

THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



Department of Agricultural Resources

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CHARLES D. BAKER
Governor

KARYN E. POLITO
Lt. Governor

KATHLEEN A. THEOHARIDES
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JOHN LEBEAUX
Commissioner

August 27, 2021

Undersecretary Jennifer Lester Moffit
United States Department of Agriculture
Marketing and Regulatory Programs

Dear Undersecretary Moffit,

The Massachusetts Department of Agricultural Resources is pleased to send you its updated state plan for approval to administer hemp production in our state. In conformity with the 2018 Farm Bill and Final Rule (7 CFR 990), I request approval of our state plan. Please contact the Department should there be any questions or additional information needed. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Lebeaux".

John Lebeaux
Commissioner
Massachusetts Department of Agricultural Resources

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MASSACHUSETTS STATE HEMP PLAN – Revised 2021

Massachusetts Department of Agricultural Resources

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INTRODUCTION

The Massachusetts Department of Agricultural Resources (“MDAR”) is submitting this revised State Plan (“Plan”) under the Agricultural Improvement Act of 2018 (“2018 Farm Bill”) and the United States Department of Agriculture’s (“USDA”) Domestic Hemp Production Program, 7 CFR 990 (“Federal Rule”). MDAR has authority to regulate the production of hemp under state law as set forth in M.G.L. c. 128, Sections 116 through 123 ([see Attachment 1](#)).

Because MDAR is exercising jurisdiction under legislation passed prior to the 2018 Farm Bill and the Federal Rule, MDAR must reconcile the differences between its existing program and the Interim Final Rule. MDAR intends to accomplish this task by promulgating regulations that will bring the hemp program in line with both state and federal requirements, reconciling the two where needed, and ensuring compliance with state and federal law. It should be noted that MDAR’s current hemp program is largely in compliance with the Rule and many of the necessary changes can be made on a programmatic level for the current growing season. In the past, MDAR has recommended changes to the Legislature for state law to further align the state statute with the Rule and may recommend additional changes in the future.

MDAR also recognizes that the state statute defining “hemp” uses different language than the corresponding federal definition of “hemp.” The Commonwealth of Massachusetts (“Commonwealth”) interprets its definition of hemp to be consistent with federal law and will ensure its program meets all federal requirements. Additionally, wherever a reference is made to “MDAR approval” or “MDAR approved” it is intended to require both MDAR and USDA approval to ensure that all hemp production in the Commonwealth is conducted in compliance with state and federal.

MDAR will continue to update USDA on the progression of all relevant legislative, regulatory, and program changes in an annual report and will share the draft regulations once available as well as resubmit the plan for approval when all the changes are complete, if needed, as required by the Federal Rule.

SECTION 1: PLAN TO MAINTAIN RELEVANT PRODUCER AND LAND INFORMATION

MDAR is currently operating in compliance with the requirements to maintain relevant producer and land information. Currently, M.G.L. c. 128, Section 118(e) mandates that producer and land information be collected via license applications.¹ MDAR maintains this information in a database along with license numbers and status. All producer and land information is reported monthly to USDA using the AMS-23 form.

Massachusetts hemp license (“Hemp License”) applications require the following information:

For a Producer License ([see Attachment 2](#)):

1. Full name, mailing address, and contact information, including email address, for the Applicant; if the Applicant is a business entity, the full name of the business; the principal business location address; full name, title, and e-mail address of the Key Participants; and employer identification number (EIN) of the business;
2. Name and address of the proposed Hemp Production Site(s);
3. Description of the Site(s), which shall include the street address or parcel identification number if no street address is available;
4. GPS coordinates provided in decimal degrees taken at the approximate center of the Site(s);
5. A map of the proposed Site(s) illustrating clear boundaries and locality of the Site(s);
6. If Hemp is to be planted in a field, the area in acres of each field;
7. If Hemp is to be planted in a greenhouse or other building, the approximate dimensions or square footage of the Production area;
8. An Identity History Summary, or other MDAR-approved documentation, for all Key Participants dated within 60 days prior to the application submission date;
9. Written assurance by the Applicant that the Applicant will comply with 330 CMR 32.00, the Federal Act, and the Federal Rule;
10. Written consent by the Applicant to MDAR to conduct both scheduled and unannounced inspections, sampling, and testing; and
11. Any other information that MDAR may require.

MDAR has the authority to license for all production, including research, under M.G.L. Chapter 128 Section 118. All hemp production is currently licensed together under a single production license but MDAR will create a separate research license once the plan is approved and regulations are promulgated ([see Attachment 4](#)). Once established, a Research License application will require the following information:

1. The name and contact information of the individual(s) charged with overseeing the Research;
2. The location of each Site at which Research shall take place, including the address and geospatial coordinates;
3. A description of the type of Research to be conducted that includes a plan to clearly define:
 - i. Research objectives
 - ii. Planting and Harvest plans
 - iii. Sampling methods that comply with the Federal Rule
 - iv. Plans for Crop Remediation and disposals that comply with the Federal Rule
 - v. Plans for Crop reporting that comply with 32.04(5) and the Federal Rule.

¹MDAR will update its application and any references to the Interim Final Rule for its 2022 application period. The 2021 application period closed on April 30, 2021.

4. A statement that all Hemp used for conducting Research will either be grown as part of the Research or will be obtained from a Producer duly authorized by USDA.
5. A statement that Hemp produced under a Research license will not enter the stream of commerce.
6. An Identity History Summary for all individuals(s) charged with overseeing the Research dated within sixty (60) days prior to the application submission date;
7. Written assurance by the Applicant that the Applicant will comply with 330 CMR 32.00, the Federal Act and the Federal Rule;
8. Written consent by the Applicant to MDAR to conduct both scheduled and unannounced inspections, sampling, and testing; and
9. Any other information that MDAR may require.

A Hemp License in the Commonwealth currently displays the following information:

- Name of licensed entity
- Mailing address
- Dates of issue and expiration
- MDAR assigned license number

MDAR uses the following scheme to assign license numbers:

State FIPS Code; initial year of license issue; sequential number generated by database; letter indicating license type

Example: 25180001D (Commonwealth of Massachusetts; initially licensed in 2018; first license issued; Dual producer and processor-type license)

All licenses issued by MDAR are reviewed and renewed on an annual basis as required by M.G.L. c. 128, Section 119. The possibility of issuing 3-year licenses as allowed by the Final Rule will be considered. However, any change to MDAR's licensing schedule must be done through legislation and would also require a revision to this Plan.

SECTION 2: PLAN FOR ACCURATE AND EFFECTIVE SAMPLING AND TESTING USING POST-DECARBOXYLATION OR SIMILARLY RELIABLE METHODS

MDAR has a sampling and testing method in place that ensures compliance with the Federal Rule. The definition of hemp under M.G.L. c. 128, Section 116 requires that MDAR test for the total combined delta-9 THC and THCa to determine Acceptable Hemp THC Levels.

MDAR currently contracts with a DEA-registered lab to test for the THC content of hemp according to a Quality Assurance Project Plan that meets all requirements of the U.S. Domestic Hemp Production Program Laboratory Testing Guidelines issued January 15, 2021.

The MDAR Hemp Program has developed a Regulatory THC Sampling Procedure for the collection of hemp samples ([see Attachment 3](#)). The sampling protocol meets confidence level requirements of the Rule and ensures a representative sample of each lot has been collected.

PROCEDURES TO EITHER SAMPLE ALL LOTS OR DO PERFORMANCE-BASED SAMPLING:

The MDAR Hemp Program has developed a Regulatory THC Sampling Procedure for the collection of hemp samples ([see Attachment 3](#)). Every lot and every growing location must be sampled and tested. Performance-based sampling will not be incorporated into the Massachusetts sampling procedures for Producers.

Hemp produced for research will not be subject to the same sampling requirements provided that the researcher adopts and carries out an alternative sampling method that has the potential to ensure, at a confidence level of 95 percent, that the hemp subject to this alternative method will not test above the acceptable hemp THC level. M.G.L. Chapter 128 Section 122 establishes MDAR's authority to inspect and have access to the equipment, supplies, records, real property and other information deemed necessary to ensure that alternative sampling methods used by any Research Licensee are accurate, reliable, and consistent. Any alternative methods must be submitted to MDAR for review and approval and comply with the federal rule.

PROCEDURES ON SAMPLING AGENTS:

MDAR currently has unrestricted access to any locations, equipment, supplies, records, and other information needed and has established an inspection and testing program in accordance with its authority set forth in M.G.L. c. 128, Section 122. The current testing program requires that MDAR, through its own inspectors acting as Sampling Agents, collect a composite sample of flower material of every crop or different variety harvested within 15 days prior to the scheduled harvest. Licensees may not collect their own regulatory THC samples. All regulatory sampling must be conducted in accordance with the Massachusetts Regulatory THC Sampling Procedure ([see Attachment 3](#)). MDAR also requires that the licensee or an authorized representative be present during the sampling. The licensee must notify MDAR prior to harvest in order to schedule an appointment for regulatory THC sample collection. MDAR would like to extend the 15-day harvest requirement to 30 days as allowed by the Final Rule but is deferring that change until the promulgation of formal regulations.

PROCEDURES ON TESTING:

The definition of hemp under M.G.L. c. 128, Section 116 requires that MDAR test for and consider the total combined delta-9 THC and THCa when determining what is hemp. MDAR has used the following definition for "Acceptable Hemp THC Level" in the proposed regulation ([see Attachment 4](#)).

Acceptable Hemp THC Level means that when applied to the reported delta-9 tetrahydrocannabinol concentration level on a dry weight basis, the Measurement of Uncertainty produces a distribution or range that includes 0.3% or less. For example, if the reported delta-9 tetrahydrocannabinol concentration level is reported as 0.35% and the Measurement of Uncertainty is +/- 0.6%, then the measured delta-9 tetrahydrocannabinol concentration level for this sample ranges from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the acceptable hemp THC level for the purposes of program compliance.

MDAR currently contracts with a private DEA-registered lab to test for the total THC content of hemp according to a Quality Assurance Project Plan that meets all requirements of the [U.S. Domestic Hemp Production Program Laboratory Testing Guidelines](#) issued January 15, 2021. The lab will also be required to report THC test results regularly to MDAR and USDA using the AMS-22 or another submission method as prescribed by USDA.

SECTION 3: PLAN FOR DISPOSAL PROCEDURES

MDAR has disposal procedures in place that meet the requirements of the Federal Rule. Currently, MDAR requires destruction of any hemp that tests above 0.3% total THC, inclusive of a Measurement of Uncertainty as set forth in the Federal Rule. Destruction of any cannabis that exceeds Acceptable THC Levels is conducted by the licensee either voluntarily or at the direction of MDAR, witnessed by at least 1 MDAR hemp inspector, and documented for MDAR's records. Acceptable destruction methods are currently incineration or tilling into the soil to render the crop unusable.

MDAR allows Licensed Producers to request a re-test of a crop no more than twice if the initial test results indicate that the total THC is above 0.3%. If the cannabis plant or plant material exceeds 0.3% total THC inclusive of the Measurement of Uncertainty and the grower has exhausted its retesting and remediation options, MDAR will notify USDA using an electronic method approved by USDA.

MDAR currently requires a Licensed Producer whose plant material exceeds the allowable standard to sign Destruction Agreement Form that acknowledges destruction, the reason for such, and waives any right to appeal. MDAR will ensure that this form and any records USDA requests are included in the notification.

MDAR is currently using the AMS-24 form to report the destruction of all hemp that does not have Acceptable THC Levels to USDA on a monthly basis. Total hemp destruction data is reported annually to USDA using the AMS-25 form and will include lab reports for all crops disposed.

SECTION 4: PLAN FOR REMEDIATION PROCEDURES

MDAR's hemp production policy does not currently allow for Remediation, but MDAR intends to allow for remediation according to the following standards:

- (a) MDAR must be notified of the intent to Remediate any non-compliant Crop prior to any Remediation activity to ensure that it is done in an MDAR-approved manner.
- (b) Crops may be Remediated before a 2nd or 3rd round of sampling.
- (c) Producers may opt for a re-test of hemp floral material after harvest, but prior to Remediation. Hemp crops are only eligible for re-testing or Remediation if they have been harvested within 30 days of an initial pre-harvest sample.
- (d) Any Remediation must adhere to the following specifications:
 - 1. Remediation must take place at the Site and may not be moved off Site.
 - 2. Remediation may occur by one of the following ways:
 - a. Removing and destroying flower material while retaining stalk, stems, and leaf material; or
 - b. Shredding the entire plant into a bio-mass like material; or
 - c. An alternative MDAR and USDA approved method.
- (e) Any Remediated material including shredded biomass material, retained stalk, stems, leaf material or seeds must be retested by MDAR to ensure compliance.
- (f) Hemp that is Remediated for Research is not subject to the sampling requirements provided that the Licensed Researcher adopts and carries out an approved alternative sampling method that can ensure, at a confidence level of 95 percent, that the Hemp subject to Remediation method will not test above the Acceptable Hemp THC level.
- (g) Any Remediated Crop that cannot be certified by MDAR as Hemp must be destroyed in accordance with Section 3 of this plan.

MDAR will include these Remediation standards in its formal production regulations.

SECTION 5: PLAN FOR INSPECTION PROCEDURES

MDAR currently meets the requirements of the Federal Rule by exercising MDAR's authority set forth in M.G.L. c. 128, Section 122 ([see Attachment 1](#)). Inspections are conducted with every Licensed Producer at least once a year. These inspections may be conducted randomly or be scheduled by MDAR in advance. Inspections are conducted under the following conditions:

- Prior to issue of a license to a new Producer;
- If amendments are made to a producer's application and MDAR feels it needs to inspect the area;
- Throughout the growing season to ensure that hemp is being grown in accordance with the license information provided to MDAR;
- Prior to harvest of any hemp crops so that MDAR may collect regulatory samples. Every lot and every single growing location in the Commonwealth must be sampled and tested.
- When MDAR feels necessary to ensure compliance with the program requirements.

If violations are discovered during the inspections, MDAR will comply with those enforcement requirements as prescribed under **§990.06** and set forth in [Section 7](#) of this plan.

SECTION 6: PLAN FOR COLLECTION OF INFORMATION

MDAR currently meets the requirement to collect and maintain the information listed above for each hemp producer. Currently, specific information is required under M.G.L. c. 128, Section 118(e) to be included in an application for a hemp license, which is issued on an annual basis ². This information is collected on the application form required by MDAR and stored in a database where information is easy to access and search. MDAR is currently using the AMS-23 form to report information to USDA on a monthly basis. Additionally, MDAR collects and maintains all information regarding the production, testing, and disposal of hemp in the Commonwealth, and reports to USDA using AMS-24 and AMS-25 forms on a regular basis.

MDAR is currently drafting regulations that will go through the M.G.L. c. 30A promulgation process. The regulations will address the requirement that producers report the required information with FSA and AMS. MDAR will also include a verification process during its inspection process to ensure that producers are submitting the required information. Additionally, MDAR will provide guidance and outreach to producers on the method of submitting this information to FSA and AMS.

² MDAR will update its application and any references to the Interim Final Rule for its 2022 application period. The 2021 application period closed on April 30, 2021.

SECTION 7: PLAN TO COMPLY WITH ENFORCEMENT PROCEDURES

MDAR currently has enforcement authority under M.G.L. c. 128, Section 120 to ensure that production, and any other hemp-related activities covered under M.G.L. c. 128, Section 116 through 123, complies with state requirements. This includes corrective action measures and suspending, revoking, or denying any license. MDAR will conduct enforcement against licensed hemp producers only as authorized by USDA and the Final Rule. MDAR's proposed regulations will reflect the USDA authorized enforcement mechanisms.

MDAR will utilize Corrective Action Plans whenever possible to address negligent violations including (but not limited to):

- Failure to provide legal description of land where hemp is produced
- Failure to obtain a license from the State
- Production of crop exceeding 1.0% total THC
- Failure to provide seed documentation prior to planting
- Planting seeds where documentation indicates they are above 0.3% THC

MDAR will use the definition of a negligent violation in the proposed regulation ([see Attachment 4](#)).

When the 2018 Farm Bill was passed, MDAR began issuing Corrective Action Plans for what it determined were negligent violations. These Corrective Action Plans are consistent with the requirements of the Final Rule and have included procedures to provide for the correction of negligent violations ([see Attachment 5](#)).

MDAR will notify the office of the U.S. Attorney General and its Office of Attorney General in a manner that is prescribed by USDA. MDAR has reached out to the Massachusetts Attorney General's Office, which has assigned an Assistant Attorney General to assist MDAR and to assist with establishing procedures for notification of any culpable violations to allow the Office of Attorney General to take any appropriate enforcement action.

MDAR has added a provision that a person with a State or Federal felony conviction relating to a controlled substance is subject to a 10-year ineligibility restriction on participating in producing hemp in its proposed regulations. MDAR currently requires an FBI Identity History Summary to be submitted as part of the application process. MDAR began requiring background checks as part of the application process in 2020 ([see Attachment 4](#)).

In determining who will be subject to felony conviction restriction, MDAR has used the following definition of a Key Participant in the proposed regulation to reflect the definition in the Final Rule ([see Attachment 4](#)):

a sole proprietor, a partner in partnership, or a person with executive managerial control in a corporation. A person with executive managerial control includes persons such as a chief executive officer, chief operating officer, and chief financial officer. This definition does not include non-executive managers such as farm, field, or shift managers. This definition also does not include a member of the leadership of a Tribal government who is acting in their capacity as a Tribal leader except when that member exercises executive managerial control over hemp production.

The applicant will also need to attest that the information submitted is true and accurate and acknowledge that any falsification will result in ineligibility to participate in the hemp program. MDAR will review the submission and if MDAR has any concerns with the documentation such as but not limited to location of the growing site and/or incomplete or confusing application information, it will follow up appropriately. This requirement will be included in regulations for hemp production going forward. For Research, MDAR will require, at a minimum, that the lead researcher and university employees responsible for compliance of all state and federal laws submit all

necessary information for a background check. MDAR may determine that additional individuals are Key Participants based upon the proposal and information submitted during the application process.

SECTION 8: CERTIFICATION THAT THE STATE GOVERNMENT HAS RESOURCES AND PERSONNEL TO CARRY OUT REQUIRED FARM BILL PRACTICES AND PROCEDURES.

Since the inception of the Commonwealth's Hemp Program in 2018, the legislature has appropriated funds to support MDAR's Hemp Program. These funds have gone towards hiring staff, providing funds to a lab for testing THC levels, and equipment/materials needed to support a program. MDAR anticipates that funds for this program will continue to be appropriated ([see Attachment 6](#)). MDAR also has staff dedicated solely to the hemp program, as well as other Department staff that have been assigned to provide support as needed.

MDAR certifies that it has the resources and personnel to carry out the practices and procedures required under both state law and by USDA.

ATTACHMENT 1: M.G.L. c. 128 SECTION 116-123

Section 116. *As used in this section and sections 117 to section 123, inclusive, the following words shall have the following meanings unless the context clearly requires otherwise:*

“Hemp”, the plant of the genus cannabis and any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 per cent on a dry weight basis or per volume or weight of marijuana product or the combined per cent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus cannabis regardless of moisture content.

“Industrial hemp”, hemp that is used exclusively for industrial purposes including, but not limited to, the fiber and seed.

“Person”, a natural person, corporation, association, partnership or other legal entity.

Section 117. *(a) Industrial hemp may be planted, grown, harvested, possessed, processed, bought, sold or researched subject to sections 116 to 123. The planting, growing, harvesting, possessing, processing, selling or research of industrial hemp as an agricultural product shall be subject to the supervision and approval of the department pursuant to sections 116 to 123, inclusive.*

(b) A person planting, growing, harvesting, possessing, processing or selling industrial hemp for commercial purposes shall:

- (i) be licensed by the department pursuant to section 118; and*
- (ii) only acquire hemp seeds from a distributor approved by the department.*

(c) Hemp shall only be used for the following:

- (i) research purposes; and*
- (ii) commercial purposes considered reasonable by the commissioner.*

Section 118. *(a) No person, other than a person utilizing hemp for commercial purposes pursuant to subsection (c) or a person utilizing industrial hemp for research pursuant to subsection (d), shall plant, grow, harvest, possess, process or sell industrial hemp without a license issued by the department.*

(b) No person shall produce or distribute industrial hemp seed without a license issued by the department.

(c) A person utilizing hemp for commercial purposes shall register with the department.

(d) A person utilizing industrial hemp for research conducted under an agricultural pilot program or other agricultural or academic research shall register with the department.

(e) An application for a license issued pursuant to subsection (a) or (b) shall include, but not be limited to:

- (i) the name and address of any applicants;*
- (ii) the name and address of the industrial hemp operation of the applicant;*
- (iii) the global positioning system coordinates and legal description of the property used for the industrial hemp operation;*
- (iv) the acreage size of the field where the industrial hemp will be grown, if applicable;*

- (v) *a written consent allowing the department to conduct both scheduled and random inspections of and around the premises on which the industrial hemp is being sown, grown, harvested, stored and processed;*
- (vi) *a nonrefundable application fee in an amount which shall be established by the commissioner;*
- (vii) *any other information as may be required pursuant to subsection (d); and*
- (viii) *any other information as may be required by the commissioner.*

(f) All documents included in an application for licensure submitted under subsection (e) of section 118 except for the address of a licensee's cultivation or production facilities and any documents describing, depicting or otherwise outlining a licensee's security schematics or global positioning system coordinates, which are considered by the department to be confidential in nature due to their public safety implications, shall be considered public records for the purposes of chapter 66 of the General Laws.

Section 119. *(a) After receipt, review and approval of an application for licensure pursuant to section 118, the commissioner may grant an annual license upon issuance of written findings that the requirements of sections 116 to 123, inclusive, have been satisfied and upon the issuance of written findings that issuing the license will be in the best interest of the commonwealth.*

(b) The commissioner shall deny an application for a license filed pursuant to section 118 if the applicant: (i) fails to satisfy the minimum qualifications for licensure pursuant to sections 116 to 123, inclusive,; or (ii) for good cause shown.

Section 120. *The commissioner shall suspend, revoke or refuse to renew the license of a person who violates sections 116 to 123, inclusive, following appropriate process in accordance with chapter 30A.*

Section 121. *(a) The department and the commissioner shall promulgate rules and regulations for the implementation, administration and enforcement of sections 117 to 123, inclusive.*

(b) Pursuant to section 2 of chapter 30A, the department may promulgate, amend or repeal any regulation promulgated under this chapter as an emergency regulation if the regulation is necessary to protect the interests of the commonwealth in regulating industrial hemp.

Section 122. *The department may inspect and have access to the equipment, supplies, records, real property and other information deemed necessary to carry out the department's duties under sections 116 to 123, inclusive, from a person participating in the planting, growing, harvesting, possessing, processing, purchasing, selling or researching of hemp, industrial hemp. The department may establish an inspection and testing program to determine delta-9tetrahydrocannabinol levels and ensure compliance with the limits on delta-9tetrahydrocannabinol concentration.*

Section 123. *The department may establish civil administrative fines for violations of sections 116 to 123, inclusive. A person aggrieved by the assessment of a fine under this section or a licensure action under section 120 may appeal by filing a notice of appeal with the department not later than 21 days after the receipt of the notice of the fine or licensure action. The adjudicatory hearing shall be conducted in accordance with chapter 30A.*

ATTACHMENT 2: HEMP PRODUCER LICENSE APPLICATION

| Directions | |
|--|---|
| <ul style="list-style-type: none"> ➤ Complete all parts of the following form to apply for a MA Hemp Producer License. Incomplete applications will not be processed. ➤ Applications must be received by the Department before April 30. ➤ Submit this application with all required attachments and the \$100 application fee. ➤ Upon approval, a Licensing fee will become due prior to issuance. Production of Hemp without a license is a violation of state and federal law and may result in further legal action. | |
| <p>Mail completed form, fees and attachments to:</p> | <p style="text-align: center;">Massachusetts Department of Agricultural Resources 251 Causeway Street; Suite 500 Boston, MA 02114 attn.: Hemp Program</p> <p style="text-align: center;">Make checks payable to: <i>Commonwealth of Massachusetts</i></p> |

Please type or print clearly. Incomplete or illegible forms will be returned. Licenses are not transferrable. If you are submitting for renewal under a new name, either individual or entity, your license will not be renewed and a new license application must be completed and submitted.

| Applicant Information | | |
|--|--|-----------|
| Applicant Name (Individual or Business Entity): | | |
| Business Name (if different): | | |
| Primary Contact Name: | | |
| Mailing Address: | | |
| City: | State: | ZIP Code: |
| Phone: <input type="checkbox"/> cell <input type="checkbox"/> home <input type="checkbox"/> work | Phone: <input type="checkbox"/> cell <input type="checkbox"/> home <input type="checkbox"/> work | |
| Email: | EIN number: | |

| Directory Information Opt-in |
|---|
| <p><i>Our program discloses limited information to the public about you or your business regarding your MA Hemp Producer License. This information, including your name, business name, and license number, may be placed in an online directory on the mass.gov website. Production location information is protected from disclosure under M.G.L. c. 128, Section 118. If you would like additional contact information to be available, please opt-in below.</i></p> <p>I would like the following additional information available in the online directory: <input type="checkbox"/> None <input type="checkbox"/> Mailing address <input type="checkbox"/> Phone <input type="checkbox"/> Email <input type="checkbox"/> Website: _____</p> |

Key Participants

A criminal history report is required for each Individual Applicant and/or Key Participant and must be current to within 60 days of submitting this application. Criminal history reports may be obtained via the Federal Bureau of Investigations and should be included with this application:

<https://www.fbi.gov/services/cjis/identity-history-summary-checks>. Attach additional sheets as needed.

Please list all Key Participants below. Key Participants are individual applicants, or any person who has a direct or indirect financial interest in the entity producing hemp, including but not limited to, owner(s) or partner(s) in a partnership, officers, directors, the chief executive officer, chief operating officer, or chief financial officer in a corporation, or the trustees of a trust. It does not include such management as farm, field or shift managers, unless those individuals are also identified above.

No Individual Applicant or Key Participant may have been convicted of a drug-related felony within the last ten (10) years.

Please list all Key Participants. You may attach additional sheets if necessary.

Key Participant Information

| | |
|---|--|
| Key Participant Name: | Title: |
| Email: | FBI Identity History Summary attached? <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Convicted of a drug-related felony within the last ten (10) years? <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| Key Participant Name: | Title: |
| Email: | FBI Identity History Summary attached? <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Convicted of a drug-related felony within the last ten (10) years? <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| Key Participant Name: | Title: |
| Email: | FBI Identity History Summary attached? <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Convicted of a drug-related felony within the last ten (10) years? <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| Key Participant Name: | Title: |
| Email: | FBI Identity History Summary attached? <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Convicted of a drug-related felony within the last ten (10) years? <input type="checkbox"/> Yes <input type="checkbox"/> No | |

Each Site must be designated by a specific property address or parcel number. You may have multiple growing areas (i.e. fields or greenhouses) at each Site. To license multiple sites, please attach additional copies of this sheet. Maps must be included for each Site.

| Growing Site Information | |
|--|-----------|
| Site Name: | |
| Site Address and/or Parcel Number: | |
| City: | Zip Code: |
| Total acreage of all hemp to be licensed outdoors at this location: | |
| Total square footage of all hemp to be licensed indoors at this location: | |

| Property Information | |
|--|----------------------|
| Statement of Property Ownership: Are you the owner of the property listed above? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>If No, (please initial) _____ I certify that I have permission to use the property listed in this application for cultivation and/or processing of hemp. The Department is not responsible for any issues that arise between a licensee and property owner.</i> | |
| Agricultural Preservation Restriction (APR): Is this property subject to an APR? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, please contact the Department's APR Program to confirm eligibility. https://www.mass.gov/agricultural-preservation-restriction-apr-program</i> | |
| Is this property subject to an Agricultural Covenant? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, please contact the Department's Farm Viability Program to confirm eligibility. https://www.mass.gov/service-details/farm-viability-enhancement-program-fvep</i> | |
| Property Owner or Manager Name (if different from Applicant): | |
| Owner/Manager Phone: | Owner/Manager Email: |

Please provide the following information for each Field or Greenhouse to be licensed at the Site listed above (attach additional sheets if necessary). Latitude and Longitude must be reported in **decimal degrees** (ex. 42.3664, -71.0588)

| Growing Area Detail | | | |
|--------------------------------|--|---------------------------------|---|
| Field/Greenhouse Name: | <input type="checkbox"/> indoor <input type="checkbox"/> outdoor | Size: | <input type="checkbox"/> acres <input type="checkbox"/> ft ² |
| Latitude (in decimal degrees): | | Longitude (in decimal degrees): | |
| Site Description: | | | |

| Growing Area Detail | | | |
|--------------------------------|--|---------------------------------|---|
| Field/Greenhouse Name: | <input type="checkbox"/> indoor <input type="checkbox"/> outdoor | Size: | <input type="checkbox"/> acres <input type="checkbox"/> ft ² |
| Latitude (in decimal degrees): | | Longitude (in decimal degrees): | |
| Site Description: | | | |

| Growing Area Detail | | | |
|--------------------------------|--|---------------------------------|---|
| Field/Greenhouse Name: | <input type="checkbox"/> indoor <input type="checkbox"/> outdoor | Size: | <input type="checkbox"/> acres <input type="checkbox"/> ft ² |
| Latitude (in decimal degrees): | | Longitude (in decimal degrees): | |
| Site Description: | | | |

Note: If your sites are approved, site names and growing area names will be required for filing planting and harvest reports.

Certification language: *By signing this application and initialing where required, the individual signing hereby acknowledges that they have the legal authority to bind the applicant and agrees to the following:*

(please initial): _____ I understand that the production of hemp in Massachusetts may be a violation of state and federal law, unless done so in accordance with applicable state and federal law, including but not limited to, the 2018 Farm Bill, the USDA Interim Final Rule, and M.G.L. c. 128.

(please initial): _____ I understand that producing hemp in violation of federal and state law may include legal action in accordance with the 2018 Farm Bill and applicable federal and state law.

(please initial): _____ I understand that producing hemp in violation of the USDA Interim Final Rule or state law may result in enforcement action by the Department or as otherwise authorized by the USDA Interim Final Rule.

(please initial): _____ I understand that if the growing site(s) is subject to an Agricultural Preservation Restriction ("APR") or Agricultural Covenant, the land may not be eligible for use in the Department's Hemp Program. I further understand that it is my responsibility to review and understand the terms and conditions set forth in the APR or Agricultural Covenant before submitting this application. I further understand that any hemp grown on land subject to an APR or Agricultural Covenant without prior written approval from the holder of the APR or Agricultural Covenant may result in further legal action, including but not limited to, the destruction of such hemp.

(please initial): _____ I understand that it is my responsibility to ensure that I obtain any other applicable licenses, permits, or approvals required by local or state law for the type of activity to be conducted and that failure to do so may result in enforcement action, included but not limited to, the loss of my hemp production license. This includes, but is not limited to, building permits and approvals under any applicable municipal regulation, ordinance or bylaw, including wetland regulations or M.G.L. c. 131, Section 40, the Wetlands Protection Act. I further understand that these licenses, permits, or approvals, may be needed prior to any activity begins.

(please initial): _____ I understand that any individual/entity registered by the Department to grow industrial hemp shall be subject to audit, inspection, and testing pursuant to the USDA Interim Final Rule and M.G.L. c. 128, at the discretion of the Department.

(please initial): _____ I hereby give consent for the Department to conduct both scheduled and random inspections of and around the premises on which industrial hemp is being sown, grown, harvested, or stored.

(please initial): _____ I understand that upon approval of my application, I will be required to provide certain reporting information to the Farm Service Agency (FSA) as required by the USDA Interim Final Rule.

(please initial): _____ I understand that upon approval of my application, the Department may share the location of my grow sites with municipal officials and local law enforcement in the city or town where hemp will be produced. I further understand that any information obtained by the Department may be disclosed to the public and/or to law enforcement agencies without further notice to me, the Applicant, the owner of the property registered for cultivation or processing of industrial hemp, or any Department representatives, unless otherwise prohibited by law.

(please initial): _____ I understand that it is my responsibility to ensure that the hemp complies with the testing requirements set forth by the Department, including that it meets all contaminant limitations, along with any other applicable testing requirements or standards set by local, state, or federal law for the type of product.

Site Maps must be attached

For each Growing Site, you must provide an **aerial photograph map** with this application that includes:

- Site Name and Address or Parcel Number
- GPS coordinates in **decimal degrees** (ex. 42.3664, -71.0588)
- Site features including *clearly marked boundaries of the proposed growing or processing areas.*

Instructions for creating a map: <https://www.mass.gov/doc/instructions-how-to-create-a-map-of-your-site/download>

Find your GPS Coordinates: <https://www.mass.gov/doc/instructions-how-to-find-your-gps-coordinates-latitude/longitude/download>

(please initial) _____ I certify that the Growing Site Map(s) accurately represent the proposed area(s) to be used for Hemp Production and are attached to this application.

Seed Source Details

Acquisition of seed or stock must be from a distributor that is approved by the Department. To qualify as an approved distributor, seeds or stock must be accompanied by documentation demonstrating that they will produce hemp with a total THC of no more than 0.3 percent on a dry weight basis.

(please initial) _____ I certify that the seeds obtained for planting will be of a type and variety that do not exceed the maximum concentration of tetrahydrocannabinol as set forth in M.G.L. c 128, Section 116 and will be approved by the Department before planting.

Varieties to be planted (*if known*):

A non-refundable application fee of \$100 is due with this application. Make checks payable to: Commonwealth of Massachusetts

I hereby certify that, to the best of my knowledge, all information provided in this application is true and accurate. I understand that providing false, inaccurate, or misleading information is grounds for application denial, suspension, or revocation pursuant to the USDA Interim Final Rule and M.G.L. c. 128. I further understand that I am not licensed to produce or process hemp in the Commonwealth until the Department has approved my application.

I hereby certify that I will comply with applicable state and federal laws, regulations, and rules that govern the production of hemp, including but not limited to, M.G.L. c. 128 and any rules, policies, or regulations promulgated thereunder, and the USDA Interim Final Rule.

I have read this application, understand the requirements in it, and I agree to hold harmless and release the Commonwealth of Massachusetts, its officers, employees, contractors or agents from any and all claims, actions, suits, damages, judgments, attorneys' fees, or prosecution of any kind, that may arise due to my cultivation of industrial hemp conducted in accordance with the Industrial Hemp Program administered by the Department of Agricultural Resources pursuant to the USDA Interim Final Rule and M.G.L. c. 128.

Signature: _____

Printed Name: _____ Date: _____

For official use:

Date Received:

ATTACHMENT 3: MASSACHUSETTS REGULATORY THC SAMPLING PROCEDURE

Hemp THC Sampling

The following procedures will be used to confirm that any Hemp to be certified by MDAR is in compliance with the Massachusetts Hemp Program Policy and the Federal Rule. All samples must be collected by a Sampling Agent for each Lot produced in accordance with the Federal Rule. Licensees may not collect their own regulatory samples. Sampling Agents must be trained and authorized by MDAR to collect regulatory THC samples.

Equipment Needed:

- Scissors or pruning shears (sanitized)
- Sterile single use disposable scoops
- Brown paper sampling bags
- Nitrile gloves
- Acetone wipes
- Chain-of-Custody tamper-proof closure
- Labeling materials
- Sample/chain-of-custody forms
- Sunglasses or UV eye protection

It is critical that all equipment be cleaned using acetone wipes or an approved solvent prior to and following each inspection. In addition, the inspector MUST wear a clean pair of nitrile gloves and use cleaned/sanitized equipment at each sampling location. Be aware some of the grow rooms have intense lighting that may cause eye discomfort and maybe even eye damage. Wear sunglasses/eye protection with working in those areas.

Sample Collection Method:

Composite Samples

Composite sampling is a technique that combines a number of discrete samples collected from individual hemp plants into a single homogenized sample for the purpose of analysis.

A single composite sample will consist of combined cuttings from individual plants. To ensure a representative sample of the THC content, a single composite sample consisting of cuttings in a single field per variety will be collected. Each cutting shall be taken from an individual plant and placed into a single bag to create a composite sample for the specific variety/field.

The number of cuttings will be estimated in a two-step process. The first step is to estimate the number of plants in a field. The second step is to adjust the estimate of the number of plants by the acreage under cultivation.

The initial number of plants in a field can be estimated using:

$$n_o = \frac{\ln(1 - p)}{\ln(1 - i)}$$

where p is the confidence level to detect hemp plants testing above the acceptable THC threshold and i is the proportion of hemp plants having THC content above the acceptable threshold. The values for i are based on past experience in the same or similar growing areas and are consistent with the requirements currently in the Final Rule.

The estimate of the initial number of plants is adjusted by the number of acres to calculate the minimum number of cuttings to be collected per sample as follows:

$$n = \frac{n_o}{1 + \frac{(n_o - 1)}{N}}$$

where n is the minimum number of cuttings to be selected for forming a composite sample, n_o is the initial number of primary plants estimated using the previous formula, and N is the number of acres under cultivation.

Example 1: The adjusted number of cuttings per sample for fields less than 10 acres in size can be estimated based on the number of plants present as shown in Table 1:

Table 1: Number of cuttings per sample for fields less than 10 acres

| Number of Plants | Minimum Number of Cuttings |
|------------------|----------------------------|
| 1-10 | All plants |
| 11-25 | 11 |
| 26-50 | 15 |
| 51-100 | 20 |
| 101-500 | 25 |
| 500+ | 30 |

Example 2: The adjusted number of cuttings per sample for fields greater than 10 acres in size is calculated based on the initial number of plants in a field estimated at 299 with a confidence level of 95% to detect hemp plants having an acceptable hemp THC level and a proportion of hemp plants having THC content above the acceptable threshold equal to 0.01. The adjusted number of cuttings per sample for fields from 11 to 173 acres in size are shown in Table 2:

Table 2: Number of cuttings per sample for fields more than 10 acres

| # acres | # cuttings | # acres | # cuttings | # acres | # cuttings | # acres | # cuttings |
|---------|------------|---------|------------|---------|------------|---------|------------|
| 11 | 11 | 40 | 36 | 75-76 | 61 | 119-120 | 86 |
| 12 | 12 | 41-42 | 37 | 77 | 62 | 121-122 | 87 |
| 13 | 13 | 43 | 38 | 78-79 | 63 | 123-124 | 88 |
| 14 | 14 | 44 | 39 | 80-81 | 64 | 125-126 | 89 |
| 15 | 15 | 45-46 | 40 | 82 | 65 | 127-128 | 90 |
| 16 | 16 | 47 | 41 | 83-84 | 66 | 129-130 | 91 |
| 17 | 17 | 48 | 42 | 85-86 | 67 | 131-132 | 92 |
| 18-19 | 18 | 49-50 | 43 | 87 | 68 | 133-134 | 93 |
| 20 | 19 | 51 | 44 | 88-89 | 69 | 135-136 | 94 |
| 21 | 20 | 52 | 45 | 90-91 | 70 | 137-138 | 95 |
| 22 | 21 | 53-54 | 46 | 92 | 71 | 139-140 | 96 |
| 23 | 22 | 55 | 47 | 93-94 | 72 | 141-143 | 97 |
| 24 | 23 | 56 | 48 | 95-96 | 73 | 144-145 | 98 |
| 25-26 | 24 | 57-58 | 49 | 97-98 | 74 | 146-147 | 99 |
| 27 | 25 | 59 | 50 | 99 | 75 | 148-149 | 100 |
| 28 | 26 | 60-61 | 51 | 100-101 | 76 | 150-152 | 101 |
| 29 | 27 | 62 | 52 | 102-103 | 77 | 153-154 | 102 |
| 30 | 28 | 63-64 | 53 | 104-105 | 78 | 155-156 | 103 |
| 31-32 | 29 | 65 | 54 | 106-107 | 79 | 157-157 | 104 |
| 33 | 30 | 66-67 | 55 | 108 | 80 | 159-161 | 105 |
| 34 | 31 | 68 | 56 | 109-110 | 81 | 162-163 | 106 |
| 35 | 32 | 69-70 | 57 | 111-112 | 82 | 164-166 | 107 |
| 36 | 33 | 71 | 58 | 113-114 | 83 | 167-168 | 108 |
| 37-38 | 34 | 72-73 | 59 | 115-116 | 84 | 169-170 | 109 |
| 39 | 35 | 74 | 60 | 117-118 | 85 | 171-173 | 110 |

Cuttings from individual plants should be taken from the flowering tops of the plant by cutting 3-5 inches from the “main stem” (that includes the leaves and flowers), “terminal bud” (that occurs at the end of a stem), or “central cola” (cut stem that could develop into a bud) of the flowering top of the plant. Other material such as stems and seeds may be collected during the process but are not relevant to the sample. Once cut, the sample shall be placed in a paper bag. One sample collection form will be filled out for each site (see **Appendix A**). Samples should contain a minimum of 5 grams of plant material by weight.

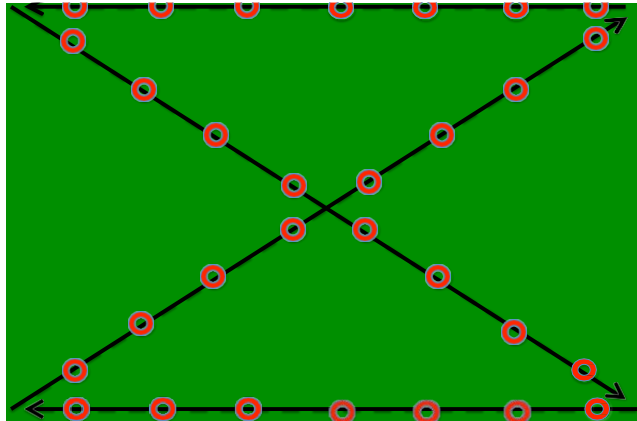
Once the composite samples are weighed, sealed, and properly labeled, and sample forms have been filled out, samples must be stored in a cooler with an ice pack to prevent degradation while in transit to the lab. If samples cannot be brought to the lab on the same day as the collection, alternative storage in a refrigerator overnight is permitted.

Field Sampling:

In normal field or greenhouse conditions a survey pattern should be followed whenever possible to ensure that all sections of the crop are adequately represented in each composite sample. When possible, sampling should be consistent with the diagram below (see **Figure 1**). All sampling should be conducted using clean equipment and while wearing clean nitrile gloves. Inspectors will use discretion to take as many cuttings as necessary, particularly from densely or irregularly planted fields, with a maximum of 30 cuttings collected per strain or variety in fields with 10 or fewer acres.

1. Starting at one corner of the field, walk along the edge of the field collecting cuttings at equidistant points along the transect.
2. Upon reaching the opposite corner, a second transect shall be walked diagonally through the field to the far corner. Again, cuttings shall be collected at equidistant points.
3. Once the far corner is reached, take cuttings at equidistant points along the edge of the field that's parallel to the first transect.
4. Once that corner is reached, finish the pattern by taking cuttings along a second diagonal transect back to the original starting point.

Figure 1. Field or Grow Room Sampling Pattern



Shears are to be cleaned between each composite sample is taken. After a sample is taken, acetone or acetone wipes will be used on the equipment. Prior to the next sample being taken, the inspector **MUST** wait for the chemical to evaporate before use.

Be aware that if sampling takes place at an indoor facility, some of the grow rooms have intense lighting that may cause eye discomfort or damage. Wear sunglasses/eye protection when working in those areas.

Harvested Material Sampling:

Hemp crops are eligible for re-testing or Remediation if they have been harvested within 30 days of the initial pre-harvest sample. Re-testing may be conducted for Remediated crops or for crops in which the pre-harvest sample results are disputed by the Licensed Producer. Producers may opt for a re-test of hemp floral material after harvest, but prior to remediation or for Remediated crops.

Re-testing of hemp is allowed only if the following conditions have been met:

1. A valid pre-harvest sample was collected from the lot to be re-tested
2. The lot was harvested within the allowed timeframe.

Harvested Material:

If plants have been harvested and remain intact (e.g., drying racks, retting), the inspector shall use the same methods as the Pre-Harvest Sampling Protocols listed above. The number of samples taken shall correspond to Tables 1 or 2 depending on field size. All other sanitation and storage procedures should follow the General Sampling Protocols above.

Harvested plants may be broken down, or have floral material separated from the stalks or stems. Sampling procedures for floral material must ensure that the entire crop is represented equally. Which containers to sample will be determined at random by the inspector. The number of sub-samples shall be relative to the amount of product harvested. Use **Table 3** to determine the number of sub-samples collected. Each sub-sample shall consist of approximately one (1) plant flower if the inflorescence remains intact. A minimum of five (5) grams of floral material must be collected for each sample.

Remediated Material Sampling:

Non-compliant hemp plants may be remediated by shredding the entire hemp plant to create “biomass.” All flowers, buds, trichomes, leaves, stalks, seed, and all plant parts from a lot should be chopped or shredded in such a way as to create a homogenous, uniform blend called “biomass” that may be stored in bags, buckets, or other various containers. When re-testing biomass, material should be collected from various depths and locations of the container to collect a representative sample of the material. Biomass sampling procedures must ensure that the entire crop is represented equally. Which containers to sample will be determined at random. The number of sub-samples shall be relative to the amount of product harvested. **Table 3** will be used to determine the number of sub-samples collected. Each sub-sample shall consist of approximately one (1) scoop of ground or milled biomass weighing at least one (1) gram. A minimum of five (5) grams of floral material must be collected for each sample.

Table 3: Minimum Samples Required

| Harvest Batch Weight | Minimum # of Sub-samples |
|----------------------|--------------------------|
| <10 lbs | 5 |
| 10-50 lbs | 10 |
| 50-100 lbs | 15 |
| 100-500 lbs | 20 |
| 500-1000 lbs | 25 |
| >1000 lbs | 30 |

Gloves must be worn at all times. The inspector may take each sample by hand or by using a sterile scoop. If there are multiple lots, new sampling equipment (gloves or scoops) must be employed for each new sample to ensure cross-contamination does not occur.

LABELING AND LAB REPORTING REQUIREMENTS

All samples must have their own unique sample number. Sample numbers shall be constructed as follows:

Inspector's Initials - Date of Sample (MMDDYY) – Last 4 digits of license number (not including the letters indicating license type G/P/D) - 2 digit sample number.

Example:

➤ BAL- 121418-0001-01

The above sample number was collected by Inspector Brittany A. Lewis on December 14, 2018, the last 4 numbers of the grower's license were "0001," and it was the first sample of the day. Each composite sample shall have this number on a label inside the bag it is stored in as well as on the seal (**see Appendix B**).

Each composite sample must be sealed with an official state seal in the presence of the licensee or an appointed representative.

The sample should be sealed by folding the opening of the paper bag over a minimum of two times and placing the official state seal over the seam. If it becomes necessary to break the seal, the broken seal should be mounted on a piece of paper with the date and inspector's initials with a brief explanation as to why to accompany the Sampling Form. The sample should then be resealed with a new seal.

A sample collection form must be completed on site and signed by the inspector and the licensee or designated representative on site. All samples should be accompanied by a copy of any other documents deemed necessary for laboratory analysis. Any deviations from the standard procedures must be reported to alert the laboratory and noted in the inspector's case narrative.

Appendix A: THC Sample Form

Regulatory Hemp THC Sample Collection Report

Page ___ of ___

| | |
|---|---|
| Licensee Name: | |
| License No.: | |
| Site Representative Name and Position (if not Licensee): | |
| Inspector Name: | Date Taken: / / at : am/pm |
| Site Name: | City/State: |
| Billing Address: | |
| Billing Phone: | Billing email: |
| State of Crop: <input type="checkbox"/> Pre-Harvest <input type="checkbox"/> Drying (racks) <input type="checkbox"/> Dried <input type="checkbox"/> Remediated (milled) <input type="checkbox"/> Other: _____ | |

| Sample Number | Variety | FSA Number | Lot Size* | Wt. (g) | Bill to |
|---------------|---------|------------|-----------|---------|--|
| | | | | | <input type="checkbox"/> Grower <input type="checkbox"/> MDAR |
| | | | | | <input type="checkbox"/> Grower <input type="checkbox"/> MDAR |
| | | | | | <input type="checkbox"/> Grower <input type="checkbox"/> MDAR |
| | | | | | <input type="checkbox"/> Grower <input type="checkbox"/> MDAR |
| | | | | | <input type="checkbox"/> Grower <input type="checkbox"/> MDAR |
| | | | | | <input type="checkbox"/> Grower <input type="checkbox"/> MDAR |
| | | | | | <input type="checkbox"/> Grower <input type="checkbox"/> MDAR |
| | | | | | <input type="checkbox"/> Grower <input type="checkbox"/> MDAR |

* Must be reported in acres or square feet. Can use <0.01 acres for small lots. Please include units. (0.01 acres = 500 ft²)


The above industrial hemp sample(s) were collected by the Massachusetts Department of Agricultural Resources in connection with the administration and enforcement of M.G.L. c. 128, Sections 116-123 and 7 CFR 990 and receipt is hereby acknowledged. The undersigned acknowledges that the sample(s) shown above were obtained from crop grown in accordance with their representative Industrial Hemp License as issued by the Department.

| | |
|------------------------------|-------|
| Signature of Representative: | Date: |
|------------------------------|-------|

| | |
|-------------------------|-------|
| Signature of Inspector: | Date: |
|-------------------------|-------|

| | | |
|-------------------------|--------------|------------|
| Sample(s) Delivered to: | Date: | Time: |
| Relinquished by: | Received by: | Date/Time: |
| Relinquished by: | Received by: | Date/Time: |

Appendix B: Chain-of-custody Sample Seal

| | | | | |
|---|---------------------|-------|-----------------|-------|
|  <p>MA DEPARTMENT OF AGRICULTURAL RESOURCES OFFICIAL SAMPLE SEAL</p> | SAMPLE NO. | DATE: | SEAL BROKEN BY: | DATE: |
| | SIGNATURE: | | | |
| | PRINT NAME & TITLE: | | | |

SAMPLE

ATTACHMENT 4: DRAFT HEMP PRODUCTION REGULATIONS

330 CMR 32.00: HEMP PRODUCTION

- 32.01: Scope and Purpose
- 32.02: Definitions
- 32.03: License Requirements; Fees
- 32.04: Hemp Production; Sign Posting; Reporting Requirements
- 32.05: Inspections and Testing for Hemp Production; Remediation; Certification of Hemp for Production; Disposal
- 32.06: Record Keeping Requirements
- 32.07: Breeders
- 32.08: Enforcement
- 32.09: Appeals

32.01: Scope and Purpose

330 CMR 32.00 establishes the requirements for the production and research of Hemp within the Commonwealth of Massachusetts. This regulation is intended to ensure consistency and compliance with the Federal Act and the Federal Rule and to allow the Commonwealth, through the Department, to exercise primary regulatory authority over the production of Hemp in the Commonwealth in accordance with federal law.

32.02: Definitions

For the purposes of 330 CMR 32.00, the following terms shall have the following meanings. The Department shall interpret and construe these terms and this regulation to effectuate the purposes of this regulation as set forth in 330 CMR 32.01 and to make this regulation consistent with the Federal Act and the Federal Rule.

Acceptable Hemp THC Level means that when applied to the reported delta-9 tetrahydrocannabinol concentration level on a dry weight basis, the Measurement of Uncertainty produces a distribution or range that includes 0.3% or less. For example, if the reported delta-9 tetrahydrocannabinol concentration level is reported as 0.35% and the Measurement of Uncertainty is +/- 0.6%, then the measured delta-9 tetrahydrocannabinol concentration level for this sample ranges from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the acceptable hemp THC level for the purposes of program compliance.

Applicant means a Person who has submitted an application to the Department to be licensed to produce Hemp.

Breeder means a Producer who cultivates Hemp Stock for sale.

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.

Commercial Purposes means for market or for cultivation for market.

Corrective Action Plan means a plan proposed by the Department for correcting violations or non-compliances with 330 CMR 32.00, the Federal Act, or the Federal Rule.

Commissioner means the Commissioner of the Department.

Commonwealth means the Commonwealth of Massachusetts.

Crop means any Cannabis grown for the purposes of being Hemp.

DEA means the United States Drug Enforcement Administration.

Department means the Massachusetts Department of Agricultural Resources.

Federal Act means the Agricultural Improvement Act of 2018, Pub. L. No. 115-334, as amended.

Federal Rule means the Domestic Hemp Production Program, as set forth at 7 CFR Part 990, as amended, promulgated pursuant to Section 10113 of the Federal Act by the United States Secretary of Agriculture.

FSA means the Farm Service Agency of the United States Department of Agriculture.

Hemp means the plant of the genus *Cannabis* and any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 per cent on a dry weight basis or per volume or weight of marijuana product or the combined per cent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus *Cannabis* regardless of moisture content. This shall include the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers.

Hemp Certificate means the documentation stating that the Department has sampled and tested a Crop and determined that the Crop has an Acceptable Hemp THC Level and is Hemp.

Hemp Stock means a viable part of a Hemp plant including, but not limited to, seeds, seedlings, and clones, which are to be used for Planting.

Identity History Summary means a report from the Federal Bureau of Investigation based on an individual's name or fingerprints, or other documentation as approved by USDA and the Department.

Key Participant means a sole proprietor, a partner in partnership, or a person with executive managerial control in a corporation. A person with executive managerial control includes persons such as a chief executive officer, chief operating officer, and chief financial officer. This definition does not include non-executive managers such as farm, field, or shift managers. This definition also does not include a member of the leadership of a Tribal government who is acting in their capacity as a Tribal leader except when that member exercises executive managerial control over hemp production. For Research, this shall include the lead individual conducting the Research or responsible for compliance with applicable state and federal laws.

Licensee means the holder of a License from the Department.

License means the documentation provided by the Department after a Person has successfully applied to Produce Hemp in the Commonwealth.

Lot means a quantity of Hemp produced in a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of Hemp throughout the area.

Measurement of Uncertainty means the parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.

Negligence means failure to exercise the level of care that a reasonably prudent person would exercise in complying with 330 CMR 32.00, the Federal Act and the Federal Rule.

Person means a natural person, corporation, association, partnership, or other legal entity.

Planting means the act of introducing seed, seedling, clone, or other planting material into growing media.

Planting Report means a report on a form prescribed by the Department that includes information about the Planting of a Crop.

Produce means to plant or grow Hemp.

Producer means a person who plants or grows Hemp.

Production means to plant or grow Hemp plants for market, or for cultivation for market, in the United States. Production shall not include Research provided such Research does not result in any Hemp or Hemp-derived product for market or entering the stream of commerce.

Remediate or Remediation means to transform a non-compliant Crop into compliant Hemp while disposing of non-compliant plant parts.

Research means to Produce Hemp for the investigation and study of Hemp in order to establish facts and collect new information.

Sampling Agent means a person authorized by the Department to collect regulatory THC samples in accordance with the Federal Rule.

Site means the physical area that is planned for producing Hemp, whether indoors or outdoors, including but not limited to, the terms “farm,” “tract,” “field,” and “subfield” as set forth in the Federal Rule.

THC means delta-9-tetrahydrocannabinol.

THCa means tetrahydrocannabinolic acid, which converts to THC when decarboxylated.

Total THC means the value determined after the process of decarboxylation, or the application of a conversion factor if the testing methodology does not include decarboxylation, that expresses the potential total delta-9 tetrahydrocannabinol content derived from the sum of the THC and THCa content and reported on a dry weight basis. This post-decarboxylation value of THC can be calculated by using a chromatograph technique using heat, such as gas chromatography, through which THCa is converted from its acid form to its neutral form, THC. Thus, this test calculates the total potential THC in a given sample. The total THC can also be calculated by using a liquid chromatograph technique, which keeps the THCa intact. This technique requires the use of the following conversion: [Total THC = (0.877 x THCa) + THC] which calculates the potential total THC in a given sample.

USDA means the United States Department of Agriculture.

Volunteer Plant means any Hemp which grows of its own accord from seeds or roots in the years following an intentionally planted Crop and which was not intentionally planted.

32.03: License Requirements; Fees

(1) No Person shall Produce Hemp or use Hemp Stock for Production or Research without first obtaining a License from the Department.

- (a) A Person may apply for either a License for Production or a License for Research. No Person may apply for both a Production and Research License during the same licensing period.
- (b) All Licenses are non-transferable.
- (c) Hemp cultivated for Research shall not result in the Production of Hemp or Hemp-derived products.
- (d) All Research shall be conducted in accordance with the Federal Act and Federal Rule. If a Research Licensee intends to engage in Production, they must first apply for and obtain a

Production License and comply with all the requirements for Production. No Person shall hold both a Production and Research License during the same licensing period.

(2) New License Applications and Fees

- (a) A Person shall submit a License application for either Production or Research on a form prescribed by the Department requesting information as set forth for Production in 330 CMR 32.03(5) or Research as set forth in 330 CMR 32.03(6).
- (b) Each License shall contain a License number issued by the Department and a written finding by the Commissioner that the requirements of M.G.L. c. 128, Sections 116 to 123, inclusive, have been satisfied and that issuing the License is in the best interest of the Commonwealth. In determining whether issuing a License is in the best interest of the Commonwealth, the Commissioner shall presume that this standard is satisfied provided the Applicant is not disqualified for failing to meet the requirements set forth in 330 CMR 32.03(4).
- (c) New License applications may be submitted to the Department between January 1st and April 30th.
- (d) An application for a License shall be accompanied by a nonrefundable application fee and shall not be deemed complete and shall not be reviewed until such time as the fee has been paid.
- (e) If an application for a License is approved, the Licensee will be required to pay a License fee established by the Department prior to the issuance of any License. A License will not be granted until such time as the Licensee has paid the fee.
- (f) A License shall be issued on an annual basis and shall expire on the 31st of December of the year in which it was issued unless earlier suspended, modified, or revoked by the Department.
- (g) The Licensee shall keep the License, or a copy, at all Sites operated under the License.
- (h) Upon issuance or revocation of any License, the Department shall provide a copy of the License or documentation of revocation to the municipality in which Production or Research of Hemp will occur. Such notice shall be provided to the municipality's chief elected official and police department, as well as the state police barracks whose patrol area includes that municipality.
- (i) The Licensee shall promptly notify the Department in writing of any substantial change to information required by 330 CMR 32.03(2). Substantial change may include, but not be limited to, the following:
 1. change of contact information (mailing address, email address, phone number);
 2. change in size or location of the Site(s);
 3. addition of Sites; or
 4. change of land ownership. Any such change in land ownership may require proof of permission to use or continue to use the land subject to the License.

(3) License Renewals and Fees

- (a) Licenses may be renewed by submitting a renewal application and nonrefundable renewal fee between October 1st and December 1st of the calendar year in which the License expires.
- (b) Licenses will not be renewed unless the Licensee has submitted the end-of-year report required by the Department under 32.04(3)(d).

- (c) Renewal applications that are not received by the Department by December 1st may still be submitted until April 30th of the following year but may be assessed an additional late fee.

(4) License Denials and Revocations

- (a) A License or renewal shall be denied if it fails to satisfy the minimum qualifications for licensure pursuant to M.G.L. c. 128, Sections 116 to 123, inclusive; or
- (b) For good cause shown. Good cause for denial of a License shall include, but not be limited to, the following:
 - 1. A Person convicted of a felony relating to a controlled substance under any state or federal law. Such Person shall be ineligible to apply for a License for a period of 10 years from the date of the conviction.
 - 2. Any Applicant who does not satisfy the requirements of 330 CMR 32.00, the Federal Act, or the Federal Rule.
 - 3. Any person who materially falsifies any information contained in a License application, including, but not limited to, the license application and accompanying documents, reports, or who makes fraudulent statements to inspectors.
- (c) A License may be revoked for failure to comply with M.G.L. c. 128, Sections 116 through 123 or as otherwise set forth in the Federal Rule.
- (d) Any Applicant denied a License or whose License has been revoked may appeal pursuant to 330 CMR 32.09.

(5) Production License

- (a) A complete application for a Production License, including renewal, shall be submitted to the Department on a Department-approved form. The application shall contain, at a minimum, the following information:
 - 1. Full name, mailing address, and contact information, including email address, for the Applicant; if the Applicant is a business entity, the full name of the business; the principal business location address; full name, title, and e-mail address of the Key Participants; and employer identification number (EIN) of the business;
 - 2. Name and address of the proposed Hemp Production Site(s);
 - 3. Description of the Site(s), which shall include the street address or parcel identification number if no street address is available;
 - 4. GPS coordinates provided in decimal degrees taken at the approximate center of the Site(s);
 - 5. A map of the proposed Site(s) illustrating clear boundaries and locality of the Site(s);
 - 6. If Hemp is to be planted in a field, the area in acres of each field;
 - 7. If Hemp is to be planted or stored in a greenhouse or other building, the approximate dimensions or square footage of the Production area;
 - 8. An Identity History Summary for all Key Participants dated within 60 days prior to the application submission date;
 - 9. Written assurance by the Applicant that the Applicant will comply with 330 CMR 32.00, the Federal Act, and the Federal Rule;

10. Written consent by the Applicant to the Department to conduct both scheduled and unannounced inspections, sampling, and testing; and
11. Any other information that the Department may require.

(6) Research License

(a) A complete application for a Research License, including renewal, shall be submitted to the Department on a Department-approved form. The application shall contain, at a minimum, the following information:

1. Full name, mailing address, and contact information, including email address, for the individual(s) charged with overseeing the Research;
2. The name and location address of the Research Institution; and
3. A letter of endorsement from the Research Institution;
4. The location and description of each Site at which Research shall take place, which shall include the street address or parcel identification number if no street address is available, and GPS coordinates provided in decimal degrees taken at the approximate center of the Site;
5. A map of the proposed Site(s) illustrating clear boundaries and locality of the Site(s);
6. If Hemp is to be planted in a field, the area in acres of each field;
7. If Hemp is to be planted in a greenhouse or other building, the approximate dimensions or square footage of the Production area;
8. A description of the type of Research to be conducted that includes a plan to clearly define:
 - a. Research objectives
 - b. Planting and Harvest plans
 - c. Sampling methods that comply with the Federal Rule
 - d. Plans for Crop Remediation and disposals that comply with the Federal Rule.
 - e. Plans for Crop reporting that comply with 32.04 and the Federal Rule.
9. A statement that all Hemp used for conducting Research will either be grown as part of the Research or will be obtained from a Producer duly authorized by USDA.
10. An Identity History Summary for all individual(s) or Key Participants charged with overseeing the Research dated within sixty (60) days prior to the application submission date;
11. Written assurance by the Applicant that the Applicant will comply with 330 CMR 32.00, the Federal Act and the Federal Rule;
12. Written assurance by the Applicant that Hemp produced for Research shall not enter the stream of commerce and shall be destroyed once the Research is completed;
13. Written consent by the Applicant to the Department to conduct both scheduled and unannounced inspections, sampling, and testing; and
14. Any other information that the Department may require.

(7) No Licensee shall offer or sell unprocessed, raw, or viable plant material, including the flower, except as follows:

- (a) To a Person Licensed under 330 CMR 32.03;
- (b) To a Person licensed as a processor pursuant to M.G.L. c. 128, Section 118;
- (c) To a Person Licensed by USDA, or under a state or Tribe authorized to issue a license under a plan approved by the Federal Rule; or
- (d) As authorized by M.G.L. c. 94G, Section 12 to a Person licensed by the Cannabis Control Commission and in accordance with any guidance or regulation promulgated by the Cannabis Control Commission.

32.04: Hemp Production; Sign Posting; Reporting Requirements

(1) Hemp that is produced for Research is not subject to the reporting requirements in 330 CMR 32.04; provided that the Licensed Researcher adopts and carries out an approved alternative reporting plan as designated 330 CMR 32.03(6)(a)(9)(d).

(2) Prior to Planting a Crop, the following information must be provided to the Department:

- (a) Documentation showing the Hemp or Hemp Stock has been tested and shows an Acceptable Hemp THC Level; and
- (b) Any additional information that the Department deems necessary prior to Production.

(3) Sign Posting

- (a) A Department-approved sign must be posted at conspicuous points of entry to the Site(s) where the Crop is Produced.
- (b) In instances where fields abut a public way, a sign must be posted, at a minimum, every 200 feet.
- (c) Signs should be at least 14 inches by 16 inches with letters 1 inch high and contain, at a minimum, the following:
 - 1. Statement *“Crop grown in this field is Hemp that is licensed by the Massachusetts Department of Agricultural Resources.”*;
 - 2. Department issued License number;
 - 3. Emergency contact information (Name and phone number) for the Licensee; and
 - 4. Department contact information.

(4) Reporting Information to the Department

- (a) No later than 10 days after Planting of the Crop, a Planting Report must be submitted to the Department.
- (b) The Department must be notified no later than 21 days before anticipated start of harvest using a method prescribed by the Department.
- (c) Volunteer Plants must be monitored and destroyed if they are outside of the Site.
- (d) An end-of-year report must be submitted to the Department no later than December 15th indicating, at a minimum, the following information, regardless of intent to renew:
 - 1. Variety of Crop Grown;

2. Harvest start date;
 3. Harvest end date;
 4. Total area of hemp planted;
 5. Total area of hemp harvested in acres or square feet;
 6. Harvest yield in dry weight; and
 7. Description of Volunteer Plants, if any occurred, and how they were managed.
- (e) If no Hemp is Produced at the Site, a Planting Report for that growing location must be submitted to the Department no later than September 1st.

(5) Reporting Information to FSA

- (a) Crop acreage must be reported to FSA as required by the Federal Rule and shall provide, at minimum, the following information:
1. Acreage dedicated to the production of Hemp, or greenhouse or indoor square footage dedicated to the production of Hemp; and
 2. License number.
- (b) A record of submission to the FSA shall be kept for 3 years and made available to the Department upon request.

32.05: Inspections and Testing for Hemp Production; Remediation; Certification of Hemp for Production; Disposal

- (1) Hemp that is produced for Research is not subject to the sampling requirements in 330 CMR 32.05; provided that the Licensed Researcher adopts and carries out an approved alternative sampling method that can ensure, at a confidence level of 95 percent, that the Hemp subject to this alternative method will not test above the Acceptable Hemp THC level as approved by MDAR and in accordance with the Federal Rule.
- (2) All Hemp for Production is subject to testing and inspections as set forth in 330 CMR 32.05.
- (3) No Licensee shall harvest any Crop for Production prior to samples being collected by the Department.
- (4) Any Crop for Production must be sampled by the Department before it can be certified as Hemp.
- (5) Any Licensee seeking certification of Hemp for Production shall contact the Department no later than 21 days prior to the anticipated start of harvest to schedule regulatory sampling for THC testing using a form prescribed by the Department.
- (a) The Licensee or an authorized representative shall be present at the Site while samples are collected.
 - (b) 1 sample shall be collected by a Sampling Agent for each Lot produced in accordance with the Federal Rule. Licensees may not collect their own regulatory samples.
 - (c) Lots must be tested individually and should be clearly separated and marked in the field.

- (d) The Licensee shall harvest the entire Lot within 30 days of the Department's collection of samples. Lots shall not be partially harvested without a waiver as determined by 32.05(4)(e).
- (e) If the Crop, or any portion of the Crop cannot be harvested within 30 days of sample collection due to weather, equipment failure, or other extenuating circumstances, the Department must be contacted prior to the expiration of the 30-day harvest period. At that time, the Department will evaluate the circumstances and make a determination, in its sole discretion, as to whether additional time to harvest will be allowed. Any additional harvest time granted by the Department shall be in writing and subject to the following conditions:
 - 1. The Department must collect a new pre-harvest sample of the Crop at the expense of the Licensed Producer. Additional pre-harvest testing will count toward the 2 allowable crop re-tests.
 - 2. If any portion of the Crop was harvested within 30 days, it must be held and designated as a separate Lot until test results have been received; and
 - 3. No Crop shall be certified as Hemp if it is harvested more than 30 days after the collection of a valid pre-harvest sample.
- (f) All harvested Lot(s) must be held on Site until a Hemp Certificate is issued by the Department.
- (g) Harvested Lots may not be co-mingled or combined until a Hemp Certificate is issued by the Department for the Lot.
- (h) If sample results show Acceptable Hemp THC Levels, then a Hemp Certificate will be issued by the Department. Upon receipt of a Hemp Certificate, the Hemp Lots that have been certified may be combined or removed from the Site(s).
- (i) If sample results show THC levels exceed the Acceptable Hemp THC Levels, a second round of sampling may be conducted by the Department upon request of the Licensee. The sample may be taken from intact floral material, or the Crop may be Remediated in accordance with 330 CMR 32.05(6) prior to the second round of sampling.
- (j) If sample results from the second round of sampling show THC levels exceed the Acceptable Hemp THC Levels, a third round of sampling may be conducted by the Department upon request of the Licensee. The sample may be taken from intact floral material, or the Crop may be Remediated prior to the third round of sampling in accordance with 330 CMR 32.05(6).
- (k) If sample results from the third round of sampling show THC levels exceed the Acceptable Hemp THC Levels, the Crop must be destroyed in accordance with 330 CMR 32.05.
- (l) Any request for a second or third round of sampling must be made to the Department within 10 days of receipt of results and completed within 30 days.
- (m) The Licensee shall be responsible for the costs incurred with any second or third round of sampling conducted by the Department.

(6) Remediation of Crops that exceed Acceptable Hemp THC Levels

- (a) Crops may be Remediated before the 2nd or 3rd round of sampling.
- (b) The Department must be notified of the intent to Remediate any non-compliant Crop prior to any Remediation activity to ensure that it is done in a Department-approved manner.
- (c) Any Remediation must adhere to the following specifications:

1. Remediation must take place at the Site and may not be moved off Site.
2. Remediation may occur by 1 of the following ways:
 - a. removing and destroying flower material, while retaining stalk, stems, and leaf material; or
 - b. Shredding the entire plant into a bio-mass like material; or
 - c. An alternative MDAR and USDA approved method.
- (d) Any Remediated material including shredded biomass material, retained stalk, stems, leaf material or seeds must be retested by the Department as set forth in 330 CMR 32.05(3) to ensure compliance.
- (e) Any Remediated Crop that cannot be certified by the Department as Hemp must be destroyed in accordance with 330 CMR 32.05(5).

(7) Disposal of Crops

- (a) Any Crop that is tested by the Department with THC levels in excess of Acceptable Hemp THC Levels shall be destroyed within 30 days of notification of the final test results in a method approved by the Department under its supervision and shall not be used for any purposes.
- (b) The Department must be notified of the intent to dispose non-conforming plants or plant parts prior to disposal.
- (c) Licensees under 330 CMR 32.03(6) shall ensure the disposal of all non-compliant Crops in accordance with 330 CMR 32.05. Only Licensees registered with DEA to handle marijuana may keep Crops that test over the Acceptable Hemp THC level to the extent permitted by DEA.

(8) Lots that do not meet the testing or Remediation requirements and which are not certified as Hemp by the Department may not be further handled, processed, or enter the stream of commerce and must be disposed in accordance with 330 CMR 32.05(7).

(9) No Crop, or any portion thereof, may be transported from the Site covered by the License without a copy of the Hemp Certificate issued by the Department. The Licensed Producer must ensure that a copy of the Hemp Certificate stays with the Crop at all times and accompanies all shipments of the Crop.

(10) Any Crop voluntarily destroyed or disposed of as a result of poor plant health, pests, disease, or weather events, along with removal of male or hermaphrodite plants as part of a cross-pollination prevention plan, are not subject to the disposal requirements herein.

(11) The Department, may at its sole discretion, witness the destruction of any Crop whether such destruction is done so voluntarily or at the direction of the Department.

32.06: Record Keeping Requirements

(1) All Licensees shall maintain true and accurate records of the Crop that has been acquired, Produced, Researched, handled, or disposed of.

- (a) Cultivation records must include the following:

1. Documentation showing the Hemp Stock used for Planting has been tested and shows Acceptable Hemp THC levels;
 2. Amount of seeds/plants Planted;
 3. Total area Planted in acres or square feet;
 4. Date that Hemp Stock is put into a growing medium;
 5. Variety of Hemp that was Planted; and
 6. Lot name or number assigned by the Licensee.
- (b) Harvest records must include the following:
1. Dates of harvest (start and end);
 2. Amount of Hemp harvested (by dry weight and area in acres or square feet);
 3. Variety harvested; and
 4. Lot harvested.
- (c) Storage records must include the following:
1. Location where Hemp is stored; and
 2. Storage dates.
- (d) If a Crop is disposed of, either voluntarily or through an enforcement action, the following information must be kept:
1. Date of disposal;
 2. Disposal method;
 3. Variety disposed of;
 4. Lot disposed of; and
 5. Amount disposed of.
- (e) Records regarding Remediation of a Crop that does not meet the definition of Hemp must include the following:
1. Date of Remediation;
 2. Remediation method;
 3. Amount of Crop subject to Remediation (area in acres or square feet, and weight);
 4. Variety of each Lot subject to Remediation; and
 5. Lots subject to Remediation.
 6. Pre- and post-Remediation testing results
- (2) All records shall be made available for inspection by the Department during reasonable business hours.
- (3) All records and reports shall be maintained for at least 3 years.

32.07: Breeders

- (1) In addition to the record keeping requirements as listed in 330 CMR 32.06(1), Breeders are required to keep the following records:
- (a) Lot number assigned to each Production batch;
 - (b) Number of plants produced per Lot planted; and
 - (c) Variety within the individual Lot.

- (2) Breeders may sell Hemp plants only to the following:
- (a) A Person Licensed under 330 CMR 32.03;
 - (b) A Person licensed as a Processor pursuant to M.G.L. c. 128, Section 118;
 - (c) A Person Licensed by USDA, or under state or Tribe authorized to issue a license under a plan approved by the Federal Rule; or
 - (d) As authorized by M.G.L. c. 94G, Section 12 to a Person licensed by the Cannabis Control Commission and in accordance with any guidance or regulation promulgated by the Cannabis Control Commission.
- (3) Upon sale of Hemp plants, the Breeder must provide the purchaser with the following information:
- (a) Documentation showing the Hemp Stock used for propagation was tested and does not show total THC levels of more than 0.3%;
 - (b) Variety;
 - (c) Number of plants sold; and
 - (d) Lot identifier.
- (4) A copy of the information provided to each Licensee as set forth in 32.07(5) must be retained by the Breeder.
- (5) If any parts of the plant are harvested, including seeds for propagation, the crops are subject to all testing as required in 330 CMR 32.05 and harvest records must be kept as required in 330 CMR 32.06(1)(b).

32.08: Enforcement

(1) Any violation of 330 CMR 32.00 shall be subject to enforcement by the Department pursuant to 330 CMR 32.08.

(2) Negligent Violations

- (a) A Negligent violation shall include, but not be limited to, the following:
1. Failure to provide to the Department an accurate legal description of land on which the Licensee cultivates Hemp;
 2. Failure to obtain a License; or
 3. Producing Cannabis with a delta-9 tetrahydrocannabinol concentration of more than 0.3 per cent but only if the Cannabis has a delta-9 tetrahydrocannabinol concentration of more than 1.0 per cent on a dry weight basis, provided that the Person made reasonable efforts to grow Hemp.
- (b) No Person shall receive more than 1 negligent violation per calendar year unless otherwise authorized by the Federal Rule.
- (c) A Person who is found by the Department to have engaged in a Negligent violation 3 or more times in a 5 year period shall have any License revoked and be ineligible to apply for a License for a period of 5 years beginning on the date of the third violation.

(3) Corrective Action Plans for Negligent Violations.

- (a) The Department shall issue a Corrective Action Plan for Negligent violations that shall include, at a minimum, the following:
1. Steps to correct each Negligent violation identified by the Department;
 2. A reasonable date by which the Licensee shall correct the Negligent violation; and
 3. A requirement that the Licensee report to the Department for a period of not less than 2 years from the date of the Negligent violation.
 4. A requirement that an inspection be conducted by the Department to determine if the Corrective Action Plan has been implemented as submitted.

(4) Violations deemed greater than Negligent.

- (a) All other violations which are deemed by the Department to involve a culpable mental state greater than Negligence shall be reported by the Department to the Office of the Attorney General of the Commonwealth and the Attorney General of the United States, shall not be subject to 330 CMR 32.08(2)(b) and may result in refusal to renew, suspension, or revocation of a License.
- (b) Any person who willfully violates M.G.L. c. 128, Sections 116 to 123, inclusive, may also be subject to enforcement as set forth therein.

32.09: Appeals

Any person aggrieved by the denial of an application for or the suspension or revocation of a License may appeal by filing a notice of appeal with the Department not later than 21 days after the receipt of the notice of the denial, suspension, or revocation. The adjudicatory hearing shall be conducted in accordance with M.G.L. Chapter 30A.

Regulatory Authority: M.G.L. c. 128, §§ 116 through 123.

ATTACHMENT 5: SAMPLE CORRECTIVE ACTION PLAN

Sample Licensee
Address
City, State, Zip

CORRECTIVE ACTION PLAN YY-CAP-## PURSUANT TO M.G.L. c. 128, Sections 116 through 123 and 7 CFR Part 990

WHEREAS, the Department of Agricultural Resources (“Department”) has authority over the planting, growing, harvesting, possession, processing, buying, selling, and researching of hemp in the Commonwealth of Massachusetts pursuant to M.G.L. c. 128, Section 116 through 123 and 7 CFR Part 990;

WHEREAS, the Department has determined that violations of M.G.L. c. 128, Sections 116 through 123 and 7 CFR Part 990 have occurred by Sample Licensee, a Massachusetts Hemp Producer Licensee (“Licensee”);

WHEREAS, the Licensee and the Department (collectively, the “Parties”) have agreed to resolve the violations through mutual agreement;

NOW, THEREFORE, the Department sets forth the following Corrective Action Plan (“Plan”).

PRINCIPLES OF LAW

1. “Hemp”, *the plant of the genus cannabis and any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 per cent on a dry weight basis or per volume or weight of marijuana product or the combined per cent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus cannabis regardless of moisture content.*

“Industrial hemp”, *hemp that is used exclusively for industrial purposes including, but not limited to, the fiber and seed.* M.G.L. c. 128, Section 116.

2. (a) *Industrial hemp may be planted, grown, harvested, possessed, processed, bought, sold or researched subject to sections 116 to 123, inclusive. The planting, growing, harvesting, possessing, processing, selling or research of industrial hemp as an agricultural product shall be subject to the supervision and approval of the department pursuant to sections 116 to 123, inclusive.* (b) *A person planting, growing, harvesting, possessing, processing or selling industrial hemp for commercial purposes shall: (i) be licensed by the department pursuant to section 118; and (ii) only acquire hemp seeds from a distributor approved by the department.* (c) *Industrial hemp shall only be used for the following: (i) research purposes; and (ii) commercial purposes considered reasonable by the commissioner.* M.G.L. c. 128, Section 117.

3. *The department may inspect and have access to the equipment, supplies, records, real property and other information deemed necessary to carry out the department’s duties under*

sections 116 to 123, inclusive, from a person participating in the planting, growing, harvesting, possessing, processing, purchasing, selling or researching of hemp, industrial hemp. The department may establish an inspection and testing program to determine delta-9 tetrahydrocannabinol levels and ensure compliance with the limits on delta-9 tetrahydrocannabinol concentration. M.G.L. c. 128, Section 122.

4. *Violations of State and Tribal plans. (a) Producer violations. Producer violations of USDA-approved State and Tribal hemp production plans shall be subject to enforcement in accordance with the terms of this section. (b) Negligent violations. Each USDA-approved State or Tribal plan shall contain provisions relating to negligent producer violations as defined under this part. Negligent violations shall include, but not be limited to: (1) Failure to provide a legal description of land on which the producer produces hemp; (2) Failure to obtain a license or other required authorization from the State department of agriculture or Tribal government, as applicable; or (3) Production of cannabis with a delta-9 tetrahydrocannabinol concentration exceeding the acceptable hemp THC level. Hemp producers do not commit a negligent violation under this paragraph (b)(3) if they make reasonable efforts to grow hemp and the cannabis (marijuana) does not have a delta-9 tetrahydrocannabinol concentration of more than 1.0 percent on a dry weight basis. (c) Corrective action for negligent violations. Each USDA-approved State or Tribal plan shall contain rules and regulations providing for the correction of negligent violations. Each correction action plan shall include, at minimum, the following terms: (1) A reasonable date by which the producer shall correct the negligent violation. (2) A requirement that the producer shall periodically report to the State department of agriculture or Tribal government, as applicable, on its compliance with the State or Tribal plan for a period of not less than the next 2 years from the date of the negligent violation. 7 CFR Part 990.6(a), in part.*

FACTS

5. On Day/Month/Year, the Department received harvest reports from the Licensee requesting regulatory pre-harvest THC testing for the following crops planted at Address/City/State/Zip (“Site”):

| Variety | Harvest Start Date | Planted Area | Amount |
|---------|--------------------|--------------|---------|
| Variety | DD/MM/YY | Field | 1 acres |

6. On Day/Month/Year, Hemp Inspector (“Inspector”) arrived at the Site to conduct regulatory pre-harvest THC Sampling for the following crops:

| Sample No. | Sample Date | Variety |
|------------|-------------|---------|
| ##### | DD/MM/YY | Variety |

7. Lab reports dated Day/Month/Year show the following results:

| Sample No. | Variety | Total THC | Measurement of Uncertainty |
|------------|---------|-----------|----------------------------|
| ##### | Variety | 1.31 | +/-12% |

8. On Day/Month/Year, Inspector notified the Licensee of the test results and requested to schedule a follow-up date for destruction or re-sampling.

9. On Day/Month/Year, Inspector returned to the site to collect a second round of regulatory THC samples for the following crops:

| Sample No. | Sample Date | Variety |
|------------|-------------|---------|
| ##### | DD/MM/YY | Variety |

10. Lab reports dated November 2, 2020 show the following results:

| Sample No. | Variety | Total THC | Measurement of Uncertainty |
|------------|---------|-----------|----------------------------|
| ##### | Variety | 1.7 | +/-12% |

11. On Day/Month/Year, Inspector notified the Licensee of the test results and requested to schedule a follow-up date for destruction or re-sampling.

12. On Day/Month/Year, Inspector arrived at the Site to witness the disposal of the following crops which were in excess of 1.0% Total THC in accordance with approved methods.

| Sample No. | Variety | Date | Amount | Method |
|------------|---------|----------|--------|---------------|
| ##### | Variety | DD/MM/YY | 1 acre | Mulch/Compost |

FINDINGS

16. The Licensee produced crops with a final test result indicating total THC levels in excess of 1.0%, in violation of M.G.L. c. 128, Section 116 and 7 CFR Part 990.

CORRECTIVE ACTION

17. As a result of the Department's findings, the Licensee will do the following:

- (a) Comply with M.G.L. c. 128, Sections 116 through 123, and 7 CFR Part 990, and the Interim Commercial Industrial Hemp Policy issued by the Department. The Licensee shall comply with all applicable statutes and regulations related to work performed under the jurisdiction of the Department, including but not limited to, 7 CFR 990, M.G.L. c. 128, and any guidance, policies, or regulations issued by the Department. Additional inspections will be conducted annually for a minimum of 2 years to ensure compliance.
- (b) Submit THC Documentation to the Department for any varieties to be planted no later than April 30th of the year of planting. All varieties must be approved by the Department prior to use. Varieties will not be approved after April 30th.

18. By agreeing to this Plan, the Licensee shall waive all rights of appeal and releases the Department, its agents, employees, and assigns from any liability associated with the actions taken under the Plan.

19. The terms of this Plan shall not establish a precedent or past practice between the Department and any other individual and are limited solely to the Parties to this Plan.

20. All questions related to this Plan or the Department shall be submitted as follows:

251 Causeway Street, Suite 500

Boston, MA 02114

Email: mahemp@mass.gov

Attn: MA Hemp Program

21. Violations of this Plan may result in further legal action by the Department, including but not limited to, the suspension or revocation of any license issued under the Department's Hemp Program or the destruction of any hemp harvested in violation of this Plan. Violations of this Plan will not be subject to criminal enforcement action by the Federal, State, Tribal, or local government but such protection shall not apply to any future violations not covered by this Plan.

22. This is the first (1st) violation issued to the Licensee. Negligent violations of a USDA-approved State or Tribal plan three (3) times in a five (5) year period shall render the Applicant be ineligible to produce hemp for a period of five (5) years beginning from the date of the third (3rd) violation.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Parties hereto execute this document under seal and agree to abide by the covenants herein.

ATTACHMENT 6: CERTIFICATION THAT STATE GOVERNMENT HAS RESOURCES AND PERSONNEL TO CARRY OUT REQUIRED FARM BILL PRACTICES AND PROCEDURES

March 9, 2020

Undersecretary Greg Ibach
United States Department of Agriculture
Marketing and Regulatory Programs

Dear Undersecretary Ibach,

This letter is to certify that the Massachusetts Department of Agricultural Resources has the resources to establish its own hemp program and regulate the production of hemp in accordance with the requirements set forth in 7 CFR 990.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Lebeaux".

John Lebeaux
Commissioner
Massachusetts Department of Agricultural Resources