

## MARYLAND REGISTER

# Proposed Action on Regulations

### Comparison to Federal Standards Submission and Response

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In accordance with Executive Order 01.01.1996.03 and memo dated July 26, 1996, the attached document is submitted to the Department of Business and Economic Development for review.

The Proposed Action is not more restrictive or stringent than corresponding federal standards.

**COMAR Codification:** 15.01.17.01-.18

**Corresponding Federal Standard:**

2018 Agricultural Improvement Act  
(2018 Farm Bill)

**Discussion/Justification:**

Under the 2018 Farm Bill, to have primary regulatory authority over the production of hemp in this State, the Department is required to submit, for USDA's approval, a plan addressing the monitoring and regulation of hemp production in this State. To begin this process, the Department recently submitted the proposed action to USDA for review. After completing its initial review, USDA noted that the proposed action is consistent with the 2018 Farm Bill, meeting the requirements of this law. As required under the 2018 Farm Bill, the proposed action includes provisions for maintaining information on the land

where hemp is produced, testing the levels of delta-9 tetrahydrocannabinol, disposing of plants not meeting necessary requirements, and licensing requirements.

**TO BE COMPLETED BY DBED**

- Agree
- Disagree

**Comments:**

Name:

Date:

- Submit to Governor's Office

**Governor's Office Response**

**Comments:**

<b>Transmittal Sheet</b>  <b>PROPOSED OR REPROPOSED</b>  <b>Actions on Regulations</b>	<b>Date Filed with AELR Committee</b>	<b>TO BE COMPLETED BY DSD</b>
	05/15/2020	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

**1. Desired date of publication in Maryland Register: 6/19/2020**

**2. COMAR Codification**

**Title Subtitle Chapter Regulation**

15 01 17 01-.18

**3. Name of Promulgating Authority**

Department of Agriculture

**4. Name of Regulations Coordinator**

Susan Z Sams

**Telephone Number**

410-841-5829

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50 Harry S Truman Parkway



**Name of Authorized Officer**

Julianne A. Oberg

**Title**

Deputy Secretary

**Date**

5/15/2020

**Telephone No.**

(410) 841-5880

**Title 15**  
**DEPARTMENT OF AGRICULTURE**  
**Subtitle 01 OFFICE OF THE SECRETARY**

**15.01.17 Hemp Farming Program**

Authority: Agriculture Article, §14-307, Annotated Code of Maryland

**Notice of Proposed Action**

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The Maryland Department of Agriculture proposes to adopt new Regulations .01—.18 establishing a new program, the Hemp Farming Program, under a new chapter, COMAR 15.01.17.

**Statement of Purpose**

The purpose of this action is to create a regulatory framework, consistent with the Agriculture Improvement Act of 2018 (the "2018 Farm Bill"), that will govern the Hemp Farming Program. This is a new statutory program that will be administered by Maryland Department of Agriculture. The purpose of the program, which establishes hemp as an agricultural product in Maryland, is twofold, that being: (1) Promotional—promoting the production of hemp in this State and the commercial sale of hemp products in and outside the State; and (2) Regulatory—Monitoring and regulating the production of hemp in this State.

Under the 2018 Farm Bill, to have primary regulatory authority over the production of hemp in this State, the Department is required to submit, for USDA's approval, a plan addressing the monitoring and regulation of hemp production in this State. To begin this process, the Department recently submitted the proposed action to USDA for review. After completing its initial review, USDA noted that the proposed action is consistent with the 2018 Farm Bill, meeting the requirements of this law. As required under the 2018 Farm Bill, the proposed action includes provisions for maintaining information on the land where hemp is produced, testing the levels of delta-9 tetrahydrocannabinol, disposing of plants not meeting necessary requirements, and licensing requirements.

## Comparison to Federal Standards

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

### Estimate of Economic Impact

#### I. Summary of Economic Impact.

The proposed action, which greatly expands the existing Industrial Hemp Pilot Program, establishes rules necessary for governing the Hemp Farming Program, a new program authorized under the 2018 Farm Bill. As allowed under State law, the proposed action sets reasonable fees to defray the Department's costs of administering and enforcing this program. These fees are paid into the Hemp Farming Fund, a special nonlapsing fund; and are necessary for the Department—not USDA— to have primary regulatory authority over the production of hemp in Maryland. The proposed action will provide small businesses a meaningful opportunity to produce hemp in this State. Under the program, hemp can be grown in Maryland and legally shipped in interstate commerce, which significantly expands potential business opportunities.

II. Types of Economic Impact.	Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
<hr/>		
A. On issuing agency:		
(1) Charged Fees	(R+)	Indeterminate
(2) Salaries, one-time purchase of equipment	(E+)	\$324,398
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
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D. On regulated industries or trade groups:		
(1) Ability to produce and sell hemp	(+)	Indeterminate
(2) Fees to operate the program	(-)	Minimal
E. On other industries or trade groups:		
On other industries or trade groups	(+)	Indeterminate
F. Direct and indirect effects on public:		
Direct and indirect effects on public	(+)	Unquantifiable

#### III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A(1). By statute, MDA, is authorized to set reasonable fees to defray the costs of administering and enforcing this program. Pursuant to this authority, MDA proposes to establish the following fees that are to be paid into the Hemp Farming Fund, a special

nonlapsing fund: (a) An annual application fee — \$50; (b) An annual license fee — \$500; (c) A fee for each additional location owned or controlled by a grower with a different mailing address — \$500; (d) A fee each time that the Department samples and tests for THC — \$250; and (e) A site modification fee if the GPS coordinates listed in the Application are changed — \$250.

The revenue from these fees is indeterminate since it depends on certain unknown variables such as the level of interest in the program and the number of samples that are tested on an annual basis. However, for illustrative purposes only, if 100—150 persons apply for licensure and are, in fact, issued a license, special fund revenues would total \$55,000—\$80,000; and if 500 samples are tested for THC, special fund revenues would increase an additional \$125,000.

A(2). This estimate reflects the cost of hiring personnel necessary for monitoring and regulating the production of hemp under the program—that being, two full-time, permanent staff (one chemist supervisor and one chemist). This estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The estimate also includes a one-time cost to purchase a dedicated high-performance liquid chromatography (HPLC) machine to analyze hemp samples.

D(1). The proposed action will provide a meaningful opportunity for small businesses to get involved in the production of hemp. Under the program, hemp can be grown in Maryland and legally shipped in interstate commerce, which significantly expands potential business opportunities. The benefit is indeterminate because it is dependent on certain unknown variables including the level of interest in the program, the amount of hemp produced, and the demand for hemp products, such as CBD oil.

D(2). The proposed action sets reasonable fees on those producers who choose to participate in Maryland's Hemp Farming Program. They include a \$50 application fee, a \$500 licensing fee, and a \$250 testing fee (this latter fee is comparable with fees imposed by private laboratories for such work). These fees will be used to defray the Department's costs of administering and enforcing the program; and will be paid into the Hemp Farming Fund, a special nonlapsing fund. These fees are necessary for the Department to administer this program. Without the revenue they provide, the Department cannot sufficiently monitor and regulate the production of hemp in the State that is called-for under the 2018 Farm Bill. Given the anticipated value of hemp, these fees should have only a minimal impact on the licensed grower's profit margin. Under the 2018 Farm Bill, in order for Maryland to have primary regulatory authority over the production of hemp in this State, its program must be approved by USDA. USDA recently completed its initial review of the Department's proposed action, finding that the requirements imposed on producers therein are consistent with standards set forth in the 2018 Farm Bill. For example, as required under the 2018 Farm Bill, the proposed action includes provisions for maintaining information on the land where hemp is produced, inspecting licensed premises, taking official samples, testing the levels of delta-9 tetrahydrocannabinol, providing certain reports, disposing of plants not meeting necessary requirements, and other licensing requirements. The requirements set forth in the proposed action are not more stringent than those imposed

under the 2018 Farm Bill. Rather, they are necessary to secure USDA approval of the State program.

E. It will benefit those persons interested in having a local source of hemp for processing hemp products such as CBD oil. The benefit is indeterminate because it is dependent on the level of interest in the program.

F. The proposed action benefits the public, providing a local source of hemp for the production of hemp products such as CBD oil.

### **Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

### **Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

### **Opportunity for Public Comment**

Comments may be sent to Jim Drews, Program Manager, Turf and Seed Section, Maryland Department of Agriculture, 50 Harry S. Truman Parkway, Annapolis, MD 21401, or call (410) 841-5962, or email to [jim.drews@maryland.gov](mailto:jim.drews@maryland.gov), or fax to . Comments will be accepted through July 20, 2020. A public hearing has not been scheduled.

### **Economic Impact Statement Part C**

A. Fiscal Year in which regulations will become effective: FY 2021

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

General funds and the Hemp Farming Fund

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

G. Small Business Worksheet:

Attached Document:

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# **Title 15 Department of Agriculture**

## **Subtitle 01 Office of the Secretary**

### **Chapter 17 Hemp Farming Program**

Authority Agriculture Article 14-307, Annotated Code of Maryland.

#### **.01 Purpose.**

This chapter explains the Maryland Department of Agriculture's Hemp Farming Program that licenses and regulates the production of hemp in this State. This chapter does not apply to an institution of higher education or a person who produces hemp under the Hemp Research Pilot Program. As required by state law, this program has been approved by the United States Department of Agriculture.

#### **.02 Definitions.**

A. In this chapter, the following terms have the meanings indicated:

B. Terms Defined.

(1) "Acceptable hemp THC level" means the application of the measurement uncertainty to the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis producing a distribution or range that includes 0.3% or less.

(2) "Applicant" means a person, or for a business entity, a person authorized to act on behalf of the business entity, who applies to the Department to become a licensed hemp grower in this State.

(3) "Authorized agent" means a USDA- approved sampling agent approved by the Department to sample hemp under the Program.

(4) "Authorized laboratory" means a laboratory that is:

(a) DEA registered; or

(b) Accredited to ISO17025:2017.

(5) "Cannabis" means a genus of flowering plants in the family Cannabaceae of which *Cannabis sativa* is a species, and *Cannabis indica* and *Cannabis ruderalis* are subspecies thereof. Cannabis refers to any form of the plant in which the delta-9-tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.

(6) "CBD" means cannabidiol.

(7) "Conviction" means any plea of guilty or *nolo contendere*, or any finding of guilt, except when the finding of guilt is subsequently overturned on appeal, pardoned, or expunged.

(8) "Culpable mental state greater than negligence" means to act intentionally, knowingly, willfully, or recklessly.

(9) "Cultivate" means to plant, water, grow, or harvest a plant or crop.

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

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

(12) "Decarboxylation" means the removal or elimination of a carboxyl group from a molecule or organic compound.

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

(14) "Department" means the Maryland Department of Agriculture.

(15) "Disposal" or "destruction" means the procedure to render unusable by burning, incorporating with other materials, or other methods approved by the department.

(16) "Dry weight basis" means the ratio of the amount of dry solid in a sample after drying to the total mass of the sample before drying, including the moisture in a sample.

(17) "Growing area" means either an outdoor or enclosed indoor area where hemp is cultivated.

(18) "GPS" means Global Positioning System.

(19) "Hemp" means the plant *Cannabis sativa* L. and any part of that plant, including all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3% on a dry weight basis.

(20) "Key participant" means a sole proprietor, a partner in partnership, or a person with executive managerial control in a corporation, such as a chief executive officer, chief operating officer (it does not include a non-executive managers, such as farm, field, or shift managers).

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

(22) "License" means written authorization by the Department permitting a person to cultivate, store, handle, or market hemp in the State.

(23) "Licensed area" means the land area shown in an approved licensing application (or, subsequently, in an approved site modification plan) on which a hemp grower plans to cultivate, store, or handle hemp, and includes growing areas, storage facilities, and other areas that are to be used in the grower's hemp operation.

(24) "Licensed Grower" means a person possessing a license issued by the Department under the authority of this chapter to cultivate, store, handle, or market hemp.

(25) "Lot" means a contiguous area in a field, greenhouse, or indoor facility growing the same variety or strain of hemp that was planted at the same time throughout this area.

(26) "Map" means a diagram depicting all borders of the hemp operation including the nearest roads to aid in orientation, the cardinal direction north, and the boundaries of the legally described parcel on which the hemp operation is located. A map designating an outdoor growing area shall clearly indicate the names, or lot numbers, of all lots and planting locations. If multiple varieties, cultivars, or strains are planted, or the growing area shall be subdivided into separate lots for the official laboratory test, the map shall indicate the lots and sub-lots with names of the varieties, cultivars, or strains.

(27) "Measurement uncertainty" or "MU" means the parameter, associated with the result of a measurement that characterizes the dispersion of the values that could be reasonably attributed to the measurement.

(28) "Negligent Violation" means a failure to exercise the level of care that a reasonably prudent person would exercise in complying with the requirements of this chapter (it does not include intentional misconduct).

(29) "Official sample" means the pre-harvest hemp sample collected by the department, in accordance with Department policy, which is used to assess the THC concentration of a single lot of hemp.

(30) "Person" means an individual, partnership, corporation, limited liability company, association, or any business entity by whatever name designated and whether or not incorporated unless the context clearly indicates otherwise.

(31) "Program" means the Hemp Farming Program established under this chapter.

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

(33) "THC-A" means tetrahydrocannabinolic acid (a precursor to THC).

(34) "USDA" means the U.S. Department of Agriculture.

(35) "Variety" means a group of plants or an individual plant that exhibits distinctive observable physical characteristic(s) or has a distinct genetic composition.

(36) "Volunteer Plant" means a hemp plant that was not intentionally planted by the person licensed to grow hemp, but results from a previous crop, growing on its own accord from seeds or roots in the years following an intentionally planted hemp crop.

### **.03 Prohibition against Growing or Producing Hemp without a License.**

A person may not cultivate or produce hemp under this Program unless the person is licensed by the Department in accordance with the Chapter.

### **.04 Contents of Application and Licensing Terms.**

A. Contents. To obtain a license to cultivate or produce hemp under the Program, a person shall annually submit a signed, complete, accurate, and legible Departmental application that provides:

(1) The Applicant's full name, business or residential address, telephone number, and email address (if the Applicant is a business entity, the full name of the business, the address of the principal business location, the full name and title of key participants, the email address of that business, and EIN number of the business);

(2) The legal description of the land on which the hemp operation is proposed.

(3) The GPS coordinates for the land on which the hemp operation is proposed;

(4) A map of the land owned or controlled by the person to be licensed, showing the location (by field number, if grown outdoors), boundaries and dimensions (in acres or square feet) of:

(a) If hemp is grown indoors, the green house or indoor facility used to grow hemp;

(b) If hemp is grown outdoors, each field where hemp will be grown and the entrance to each field;

(c) The facility used to store hemp post-harvest; and

(d) Others fields or facilities to be used in the hemp operation.

(5) The portion or portions of the hemp plant or flower that the Applicant intends to market, i.e., seed, grain, fiber, hurd, or CBD;

(6) A certification that the Applicant is at least 18 years of age;

(7) A criminal background report of the Applicant and other key participants, prepared by the Federal Bureau of Investigation, dated no more than 60 days before the date of the Applicant's Application;

(8) Documentation showing that the Applicant has the legal right to cultivate hemp on the land (the proposed licensed area) and the legal authority to grant the Department access for inspection and sampling, including deeds, leasing agreements, written agreements by a landowner, or other appropriate documentation.

B. The Department shall provide the Applicant a reasonable opportunity to amend an application that is insufficient or to resolve any minor violations of this chapter.

C. Site Modification. A licensed grower may apply to the Department to alter the approved licensed area. To accomplish this, the licensed grower shall pay the site modification fee and submit a signed, complete, accurate, and legible Departmental application at least 15 days before the proposed modification that includes:

- (1) An updated legal description of the land that will comprise the hemp operation;
- (2) Updated GPS coordinates that will comprise the hemp operation; and
- (3) An updated map providing the information required under Section A(4) of this Regulation.

**D. Licensing Terms.** By signing and submitting the application, the Applicant agrees to abide by the following licensing terms:

(1) The licensed grower shall fully cooperate and assist the Department with all aspects of the administration and enforcement of the Program, including, but not limited to, the application, license, reporting, inspection, and sampling processes.

(2) The licensed grower shall permit the Department or any other law enforcement agency to enter the property for the purpose of collecting, sampling or inspecting hemp plants in the licensed area, whether in the field or in storage, during the licensing period, or after the license has expired or is suspended or surrendered;

(3) If hemp plants test greater than 0.3% THC or otherwise do not comply with this chapter, the licensed grower shall inspect the property post-harvest and, for the following growing season, pre-harvest, and destroy, as directed by the Department, any volunteer plants;

(4) The licensed grower shall maintain all records pertaining to hemp production for a minimum period of three years including, but not limited to, the following records:

- (a) Planting records;
- (b) Harvesting records;
- (c) Sampling and testing records; and
- (d) Records pertaining to the disposal of non-compliant hemp;

(5) The licensed grower shall keep the records required under subsection (3) of this section in this State and make them available during normal business hours for copying and inspection by the Department or other law enforcement agencies;

(6) The licensed grower shall submit all required reports by the applicable due dates specified by the Department.

(7) The licensed grower shall name an in-state agent for the receipt of notices in enforcement actions for records and other matters;

(8) The licensed grower shall notify the Department within 15 days of any changes to the hemp grower's operation, including planting, harvesting, testing, sampling, or any changes to the license holder's address or other contact information; and

(9) The licensed grower shall pay any fees as required by this chapter.

**E. Required Certification.** The Applicant shall certify that the contents of the application are true and correct and that when licensed, the grower will comply with all of the Department's reporting requirements and those of USDA and all other regulatory and statutory requirements for producing hemp under the Program.

**F. Grounds for Denying Licensure.** The Department may not issue a license to a person to grow hemp under this Program if the person:

- (1) Has a felony conviction under state or federal law related to a controlled substance during the 10-year period preceding the date of application;
- (2) Provides materially false or misleading information in the application; or
- (3) Has not met the requirements of this chapter.

#### **.05 Licensing Period.**

A person may apply to become a licensed grower at any time during a calendar year. Unless suspended or revoked, a license to grow hemp under this Program is valid from the date it was issued through December 31 of the year that the license was issued. To ensure continuity of the license, a licensed grower shall submit to the Department an application to renew the person's license no later than December 1 of the year that the license is due to expire. A license issued under this chapter may not be assigned or transferred to another person under any circumstances.

#### **.06 Fees.**

The following non-refundable fees apply to hemp growers:

- A. An annual application fee — \$50;
- B. An annual license fee — \$500;
- C. A fee for each additional location owned or controlled by a grower with a different mailing address — \$500;
- D. A fee each time that the Department samples and tests for THC — \$250; and
- E. A site modification fee if the GPS coordinates listed in the Application are changed — \$250.

#### **.07 Prohibited Acts.**

A. A licensed grower may not:

- (1) Grow or store hemp in a structure that is used for residential purposes;
- (2) Plant, grow, or store hemp on any site not that is within the licensed area;
- (3) Display or exhibit live hemp plants, viable seeds, or floral materials at trade shows, county fairs, educational or other similar events without written permission from the organizer of the event;
- (4) Allow unsupervised public access to hemp plots or plantings;

(5) Sell, transfer, or permit the sale or transfer, of living hemp plants or viable hemp seeds to any person in the State who does not hold a license issued by the Department;

(6) Sell or transfer, or permit the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person outside the state of Maryland who is not authorized by the laws of that state to own or otherwise possess such products;

(7) Comingle hemp plant material from one lot with hemp plant material from other lots unless the lots have been tested and deemed compliant with this Chapter;

(8) Place in the stream of commerce any hemp grown in a lot that has a noncompliant THC level;

(9) Provide false or misleading information in any report, record, or other document required under this chapter or during the course of an inspection conducted under this chapter;

(10) Hinder or obstruct an authorized agent of the Department or any other law enforcement officer from entering the licensed area for the purpose of collecting, sampling or inspecting hemp;

(11) Violate any of the provisions of this chapter including, but not limited to, the licensing terms set forth in Regulation .04; or

(12) Violate any applicable laws and regulations relating to the use and development of the land for hemp production.

B. There is no distance requirement, limitation, or buffer zone between licensed hemp growers and between licensed growers and medical cannabis producers licensed in the State. No rule may establish such a distance requirement, limitation, or buffer zone without the Department's evaluation, in consultation with the Natalie M. LaPrade Medical Cannabis Commission, of sufficient scientific data showing impacts to either crop as a result of cross-pollination.

#### **.08 Grower Reporting Requirements.**

##### **A. Field Planting Report.**

(1) Within 10 days after planting, a licensed grower shall submit to the Department a signed, complete, accurate, and legible Departmental Field Planting Report that includes:

(a) The licensed grower's full name and contact information;

(b) The license number;

(c) The planting date and anticipated harvest date;

(d) The hemp's variety name;

(e) The field location ID listed in the application;

(f) An updated detailed map depicting any changes; and

(g) The primary intended use of the harvested hemp for each planting.

(2) A Licensed Grower who does not plant hemp in an approved outdoor growing area listed in the application shall submit a Field Planting Report on or before July 31, stating that hemp has not and will not be planted at that site.

(3) If a replanting of seeds or propagules occurs, the licensed grower shall complete and submit to the Department a new Planting Report within 10 days after the planting, providing the information required under this section.

##### **B. Indoor Planting Report.**

(1) Within 10 days after establishing plants at an indoor location, a licensed grower shall submit to the Department a signed, complete, accurate, and legible Departmental Greenhouse/Indoor Planting Report that includes:

(a) The licensed grower's full name and contact information;

(b) The license number;

(c) The planting date and anticipated harvest date;

(d) The hemp's variety name; and

(e) The primary intended use of the harvested hemp of each planting.

(2) The grower must submit this report each time hemp is planted in, moved within, or moved into a licensed area, except for replanting into a larger container within the same indoor location.

(3) In addition to completing the initial Greenhouse/Indoor Planting Report, the licensed grower must submit to the Department quarterly reports for each location ID to the Department no later than March 31, June 30, September 30, and December 31.

##### **C. Pre-Harvest report.**

(1) At least 5 days before the expected harvest date of a hemp crop, a licensed grower shall submit to the Department a signed, complete, accurate, and legible Departmental Pre-Harvest Report that includes:

(a) The licensed grower's full name and contact information; and

(b) The license number; and

(c) The anticipated date range for initiating and completing harvest, shown by lot, and, if the crop is being grown outdoors, a map designating the location of the lot(s) being harvested.

(2) If more than one harvest date is being reported for lots within a growing area, the map shall designate the locations of the lots, and the intended harvest dates that are to be harvested under the Pre-Harvest report.

(3) If a licensed grower fails to submit a Pre-Harvest Report and proceeds to harvest a crop before a sample is collected by the Department, the Department may suspend or revoke the person's license.

*D. Postharvest report. Within 15 days after a harvest of a lot is complete, the licensed grower shall submit to the Department a signed, complete, accurate, and legible Departmental Postharvest Report that includes:*

- (1) The licensed grower's full name and contact information;*
- (2) The license number; and*
- (3) The independent harvest date of each lot.*

*E. Destruction report. Within 48 hours after crop destruction or as ordered by the Department, the licensed grower shall submit to the Department a signed, complete, accurate, and legible Departmental Destruction Report that includes:*

- (1) The licensed grower's full name and contact information;*
- (2) The license number;*
- (3) The disposal date of each lot destroyed; and*
- (4) The method of destruction.*

*F. Annual Production Report. A licensed grower shall submit to the Department a signed, complete, accurate, and legible Departmental Annual Production Report by December 1 of each year that provides the following information:*

- (1) The licensed grower's full name and contact information; and*
- (2) The license number;*
- (3) The acreage or amount of greenhouse space planted, the planting date, the harvest date, and the varieties grown; and*
- (4) The weight and type of plant material harvested and the plant material being stored and the location of its storage as of the date of this report.*

*G. Hemp Crop Acreage Report to Farm Service Agency. A licensed grower shall report information pertaining to the grower's hemp operation with the USDA, Farm Service Agency, as required under federal law. This information may include:*

- (1) The license number that the Department issued to the licensed grower;*
- (2) The street address where licensed grower is producing hemp;*
- (3) The geospatial location of each lot or greenhouse where hemp will be produced;*
- (4) If hemp is grown outdoors, the hemp crop acreage, including the total acreage planted and harvested, and, if any portion of the crop is disposed of, the amount; and*
- (5) If hemp is grown indoors, the indoor square footage or acreage dedicated to the production of hemp.*

*H. Drug Felony Conviction Report.*

*(1) Within 15 days of conviction of a disqualifying felony offense, a licensed grower shall inform any co-licensees and submit to the Department a signed, complete, accurate, and legible Departmental Felony Conviction Report that includes:*

- (a) The license number;*
- (b) The date of conviction;*
- (c) An acknowledgement that all co-licensees have been informed of the disqualifying offense, if applicable, and the co-licensees have assumed full responsibility for the hemp crop.*
- (2) Failure to report the disqualifying offense may result in an order of destruction.*

*I. Record-Keeping Requirements. A licensed grower shall keep and maintain for at least three years all information that supports, verifies or documents all reports required under this regulation.*

#### **.09 Inspections of Hemp Operations and Sampling and Testing for THC.**

*A. Annual Inspections. The Department may inspect the location of each licensed grower annually and collect samples of hemp to verify that hemp is not being produced in violation of this chapter.*

*B. Additional Inspections. In addition to conducting an annual inspection, the Department, without notice, may inspect, and take samples of hemp from, a licensed grower's operation during normal business hours. The Department may also conduct such additional inspections and sampling it deems appropriate if it has reason to believe a violation of the Program may be occurring.*

*C. Sampling Methodology. To ensure a confidence level of 95 percent that no more than one percent of the plants in a lot exceeds the acceptable hemp THC level, official samples shall be collected in accordance with the Department's sampling methodology, which requires that:*

- (1) Samples must be collected by the Department or an authorized agent;*
- (2) Samples selected shall be solely determined by the Department or authorized agent;*
- (3) Samples must be from the flower material of the hemp plant.*
- (4) Samples must represent a homogeneous composition of the lot be collected, and a minimum of two samples from each lot must be collected (the number of plants selected for sampling will be dependent on the size of the growing area);*
- (5) Samples of hemp plant material from one lot may not be commingled with hemp plant material from other lots.*
- (6) Samples must be collected during the growing season and before harvest;*
- (7) When a scheduled sampling occurs, the grower or an authorized grower representative must be present at the growing site;*

(8) The grower must provide the Department or an authorized agent complete and unrestricted access to all hemp plants and all locations listed in the application;

(9) The grower or authorized agent may take any other action that the Department deems necessary to ensure that the stated confidence level is met.

(10) If the licensed grower fails to complete the harvest within 15 days, a new sample of the lot shall be collected for testing purposes following the procedures set forth in this regulation.

(11) The Department or authorized agent shall place the composite representative sample in a properly labeled paper bag, seal the bag, and place the following information on the bag or otherwise include it with the sample:

- (a) License number;
- (b) Name and contact information of the sampling agent;
- (c) Name and contact information of the licensee;
- (d) Date sample was taken;
- (e) Sample identification number for the lot;
- (f) Field identification number listed in the application; and
- (g) Any other information that may be required by the Department.

(12) The sample and sampling report shall be hand-delivered or placed in a box, sealed with security tape, and over-night-shipped to the Department or authorized laboratory.

D. All hemp samples collected become the property of the Department without cost to it and are nonrefundable.

E. Testing Requirements. The Department or an authorized laboratory shall test hemp for prohibited THC levels by performing a quantitative laboratory determination of the delta-9 THC concentration on a dry weight basis. In conducting this work, the following standards must be met:

(1) Laboratory quality assurance must ensure the quality and validity of the test results and that the testing method used is appropriate.

(2) An appropriate chain of custody will be maintained at all times.

(3) The official samples will be dried, the stem and seed will be separated from floral material and discarded, and the floral material will be ground.

(4) The ground floral material will be tested for THC content.

(5) The THC testing procedure must include a valid testing methodology that uses post-decarboxylation or other similarly reliable methods, including, but not limited to, gas chromatography with flame ionization detection, or liquid chromatography with ultraviolet detection. The testing methodology must consider the potential conversion of THCA in hemp into THC and the test result must measure total available THC derived from the sum of the THC and THC-A content. The total THC concentration level shall be determined and reported on a dry weight basis. MU will be used in determining the range of the result found.

(6) A sample test result with a delta-9 THC concentration on a dry weight basis greater than the acceptable hemp THC level is conclusive evidence that the lot represented by the sample contains a delta-9 THC concentration on a dry weight basis of more than 0.3 percent and that the hemp is therefore not in compliance with this chapter.

(7) Test results report. If an authorized laboratory conducts the testing, the hemp grower shall ensure that the laboratory reports the test results for all samples tested to the Department. The test results report shall contain the information below for each sample tested:

- (a) Hemp grower's license or authorization identifier;
- (b) Name of hemp grower;
- (c) Business address of hemp grower;
- (d) Lot identification number for the sample;
- (e) Name and address of laboratory;
- (f) Date of test and report;
- (g) Identification of a retest; and
- (h) Test result.

#### **.10 Prerequisites for Placing Hemp in Commerce.**

A. A licensed grower may not co-mingle, transport, transfer, sell, market, process or otherwise dispose of hemp pending a THC analysis by the Department or an authorized laboratory.

B. To place hemp in the stream of commerce, test results must confirm that the final product batch contains no more than 0.3 percent delta-9 THC on a dry weight basis using the method's determined measurement uncertainty; and all such testing results must be retained by the grower and made available to the Department upon demand for a minimum of three years.

C. Hemp samples with a post-decarboxylated THC level equal to or below 0.3% THC requires no further action by the Department. The area or harvested plant material from which the sample was obtained that was harvested within 15 days of the date of sampling may be marketed or further processed.

#### **.11 Non-compliant Hemp.**

A. Upon receipt of a failing test result, a licensed grower may request resampling and retesting of the varieties in question. If no re-test is requested, or the re-tested sample is greater than 0.3% THC, the area represented by the sample, or any harvested hemp from the area represented by the sample shall be disposed as provided in Regulation

.12 of this chapter. The grower must retain all such testing results and make them available to the Department upon demand for a minimum of three years.

B. Hemp from lots determined to be non-compliant with the acceptable hemp THC level may not be further handled, processed, or enter the stream of commerce.

C. If a grower comingles hemp from a lot with hemp from another lot before the test results from any of the comingled lots are made known, the grower must dispose of all of the hemp if the test results from just one of these lots is subsequently found to be noncompliant.

**.12 Grower's Duty to Dispose of Hemp.**

A. The costs of disposal of non-compliant hemp are the responsibility of the grower.

B. The grower shall notify the Department immediately upon receipt of a test report determining that any portion of the crop tests positive for a prohibited amount of THC.

C. If hemp is deemed non-compliant with this chapter (e.g., a test report shows that it exceeds the acceptable hemp THC concentration), the Department shall:

(1) Notify the grower to stop the harvest and shipment of any plants or plant material harvested from the tested area;

(2) Send a representative from the Department to conduct an inventory of the harvested and unharvested plants from the area that was tested;

(3) Offer options for re-testing; and

(4) Offer options for disposal.

D. The disposal of hemp deemed non-compliant with this chapter must be done in accordance with the Controlled Substances Act and the DEA regulations found at 21 CFR 1317.15 as directed by the Department.

E. The grower shall notify the Department and USDA of the grower's intent to dispose of non-conforming plants.

F. A representative from the Department or a law enforcement official shall supervise the disposal of any non-compliant hemp plants or plant materials.

G. The grower shall verify disposal by submitting required documentation to the Department and USDA and retain a copy of the disposal record for three years.

**.13 Sanctions for Violating the Department's Hemp Farming Program.**

A. Except as provided in Section B, the Department, upon notice and an opportunity to be heard, may deny a license application, suspend or revoke a license to produce hemp under the Program, if the person:

(1) Fails to comply with the Department's plan for monitoring and regulating the production of hemp;

(2) Misrepresents the legal description of land on which hemp is produced;

(3) Produces hemp without a valid license;

(4) Produces plants, or any part of a plant, that exceeds a delta-9-tetrahydrocannabinol concentration of 0.3% on a dry weight basis;

(5) Violates the licensing terms set forth in Regulation .04D of this chapter;

(6) Provides false or misleading information in the application for a licensee to grow hemp as provided in this chapter;

(7) Provides false or misleading information in any report, record, or other document required under this chapter or during the course of an inspection conducted under this chapter;

(8) Hinders or obstructs an authorized agent of the Department or any other law enforcement officer from entering the licensed area for the purpose of collecting, sampling or inspecting hemp;

(9) Fails to maintain all records pertaining to hemp production required by this chapter and to make these records available during normal business hours for copying and inspection by the Department or other law enforcement agency;

(10) Fails to submit complete, signed, and accurate reports required under Regulation .08;

(11) Fails to dispose of hemp as directed by the Department;

(12) Is found to be growing or in possession of hemp not in compliance with these regulations.

(13) Is convicted of a felony related to a controlled substance under state or federal law;

(14) Cultivates or stores hemp on any site not listed in the application;

(15) Represents hemp seeds which are indistinguishable by the plant's characteristics to be of a recognized variety, without having adequate information for such variety representation; or

(16) Violates any provision of this chapter.

B. Negligent Violations.

(1) If it determines that a violation is a negligent violation, the Department, in lieu of sanctioning the person as provided in Section A of this Regulation, may issue a Corrective Action Plan, affording the person an opportunity to correct that violation and come into compliance.

(2) The corrective action plan issued by the Department shall include the following:

(a) A date by which the person shall correct the violation;

(b) The action that the person shall take to come into compliance;

(c) To ensure compliance, a requirement that the person shall report to the Department at a frequency determined by the Department for a period of not less than 2 calendar years from the date of the violation the compliance measures it is taking; and

(d) Inspection requirements as determined by the Department.

(3) If the person fails to implement or comply with the Corrective Action Plan, the Department may proceed to suspend or revoke the grower's license to produce hemp as provided in Section A of this Regulation.

(4) If the Department determines that a person has violated this chapter three times in a 4 year period, that person is banned from producing hemp for a period of 5 years beginning on the date of the third violation.

**C. Violations Exceeding Negligence—Immediate Suspension.**

(1) If the Department determines that a person has violated the Program with a culpable mental state greater than negligence, the Department shall:

(a) Send a Notice of Suspension to the person, ordering the person to suspend all hemp operations immediately; and

(b) Refer the matter to the United States Attorney General, the Maryland Attorney General, or State's Attorney, as appropriate, to enforce the requirements of this chapter.

(2) If the Department issues a Notice of Suspension, the grower may not harvest, or remove cannabis from the premises where hemp or other cannabis was located at the time the Department issued this notice.

(3) As soon as possible after the Notification of the Suspension, the Department shall inspect the grower's premises and perform an inventory of all hemp, and hemp products that are in the grower's possession;

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

**.14 Notice, Hearings, and Appeals.**

**A. Notice.** If it determines that sanctions are warranted against a person under Regulation of .11 of this Chapter, the Department shall provide the person written Notice of the Violation via regular mail, certified mail, or personal service that includes:

(1) The facts that are asserted pertaining to the violation;

(2) The pertinent statutory and regulatory sections under which the Department is taking its action;

(3) The Department's determination whether the person's conduct constitutes a negligent violation or a violation with a culpable mental state greater than negligence;

(4) A statement explaining whether the Department has informed law enforcement of the violation;

(5) The sanction proposed, if any, as a result of the Department's action; and

(6) Unless a hearing is automatically scheduled, notice that the person may request a hearing within 20 days from receiving the Notice of the Violation, what, if anything, the person must do to receive a hearing, and the direct consequences, sanction, of the person's failure to exercise in a timely manner the opportunity for a hearing or to appear for a scheduled hearing.

**B.** To receive a hearing on the matter set forth in the Notice of Violation, the person must submit a written request for a hearing to the Maryland Department of Agriculture, Hemp Farming Program, 50 Harry S. Truman Parkway, Annapolis, Maryland 21401. If the person fails to submit a written request in a timely manner, the Notice of Violation shall become final and the Department may impose the proposed sanction stated in the notice.

**C. Hearings.** Hearings under this regulation shall be in accordance with the Maryland Administrative Procedure Act and COMAR 15.01.01.

**D. Appeals.** A person aggrieved by a decision of the Department under this chapter, including a decision to deny an application for a license, or to suspend or revoke a license, may appeal the decision to the circuit court pursuant to the Maryland Rules of Civil Procedure.

**.15 Department Reports to USDA.**

**A.** By the first of each month, the Department shall file with USDA a report on each licensed grower with the following information:

(1) For each new licensee that is an individual, the report shall include:

(a) The full name of the individual;

(b) The license number and status;

(c) The business address;

(d) Telephone number and email address (if applicable); and

(e) A legal description and GPS coordinates for each field, greenhouse, indoor growing structure, or site where industrial hemp will be cultivated, handled or stored.

(2) For each new licensee that is a business entity, the report shall include:

(a) The full name of the business entity;

(b) The license number and status;

(c) The principal business location address;

(d) The full name, title, and email address (if applicable) of each person for whom the entity is required to submit a criminal background check; and

(e) A legal description and GPS coordinates for each field, greenhouse, indoor growing structure, or site where industrial hemp will be cultivated, handled or stored.

(3) For each licensee that was included in a previous report and whose reported information has changed, the report shall include the previously reported information and the new information, including the following:

(a) The status of each grower and seed producer's license;

(b) The period covered by the report; and

(c) Indication that there were no changes during the current reporting cycle if applicable.

B. By the first of each month, the Department shall file with USDA a report of any occurrence among licensed hemp growers where hemp plants or plant parts have exceeded the acceptable THC levels as provided in this chapter with the following information:

(1) The name and address of the licensee;

(2) Producer license number;

(3) Location information, such as a lot number, location type, and GPS coordinates or other location descriptor for the production area subject to hemp disposal;

(4) Information on the agent handling the disposal; and

(5) Documentation or traceability from seed acquisition to harvest or crop termination.

C. In addition to the hemp disposal report described in section B of this regulation, the Department shall promptly notify USDA's Agricultural Marketing Administration of any occurrence of hemp plants or plant material that do not meet the definition of hemp as provided in this chapter. Records shall be attached to the report demonstrating that the proper disposal methods were followed.

D. By December 15 of each year the Department shall submit an annual report to USDA that provides the following information under the Hemp Farming Program:

(1) Total planted acreage;

(2) Total harvested acreage; and

(3) Total acreage disposed.

E. Any report filed by the Department with the USDA shall be submitted using a digital form compatible with USDA's sharing systems, whenever possible.

#### **.16 Public Records.**

A. Any public record held by the Department is subject to inspection and release only as provided by the Maryland Public Information Act.

B. The Department shall release to the USDA record information about each hemp grower in a timely manner required by the United States Secretary of Agriculture.

#### **.17 Criminal Penalties.**

In addition to any other penalty provided by law, a person who violates this chapter may be subject to criminal penalties under Agriculture Article §§12-101 et seq. Maryland Annotated Code.

#### **.18 Enforcement.**

The Department shall report a person to the United States Attorney and the Maryland Attorney General who knowingly:

A. Fails to comply with the Department's plan for monitoring and regulating the production of hemp;

B. Misrepresents the legal description of land on which hemp is produced;

C. Produces hemp without a valid license; or

D. Produces plants, or any part of a plant, that exceeds a delta-9-tetrahydrocannabinol concentration of 0.3% on a dry weight basis.