in the amount established in 302 KAR 50:060.
 - (c) Participation fees shall be paid in full prior to the execution of the grower licensing agreement with a check or money order payable to the Kentucky State Treasurer.
- (2) Secondary Pre-Harvest Sample fee.
 - (a) If a licensed grower fails to complete the harvest within fifteen (15) days after the department collects the pre-harvest sample, the licensed grower shall submit a new Harvest/Destruction Report and may be required to pay a secondary pre-harvest sample fee.
 - (b) If three (3) or more harvests are taken from the same plot, the licensed grower may be required to pay a secondary pre-harvest sample fee.

(c) The secondary pre-harvest sample fee shall be paid to the department with a check or money order payable to the Kentucky State Treasurer within fifteen (15) days of invoice by the department. The secondary pre-harvest sample fee shall be as established in 302 KAR 50:060.

(d) If the licensed grower fails to pay the secondary pre-harvest sample fee within fifteen (15) days of invoice, the lack of payment shall be considered a violation of the grower licensing agreement.

(e) The licensed grower shall not harvest the remaining crop until the department collects a secondary pre-harvest sample if one is required as established in paragraph (a) or (b) of this subsection.

(3) Post-harvest retest fee.

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

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

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

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

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

Section 10. Site Modifications and Site Modification Surcharge Fees.

(1) A licensed grower who elects to grow hemp in a new growing location or store or handle at a site other than the sites specified by the GPS coordinates listed in the grower licensing agreement shall submit a Site Modification Request Form, incorporated by reference in 302 KAR 50:080, and obtain written approval from a representative of the department, prior to planting or storing at the proposed location.

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

(3) The land or growing structure being requested shall not be owned by or leased from any person who was terminated, or denied admission to the program for one (1) or both of the following reasons:

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

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

(4) The department shall charge a site modification surcharge fee for each new growing location, be it an individual field or greenhouse or indoor structure, where hemp will be

planted. The amount of the site modification surcharge fee shall be as established in 302 KAR 50:060.

(5) The department shall not approve a site modification request for a new growing location until the department has received the site modification surcharge fee. Surcharge fees shall be submitted to the department with a check or money order payable to the Kentucky State Treasurer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 14. Seeds of Wild, Landrace, or Unknown Origin.

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

of the department.

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

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

Section 15. Planting Reports for Outdoor Plantings.

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

(2) Each Field Planting Report shall identify the:

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

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

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

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

Section 16. Planting Reports for Indoor Plantings.

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

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

(a) Correct hemp variety name as designated in the Domestic Seed/Propagule Request form or International Seed Request form and approved by the department;

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

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

(3) In addition to the initial Greenhouse/Indoor Planting Report, a licensed grower with an approved greenhouse or indoor growing site shall submit quarterly reports for each location ID to the department. Greenhouse/Indoor Planting Reports shall be due no later than March 31, June 30, September 30, and December 31.

Section 17. Site Access for Representatives of the Department and Law

Enforcement Agencies.

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

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

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

Section 18. Pesticide Use.

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

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

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

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

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

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

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

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

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

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

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

(5) Representatives of the department shall be provided with complete and

unrestricted access to all hemp and other cannabis plants, whether growing or harvested, and all land, buildings, and other structures used for the cultivation, handling, and storage of all hemp and other cannabis plants; and all locations listed in the grower licensing agreement.

(6) The licensed grower shall harvest the crop not more than fifteen (15) days following the date of sample collection by the department, unless specifically authorized in writing by the department.

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

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

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

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

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

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

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

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

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

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

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

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

Section 21. Restrictions on Sale or Transfer.

(1) A licensed grower shall not sell or transfer, or permit the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person in the Commonwealth

who does not hold a license issued by the department.

(2) A licensed grower shall not sell or transfer, or permit the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person outside the Commonwealth (but within the United States) who is not authorized by a university or state department of agriculture under the authority of 7 U.S.C. 5940 and the laws of that state. The licensed grower shall ensure that the sale or transfer is lawful in other states.

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

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

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

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

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

Section 22. Other Prohibited Activities.

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

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

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

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

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

Section 23. Other Required Reports.

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

(2) A licensed grower's failure to submit an accurate and complete report that is required by the department before the deadline established by the department shall constitute grounds for the department to terminate the grower licensing agreement and deny future applications for licensure.

Section 24. Information Submitted to the Department Subject to Open Records Act.

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

(2) Personally identifiable information including physical address, mailing address, driver's license numbers, background checks, GPS coordinates, telephone, and email addresses shall be shielded by the department to the maximum extent permitted by law.

Section 25. Immediate License Suspension.

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

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

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

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

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

Section 26. Temporary License Suspension Procedures.

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

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

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

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

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

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

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

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

Section 27. License Revocation Hearings and Consequences of Revocation.

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

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

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

(4) A person whose grower licensing agreement has been temporarily suspended shall appear in person at the assigned hearing time. Failure to appear on time shall constitute a waiver of the person's right to present information and arguments against revoking the grower licensing agreement.

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

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

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

(8) If a majority of the three (3) members of the administrative panel find that it is more likely than not that a licensed grower has committed any of the acts listed in Section 26(1) of this administrative regulation or violated any provision of the grower licensing agreement, then the grower licensing agreement shall be revoked effective immediately.

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

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

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

(12) A person whose grower licensing agreement has been revoked shall be barred from participation in the program in any capacity for a minimum period of five (5) years.

Section 28. Monetary Civil Penalties.

(1) If the department receives information supporting a finding that it is more likely than not that a person has engaged in conduct violating a provision of this administrative regulation, KRS 260.850 through 260.869, or the grower licensing agreement, then the department shall assess a monetary civil penalty not to exceed \$2,500 per violation.

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

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

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

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

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

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

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

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

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

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

(12) The department shall have the authority to pursue unpaid monetary civil penalties

by filing a civil cause of action in the Franklin Circuit Court.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: December 15, 2017

FILED WITH LRC: December 15, 2017 at noon

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