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EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS

**Department of Agricultural Resources**

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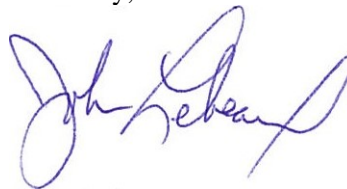
March 9, 2020

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

Dear Undersecretary Ibach,

The Massachusetts Department of Agricultural Resources is pleased to send you its state plan for approval to administer hemp production in our state. In conformity with the 2018 Farm Bill and the Interim 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,



John Lebeaux  
Commissioner  
Massachusetts Department of Agricultural Resources

**MASSACHUSETTS STATE HEMP PLAN**  
**Massachusetts Department of Agricultural Resources**  
**Submitted: March 9, 2020**

## **INTRODUCTION**

On July 28, 2017, Governor Baker signed H. 3818, An Act to Ensure Safe Access to Marijuana (“Act”).<sup>1</sup> The Act updated the laws in the Commonwealth of Massachusetts that governed the use of marijuana. The Act also created a legal distinction between marijuana and hemp, allowing hemp to be grown in the Commonwealth under the jurisdiction of the Massachusetts Department of Agricultural Resources (“Department”) by adding M.G.L. c. 128, Sections 116 through 123.(See Attachment 1A).

On December 20, 2018, the Agricultural Improvement Act of 2018 (“2018 Farm Bill”) was signed into law. The 2018 Farm Bill created a distinction between hemp and marijuana under federal law, removing it from the Controlled Substances Act as a Schedule I Controlled Substance and recognizing it as an agricultural commodity. The 2018 Farm Bill also authorized the United States Department of Agriculture (“USDA”) to develop regulations and guidelines related to the cultivation of hemp, establishing that hemp cultivation in the United States will require licensing, either through USDA or in accordance with a state plan developed by a state department of agriculture and approved by USDA. Until such time as USDA developed regulations and guidance, Section 7606 of the 2014 Farm Bill, which authorized Agricultural Research Programs through state departments of agriculture or universities of higher education, was to remain in place.

On October 31, 2019, USDA released its Interim Final Rule (“Rule”). This Rule will remain in place for two (2) years after its publication. USDA began accepting state plans for review beginning November 30, 2019 and will have sixty (60) days to review a plan once submitted.

The Department, on behalf of the Commonwealth of Massachusetts, is hereby submitting its state plan to USDA. Because the Commonwealth has existing legislation already allowing for hemp production under the authority of the Department, the Department must reconcile the differences between its existing program and the Interim Final Rule. On January 31, 2020, a legislative amendment to its enabling authority was filed with the Massachusetts Legislature through its supplemental budget process that will repeal and replace M.G.L. c. 128, Sections 116 through 123. The new, proposed sections of M.G.L. c. 128, Sections 116 through 119 will authorize hemp production and provide the Department with the authority needed to regulate hemp production in a manner consistent with the 2018 Farm Bill and the Rule. This includes amending the definition of hemp, establishing a production program in the Commonwealth under the Department, establishing testing and sampling authority, and setting forth enforcement requirements consistent with the Rule. It should be noted that the Department’s current hemp program is largely in compliance with the Rule and many of the changes that need to be made can be made on a programmatic level for the 2020 growing season. The Department will update USDA on the progression of all relevant legislative and program changes in an annual report and will resubmit the plan for approval when all of the changes are complete as required by the Rule.

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<sup>1</sup><https://malegislature.gov/Laws/SessionLaws/Acts/2017/Chapter55>

## TABLE OF CONTENTS

<b>SECTION</b>	<b>PAGE</b>
SECTION 1: MAINTAINING RELEVANT PRODUCER AND LAND INFORMATION	5
SECTION 2: ACCURATE AND EFFECTIVE SAMPLING TESTING USING POST DECARBOXYLATION OR SIMILAR RELIABLE METHODS	6
SECTION 3: PLAN FOR DISPOSAL PROCEDURES	9
SECTION 4: PLANS FOR INSPECTION PROCEDURES	10
SECTION 5: PLAN FOR COLLECTION OF INFORMATION	11
SECTION 6: PLAN TO COMPLY WITH ENFORCEMENT PROCEDURES	13
SECTION 7: CERTIFICAITON THAT STATE/TRIBAL GOVERNMENT HAS RESOURCES AND PERSONNEL TO CARRY OUT	16
SECTION 8: TIMELINE FOR CHANGES AND UPDATES	17

## SECTION 1: MAINTAINING RELEVANT PRODUCER AND LAND INFORMATION

### **§990.3(a)(1)**

***A State or Tribal plan must include a practice to collect, maintain, and report to the Secretary relevant and real-time information for each producer licensed or authorized to produce hemp under the State or Tribal plan regarding:***

- (i) Contact information as described in § 990.70(a)(1);***
- (ii) A legal description of the land on which the producer will produce hemp in the State or territory of the Indian Tribe including, to the extent practicable, its geospatial location; and***
- (iii) The status and number of the producer's license or authorization.***

**State Response:** The Department currently meets the requirement to collect and maintain information for each hemp producer. Currently, M.G.L. c. 128, Section 118(e) mandates that the information required by §990.3(a) (1) be included in applications for hemp licenses, which are issued on an annual basis. This information is collected on the applications required by the Department and maintained in a database where information is easy to access and search. This database also maintains information about licensure status and the number assigned to the license by the Department. The Department will report this information to USDA in the manner USDA prescribes.

The Department requires, and will continue to require, the following information from all applicants:

- Name and address of the applicant(s);
- Name and address of the industrial hemp operation of the applicant;
- Global positioning system coordinates and legal description of the property used for the industrial hemp operation;
- Acreage size of the field where the industrial hemp will be grown, if applicable; and
- 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.

The Department has added this requirement in its proposed legislation (see Attachment 1). Additionally, the Department has added the requirement that applicants attach a criminal history report that has been completed within sixty (60) days of the application date to their 2020 renewal and new producer applications. In determining who will be subject to felony conviction restriction, the Department has defined a Key Participant as an individual applicant, 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.

The Department currently requires that all licenses be reviewed and renewed on an annual basis but is considering the possibility of issuing three (3) year licenses as allowed by the Rule. Any change to the Department's licensing schedule will be done through regulation.

## SECTION 2: ACCURATE AND EFFECTIVE SAMPLING TESTING USING POST DECARBOXYLATION OR SIMILAR RELIABLE METHODS

### **§990.3(a)(2)**

***A State or Tribal plan must include a procedure for accurate and effective sampling of all hemp produced, to include the requirements in this paragraph (a)(2).***

§990.3(a)(2)(i) through (v) requires that the following take place when sampling and testing hemp for THC levels:

- Flower material is collected within fifteen (15) days of harvest;
- Methods used for sampling must be at a sufficient confidence level of 95% that no more than 1% of the plants in the lot would exceed the acceptable level of THC;
- A representative sample is collected that represents a homogeneous composition of the lot;
- The producer or authorized representative of the producer is present at the growing site;
- The agency has unrestricted access to the property during business hours; and
- Producers do not harvest the hemp prior to samples being taken.

**State Response:** The Department's hemp program currently meets these requirements. The definition of hemp under M.G.L. c. 128, Section 116 requires that the Department test for and consider the total combined THC and THCa when determining what is hemp. In order to do this, the Department has unrestricted access to any locations, equipment, supplies, records, and other information needed regarding hemp production 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 the Department, through its own inspectors, collect a composite sample of flower material of every crop or different variety harvested within ten (10) days prior to the scheduled harvest. The Department also requires that the licensee or an authorized representative be present during the sampling. The licensee must indicate on a Department-approved planting form what their tentative harvest date will be for the season and must notify the Department prior to harvest to schedule a date that sampling will take place (see Attachment 2). The Department is considering extending the ten (10) day harvest requirement to fifteen (15) days for the 2020 growing season as allowed by the Rule but any change would be done through regulation.

The Department has developed Standard Operating Procedures 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.

The Department also permits licensees to clone hemp from mother plants and/or start hemp plants from seeds and then sell the seedlings or starts to another licensed producer for planting. The Department views this practice as nursery and/or breeding work and requires a license for these activities. However, these plants are not harvested by the initial producer; rather they are sold to another licensed producer for planting. Because the plants are immature at the time of sale, flowers are not available to sample prior to sale and transport, and an accurate THC content cannot be measured. The Department restricts the sale of immature hemp plants, and requires that they are only sold and/or purchased by licensed producers. Additionally, the Department requires producers to provide documentation to demonstrate that the THC concentration of the mother plant(s) and/or seed stock is 0.3%THC or less prior to planting any hemp. This documentation is required of all hemp plants or seeds used in the Massachusetts Hemp Program to ensure that any crop planted in Massachusetts is hemp as defined by law.

**§990.3(a)(3)**

***A State or Tribal plan must include a procedure for testing that is able to accurately identify whether the sample contains a delta-9 tetrahydrocannabinol content concentration level that exceeds the acceptable hemp THC level. The procedure must include a validated testing methodology that uses postdecarboxylation or other similarly reliable methods. The testing methodology must consider the potential conversion of delta-9 tetrahydrocannabinolic acid (THC-A) in hemp into THC and the test result measures total available THC derived from the sum of the THC and THC-A content. Testing methodologies meeting the requirements of this paragraph (a)(3) include, but are not limited to, gas or liquid chromatography with detection. The total THC concentration level shall be determined and reported on a dry weight basis.***

§990.3(a)(3) requires that the lab do the following:

- Become registered with the Drug Enforcement Agency (“DEA”)
- Ensure the validity and reliability of the test with quality assurance
- Validate and verify that testing methods are appropriate
- Ensure testing is consistent and accurate
- Ensure analytical tests are sufficiently sensitive for the purpose of detectability
- Develop disposal procedures in compliance with DEA for hemp that is non-compliant
- Estimate and report on the measurement of uncertainty of the test results

**State Response:** The Department currently contracts with a private lab located in Massachusetts to test for the THC content of hemp. The summary of the current lab protocol is as follows:

- Hemp material is received and homogenized;
- The water content in the sample is determined using Karl Fischer titration;
- 0.1 gram of homogenized hemp sample is extracted with 10ml Acetonitrile;
- Extract is run neat and diluted on an HPLC system and analyzed for cannabinoid content;
- Detector allows four (4) different wavelengths to be observed simultaneously; and
- Each test is run in triplicate.

The Department understands that this requirement will be delayed but is currently in discussions with the Massachusetts Pesticide Analysis Lab (“MPAL”) located on the University of Massachusetts Campus in Amherst to take over the THC testing analysis. This lab has already begun the process to become registered with DEA and has submitted its registration application. MPAL is used by the Department for pesticide regulation and is willing to test THC levels for our Hemp program.

In either situation (MPAL or private lab setting), the Department has undertaken the necessary steps to ensure that the lab used by the Department maintains the following in order to be in compliance with the USDA requirements:

- Lab needs to become registered with DEA (deadline for this has been extended); and,
- A Quality Assurance Project Plan (“QAPP”) needs to be developed by the lab. This plan will include the following:
  - Project Description
  - Project Organization and Responsibilities
  - Quality Assurance Objections for Measurement Data in Terms of Precision, Accuracy, Completeness, Representativeness and Comparability
  - Measure of uncertainty and how it is determined
  - Sampling Procedure
  - Sample Custody
  - Calibration Procedures and Frequency
  - Analytical Procedures

- Data Reduction, Validation and Reporting
- Internal Quality Control Checks
- Performance and Systems Audits
- Preventive Maintenance
- Specific Routine Procedures Used to Assess Data Precision, Accuracy and Completeness
- Corrective Action
- Disposal Methods
- Quality Assurance Reports to Management

The Department has begun working with its current lab and MPAL on these items to ensure compliance and anticipates approval to proceed once MPAL has received its DEA registration. We have been informed that this should be completed prior to any action on the Department's plan.



### SECTION 3: PLAN FOR DISPOSAL PROCEDURES

**§990.27**

***Cannabis plants exceeding the acceptable hemp THC level constitute marijuana, a schedule I controlled substance under the Controlled Substances Act (CSA), 21 U.S.C. 801 et seq. and must be disposed of in accordance with the CSA and DEA regulations found at 21 CFR 1317.15***

**State Response:** Currently, the Department requires destruction of any hemp that tests above .3000% THC. Destruction is conducted by the licensee either voluntarily or at the direction of the Department and is done in front of at least one (1) Department hemp inspector and documented for the Department's records. Acceptable destruction methods are currently incineration or tilling into the soil so that it is rendered unusable.

The Department allows a producer to request a re-test of a crop no more than twice if the initial test results indicate that the combined THC is above 0.3000 % (see Attachment 4). If the cannabis plant or plant material exceeds 0.3% THC and the grower has exhausted its retesting options, the Department will notify USDA using an electronic method approved by USDA. The Department conducts all sampling and testing for each round and does not rely upon the producer or third-party test results when determining whether a crop will be certified by the Department as hemp.

Currently, the Department requires the destruction of all cannabis that tests above .3% THC. Any destruction is done by either burning or tilling the crop into the soil in a way that renders it unusable. All destructions are required to be witnessed and documented by the Department.

The Department will ensure appropriate destruction in accordance with approved USDA destruction options.

**§990.3(a)(4)**

***A State or Tribe shall promptly notify the Administrator by certified mail or electronically of any occurrence of cannabis plant or plant material that do not meet the definition of hemp in this part and attach the records demonstrating the appropriate disposal of all of those plants and materials in the lot from which the representative samples were taken.***

The Department currently requires from a licensed producer whose plant material exceeds the allowable standard a signed Notice of Destruction form that acknowledges destruction, the reason for such, and waives any right to appeal. The Department will ensure that this form and any records USDA requests are included in the notification.

## SECTION 4: PLANS FOR INSPECTION PROCEDURES

### **§990.3(6)**

***A State or Tribal plan must include a procedure for conducting annual inspections of, at a minimum a random sample of producers to verify that hemp is not produced in violation of this part. These procedures must enforce the terms of violations as stated in the Act and defined under §990.6.***

**State Response:** The Department currently meets these requirements under its existing hemp program policy and under the Department's authority set forth in M.G.L. c. 128, Section 122 (See Attachments 1 and 5). Inspections are conducted with every licensed producer at least once a year. These inspections may be conducted randomly or be scheduled by the Department 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 the Department 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 the Department;
- 10 days prior to harvest so that the Department may sample the crop to ensure that it is at or below 0.3%; and
- When the Department feels necessary to ensure compliance with the program requirements.

If violations are discovered during the inspections, the Department will comply with those enforcement requirements as prescribed under §990.6 and set forth in Section 6 of this plan.

## SECTION 5: PLAN FOR COLLECTION OF INFORMATION

### **§990.3(7)**

***A State or Tribal plan must include a procedure for submitting the information described in §990.7 to the Secretary not more than 30 days after the date on which the information is received. All such information must be submitted to the USDA's information sharing systems.***

§990.7 requires that the following be reported to USDA:

- New producer that is an individual
  - Name of individual
  - License or authorization identifier
  - Business address
  - Telephone number
  - Email address (if available)
- New producer that is an entity:
  - Full name of entity
  - Principal business location address
  - License or authorization identifier
  - Full name, title, and email for each employee that is required to submit the criminal history report
- Producers who have amended or changed their previously reported information
  - Previous reported information
  - New reported information
- Status of each producers' license/authorization
- Period covered by the report
- Indication that there were no changes, if applicable

**State Response:** The Department 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. This information is collected on the application required by the Department and stored in a database where information is easy to access and search. The Department will report this information to USDA in the manner USDA prescribes.

The Department requires, and will continue to require, the following information from all applicants:

- Name and address of the applicant(s);
- Name and address of the industrial hemp operation of the applicant;
- Global positioning system coordinates and legal description of the property used for the industrial hemp operation;
- Acreage size of the field where the industrial hemp will be grown, if applicable; and
- 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.

**§990.3(9)**

***The State or Tribal plan must include a procedure to share information with USDA to support the information sharing requirements in 7 U.S.C. 1639q(d). The procedure must include the requirements in this paragraph (a)(9).***

- (i) The State or Tribal plan shall require producers to report their hemp crop acreage to the FSA, consistent with the requirement in §990.7.***
- (ii) The State or Tribal government shall assign each producer with a license or authorization identifier in a format prescribed by USDA.***
- (iii) The State or Tribal government shall require producers to report the total acreage of hemp planted, harvested, and if applicable, dispose. The State or Tribal government shall collect this information and report it to AMS.***

**State Response:** The Department is currently drafting regulations that will go through the M.G.L. c. 30A promulgation process once the proposed legislative amendments are in effect. The regulations will address the requirement that producers share the required information with FSA and AMS. The Department will also include a verification process during its inspection process to ensure that producers are submitting the required information. Additionally, the Department will provide guidance and outreach to producers on the method of submitting this information to FSA and AMS.

A Massachusetts Hemp License currently contains the following information:

- Name of Individual/Business
- Address
- Date of Issue and Expiration date of license
- Department assigned number

The Department uses the following scheme to assign license numbers:

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

Example: MA20180001G (Commonwealth of Massachusetts; initially licensed in 2018; first license issued; Grower-type license)

In order to comply with USDA requirements, the Department will add its assigned census number of 25 in place of state abbreviation (MA). The Department will begin assigning these numbers immediately.

## SECTION 6: PLAN TO COMPLY WITH ENFORCEMENT PROCEDURES

### **§990.6(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.***

**State Response:** The Department is partially in compliance with the federal requirement. It currently has enforcement capabilities under M.G.L. c. 128, Section 120 to ensure that the producers comply with the state requirements. This includes corrective action measures and suspending, revoking, or denying any license. The Department will only conduct enforcement against licensed hemp producers as authorized by USDA. The Department's proposed legislation will reflect the USDA authorized enforcement mechanisms and will draft its regulations to address enforcement in greater detail.

### **§990.6(b)**

***Negligent violations. Each USDA approved State or Tribal plan shall contain provisions relating to negligent producer violations as defined under this***

§990.6(b) describes a negligent violation to include:

- Failure to provide legal description of land where hemp is produced;
- Failure to obtain a license from the State; and
- Production of crop exceeding 0.5% total THC.

**State Response:** Prior to the Interim Rule, the Department had been utilizing Corrective Action Plans whenever possible to address what it deemed as "negligent" violations of applicable Massachusetts law. Examples of what the Department has considered a negligent violation are the following:

- Failure to provide seed documentation prior to planting
- Planting seeds where documentation indicates they are above 0.3% THC
- Hemp testing above 0.3% THC prior to harvest

This included, but was not limited to, additional reporting requirements, site inspections, destruction of hemp, and changes to hemp production/processing activities as directed by the Department to ensure continued compliance.

Going forward, the Department will use the definition of a negligent violation and has used it in the Department's proposed legislation (see Attachment 1).

### **§990.6(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.***

§990.6(c) requires Corrective Action Plan to include the following:

- Date by which violation should be corrected;
- Producer must report to the State periodically for a period of no less than two (2) years; and
- Inspections are conducted to ensure that the plan has been implemented.

**State Response:** When the 2018 Farm Bill was passed, the Department began issuing Corrective Action Plans during the 2019 season for what it determined were negligent violations. These Corrective Action Plans are consistent with the requirements of the Rule.

**§990.6(d)**

***Culpable violations. Each USDA-approved State or Tribal plan shall contain provisions relating to producer violations made with a culpable mental state greater than negligence, including that:***

***(1) If the State department of agriculture or Tribal government with an approved plan determines that a producer has violated the plan with a culpable mental state greater than negligence, the State department of agriculture or Tribal government, as applicable, shall immediately report the producer to:***

***(i) The U.S. Attorney General; and***

***(ii) The chief law enforcement officer of the State or Indian Tribe, as applicable.***

***(2) Paragraphs (b) and (c) of this section shall not apply to culpable violations.***

**State Response:** The Department will notify the office of the U.S. Attorney General and its Office of Attorney General in a manner that is prescribed by USDA. The Department has reached out to the Massachusetts Attorney General's Office in order to establish a procedure for notification of any culpable violations.

**§990.6(e)**

***Each USDA-approved State or Tribal plan must contain provisions relating to felonies. Such provisions shall state that:***

***(1) 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 the plan and producing hemp under the State or Tribal plan from the date of the conviction. An exemption applies to a person who was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018 and whose conviction also occurred before that date.***

***(2) Any producer growing hemp lawfully with a license, registration, or authorization under a pilot program authorized by section 7606 of the Agricultural Act of 2014 (7 U.S.C. 5940) before October 31, 2019 shall be exempted from paragraph (e)(1) of this section.***

***(3) For producers that are entities, the State or Tribal plan shall determine which employee(s) of a producer shall be considered to be participating in the plan and subject to the felony conviction restriction for purposes of paragraph (e)(1) of this section.***

**State Response:** The Department has added a statement 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 proposed legislation that has recently been filed. The Department will add the requirement that a criminal background check be submitted as part of the application process by requiring the applicant to submit a criminal history report using the same requirements that USDA is putting forth for its licensees. The Department will begin the requirement of background checks immediately as part of its application process. The application to produce hemp in 2020 will include this language and a supplemental form will be sent out to producers that have already submitted for license renewal.

In determining who will be subject to felony conviction restriction, the Department I has defined a Key Participant as an individual applicant, 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 and will include that in its regulations.

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. The Department will review the submission and if the Department 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.

Massachusetts did not have a 2014 Farm Bill compliant program and therefore the exemption for licensees who were licensed prior to December 20, 2018 does not apply.

**§990.6(f)**

***False statement. Each USDA-approved State or Tribal plan shall state that any person who materially falsifies any information contained in an application to participate in such program shall be ineligible to participate in the program.***

**State Response:** The Department currently has language on its license application that states (see Attachment 6):

*“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 registration denial, suspension, or revocation pursuant to M.G.L. c. 128, Section 120. I further understand that I am not licensed to plant, grow, and/or harvest industrial hemp in the Commonwealth until the Department has approved my application.”*

The Department will adopt a form of applicant attestation that complies with the USDA language and legal references to ensure applicants understand they are agreeing to all USDA and Department hemp production program requirements.

## SECTION 7: CERTIFICATION THAT STATE/TRIBAL GOVERNMENT HAS RESOURCES AND PERSONNEL TO CARRY OUT

**§990.3(a)(8)**

*The State or Tribal plan must certify that the State or Indian Tribe has the resources and personnel to carry out the practices and procedures described in paragraphs (a)(1) through (7) of this section.*

**State Response:** Since the inception of the Hemp Program in 2018, the legislature has appropriated funds to support the Department'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. The Department anticipates that funds for this program will continue to be appropriated (See Attachment 7). The Department also has staff dedicated solely to the hemp program, as well as other Department staff that have been assigned to provide support as needed.

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



## SECTION 8: TIMELINE FOR CHANGES AND UPDATES

Massachusetts recognizes that it will need to change its existing legislation and develop regulations to ensure compliance with the interim final rule. Additionally, the Department will need to change some things on a programmatic level as well. The major areas of change are the following:

- Legislative changes
- Development of regulations
- Background checks for applicants
- Enforcement actions
- DEA disposal methods
- Reporting to USDA monthly and annually

TASK	ANTICIPATED COMPLETION DATE
Legislative update	July 2020
Regulation development	Regulations anticipated as soon as possible once the proposed legislative amendment goes into effect.
Quality Assurance Plan from Lab, including DEA registration	Fall 2020
Notification to USDA of hemp that exceeds 0.3% THC and needs to be disposed of	Effective immediately after USDA provides a notification process to states.
Determine disposal method that is in compliance with DEA	Effective immediately after guidance from USDA or DEA has been provided to the states.
Report grower information to USDA monthly	Effective immediately after guidance from USDA on reporting methods is provided.
Require background checks	Effective immediately

## ATTACHMENT 1: H. 4354

H. 4354 is titled "An act making appropriation for fiscal year 2020 to provide for supplementing certain existing appropriations and for certain other activities and projects. It was filed on January 31, 2020. The sections relative to hemp are located within Section 24 (listed below).

*SECTION 24. Chapter 128 of the General Laws, as so appearing, is hereby further amended by striking out sections 116 to 123, inclusive, and inserting in place thereof the following 4 sections:-*

*Section 116. As used in this section and sections 117 to 119, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:*

*"Hemp", the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 per cent on a dry weight basis.*

*"Federal Act", the Agricultural Improvement Act of 2018, Pub. L. 115-334, as amended.*

*"Federal Rule", 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.*

*"Produce" or "Production", to grow hemp plants for market, or for cultivation for market, in the United States.*

*"Producer", a person who produces hemp.*

*"USDA", the United States Department of Agriculture.*

*Section 117. (a) The growing, cultivation, and possession of hemp in the commonwealth shall be permitted. The production of hemp in the commonwealth is authorized subject to sections 116 to 119, inclusive. The department shall have jurisdiction over the production of hemp in the commonwealth and shall ensure compliance with the Federal Act and Federal Rule in connection therewith.*

*(b) In accordance with the Federal Act and the Federal Rule, the department, in consultation with the governor and the attorney general, may develop and submit for USDA approval a plan under which the commonwealth, through the department, shall have primary regulatory authority over the production of hemp in the commonwealth.*

*(c) The department shall promulgate rules and regulations for the implementation, administration, and enforcement of sections 116 to 119, inclusive.*

*(d) No person shall produce hemp in the commonwealth unless such production is in compliance with the Federal Act, Federal Rule, and sections 116 to 119, inclusive. Any person producing hemp in violation of sections 116 to 119, inclusive, shall be subject to enforcement as set forth in section 119.*

*(e) The department may charge applicants and licensees nonrefundable application fees and licensing fees in amounts determined by the department in consultation with the secretary of administration and finance.*

*Section 118. (a) No person shall produce hemp without a license issued by the department unless otherwise authorized by USDA under the Federal Rule. The department may by regulation determine the form of application and any minimum qualifications required for licensure, which shall include any qualifications required by the Federal Act or Federal Rule, or any state plan approved under subsection (b) of section 117. A license shall be valid for 3 years, or such other period authorized by the Federal Act or Federal Rule and prescribed by the department through regulation.*

*(b) No person convicted of a felony relating to a controlled substance under any state or federal law shall be eligible to apply for a license under this section for a period of 10 years from the date of the conviction unless otherwise authorized by the Federal Act. The department shall be authorized to require any person applying for licensure under this section to provide the department with criminal history information, including criminal offender record information, as defined in section 167 of chapter 6, for the purpose of determining a person's eligibility for licensure under this subsection. Information obtained pursuant to this section shall not be disseminated for any purpose other than to ensure compliance with this subsection and shall be exempt from the disclosure of public records under section 10 of chapter 66.*

*(c) Any person who materially falsifies any information in an application shall be denied a license and may be subject to enforcement as set forth in section 119.*

*Section 119. (a) Any violation of sections 116 to 119, inclusive, the department's regulations promulgated thereunder, or the state plan approved by the USDA under subsection (b) of section 117 shall be subject to enforcement in accordance with this section and the Federal Rule.*

*(b) (i) A negligent violation by a producer of hemp shall include, but not be limited to, the following: (i) failure to provide to the department an accurate legal description of land on which the producer produces hemp; (ii) failure to obtain a license under section 118; or (iii) producing Cannabis sativa L. with a delta-9 tetrahydrocannabinol concentration of more than 0.3 per cent and less than or equal to 0.5 per cent on a dry weight basis, provided that the person made reasonable efforts to grow hemp.*

*(2) Such violations shall be deemed negligent by the department if not done willfully and shall require the violating person to comply with a corrective action plan issued by the department, including but not limited to a requirement to correct the negligent violation by a reasonable date, to periodically report on such compliance for a period of no less than 2 calendar years from the date of violation, and any other requirements set forth in the Federal Rule.*

*(3) A negligent violation shall not subject the violator to any criminal enforcement by any state or local governmental bodies and any enforcement action taken by the department shall be done in compliance with the Federal Act and Federal Rule.*

*(4) 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 their license revoked and be ineligible to apply for a license to produce hemp for a period of 5 years beginning on the date of the third violation.*

*(c) (1) 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 attorney general and the Attorney General of the United States shall not be subject to subsection (b) and may result in suspension or revocation of a license.*

*(2) Any person who willfully violates sections 116 to 119, inclusive, or any rule or regulation promulgated by the department under section 117 shall be subject to a civil penalty not to exceed \$25,000 for each violation, which may be assessed in an action brought on behalf of the commonwealth in any court of competent jurisdiction. Each day of violation shall constitute a separate violation.*

*(3) The superior court shall have jurisdiction to enjoin willful violations of sections 116 to 119, inclusive, or any rule or regulation promulgated by the department under section 117, or grant such relief as it deems necessary or appropriate to secure compliance with any provision of sections 116 to 119, inclusive, or the terms of a license issued thereunder.*

*(d) Any person aggrieved by the denial of an application for or the suspension or revocation of a license to produce hemp 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 chapter 30A.*

*(e) The department shall have the right to enter any real property used in connection with the production of hemp and shall have access to and the right to inspect any equipment, supplies, records, real property, and other information of the licensee deemed necessary at any time to carry out the department's duties under sections 116 to 119, inclusive.*

*(f) The department shall establish an inspection and testing program to determine, at a minimum, delta-9 tetrahydrocannabinol levels and ensure compliance with the limits on delta-9 tetrahydrocannabinol concentration using post-decarboxylation or other similarly reliable methods, and to perform any other inspection and testing required by the Federal Act or Federal Rule or the state plan approved under subsection (b) of section 117.*

*(g) The department shall establish a procedure for the disposal of hemp produced in violation of sections 116 to 120, inclusive, and any products derived therefrom as required by the Federal Rule.*

*(h) The department shall collect and maintain any other information as required by the Federal Act and Federal Rule and otherwise necessary to carry out the department's duties under sections 116 to 119, inclusive. Any such records collected by the department shall be maintained for a minimum of 3 years up to and including such longer period required by the applicable document retention schedules established under section 42 of chapter 30, and shall be subject to disclosure as required by the Federal Act.*

## ATTACHMENT 1A: M.G.L. c. 128 section 116-128

**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 HARVEST REQUIREMENTS IN HEMP POLICY (p. 8 -9)

### **B. Inspection and Testing**

*The Department is authorized to conduct inspections and testing to ensure compliance of all activities authorized under M.G.L. c. 128, Sections 116 through 123. This includes compliance with the Policy as well as testing to ensure that THC levels of the Crop meet the limitations set by M.G.L. c. 128, Section 116.4*

#### **1. Inspections**

*a. All Growers are subject to testing and inspections of Crops. The Department will make every effort to provide advanced notice of testing and inspections to the Grower unless such notice would impact the Department's ability to conduct necessary enforcement activities authorized by M.G.L. c. 128, Sections 116 through 123. Inspections will occur at the following stages:*

*i. License application process: Prior to issuing a license, the Department may schedule a site visit to the property. The purpose of this visit will be to review information that was provided during the application process and to also ensure a better understanding of the growing operation.*

*ii. Routine Sampling: The Department will test the Crop in order to ensure that the Crop does not exceed the 0.3% THC level, as required by the M.G.L. c. 128, Section 116. Sampling shall be conducted for all licensees prior to harvest and with the Grower present. Routine sampling will be scheduled in advance with the Grower or an authorized representative of the Grower*

#### **2. Testing**

*a. The Grower shall contact the Department no later than fourteen (14) days prior to harvest of the Crop or portion of the Crop to schedule sampling for testing.*

*i. The Department will collect samples of the Crop and bring material to a Department-approved lab for testing. The Grower or an authorized representative of the Grower must be present during the sampling.*

*ii. The Grower shall harvest within ten (10) days of the collection of samples, unless otherwise authorized in writing by the Department. If harvesting after collection of samples but prior to receiving the sample results, the Grower must hold onto all harvested Crop material until a Certificate is issued from the Department.*

*iii. The Grower shall submit the Department approved Harvest Form to the Department within ten (10) days of harvest.*

*iv. If sample results show THC levels do not exceed 0.3% then a Certificate will be issued by the Department to the Grower. Upon receipt of a Certificate, the Grower may move the Crop off the licensed site if needed for processing or sale.*

*v. If sample results show THC levels exceed 0.3%, then the Crop is no longer considered Hemp and the Grower is prohibited from harvesting the Crop for Commercial purposes or engaging in any other activities under this Policy. The Grower may also be subject to civil or criminal liability under state and federal marijuana laws. The Grower may opt for a second round of sampling at his/her own cost. If the second round of sampling of the Crop show THC levels higher than 0.3%, then the Grower may opt for a third round of sampling of the Crop while still in the ground or harvested Crop at his/her own cost. In the event that testing results show THC levels higher than 0.3%, the Grower will be instructed to destroy the Crop. The Grower and Department will enter into a written agreement setting forth the terms of such resolution and the Department will be present for the harvest and disposal of any Crop that does not comply with M.G.L. c. 128, Sections 116 through 123.*

# ATTACHMENT 3: HEMP SAMPLING PROTOCOL

## V. SAMPLING PROCEDURES

### A. Hemp THC Sampling

*Except where site specific circumstances warrant otherwise, the following procedures will be used to confirm that the plants to be certified by the Department are in compliance with the Industrial Hemp Program Policy.*

#### 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 when 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 sub-samples from individual plants. Composite samples will be taken for each variety grown, in each different growing site.*

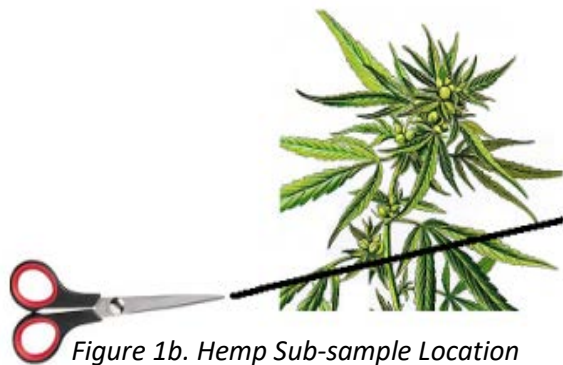
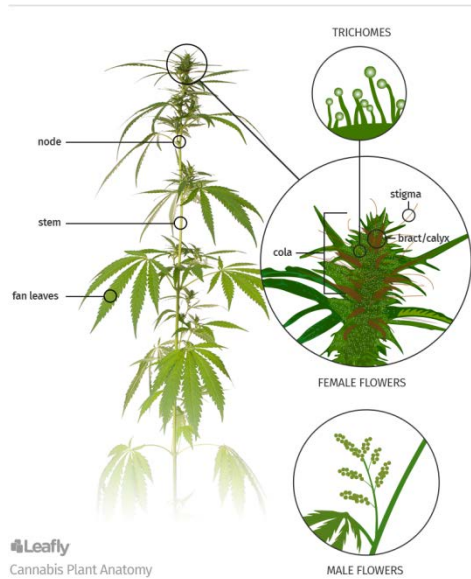
*To ensure a representative sample of the THC content, a single composite sample consisting of sub-samples from up to 30 individual plants in a single field per variety will be collected. Each sub-sample shall be taken from an individual plant and placed into a single bag to create a composite sample for the specific variety/field.*

*Sub-samples from individual plants should be taken from the apical meristem of each plant whenever possible (see Figure 1a). This involves taking the top 5-8 cm (2-3 inches) of the center stem of the plant, including leaf material and buds (see Figure 1b). 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 C).*

*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.*



*Figure 1b. Hemp Sub-sample Location*

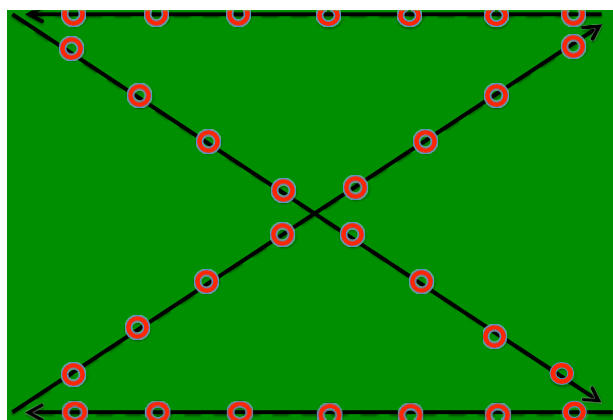
### Field Samples

*In normal field or greenhouse conditions a survey pattern should be followed to ensure that all parts of the crop are adequately represented in each composite sample. When possible, sampling should be consistent with the diagram below (see Figure 2). 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 sub-samples collected per strain or variety.*

- 1. Starting at one corner of the field, walk along the edge of the field collecting up to seven (7) sub-samples 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, up to eight (8) sub-samples shall be collected at equidistant points.*

3. Once the far corner is reached, take up to seven (7) sub-samples 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 up to eight (8) sub-samples along a second diagonal transect back to the original starting point.

Figure 2. Field or Grow Room Sampling Pattern



Shears are to be cleaned between each composite sample is taken (up to 30 plant tips). 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 is being conducted at indoor facilities, some of the grow rooms have intense lighting that may cause eye discomfort or damage. Wear sunglasses/eye protection when working in those areas.

Table 1: Plant Sampling Size

Number of Plants Present	Number of plants required for sampling
1-13	All plants
14-15	13
16-17	14
18-19	15
20-22	16
23-25	17
26-28	18
29-32	19
33-38	20
39-44	21
45-53	22
54-65	23
66-82	24
83-108	25
109-157	26
158-271	27
272-600	28
601-900	29
901+	30

Post-Harvest Material:

Instances may occur where sampling must be conducted on plant material that has already been harvested. The storage containers employed may vary depending on the product being created. Drying may occur in trays or in whole plant drying racks. Curing may occur in buckets or bags indoors. Sampling procedures must ensure that the entire crop is represented equally. Which containers to sample will be determined at random.

Whole Plant Sampling:

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

Flower Sampling:

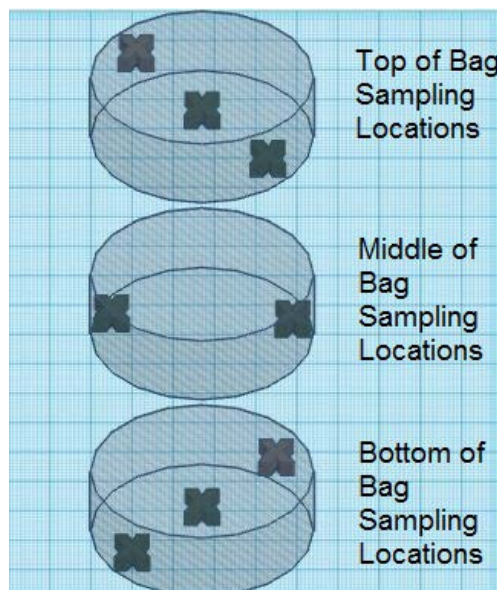
The number of samples taken shall be relative to the amount of product harvested. [Table 2] will be used to determine the number of samples collected. Each sub-sample shall consist of approximately one (1) plant flower if the inflorescence is being harvested, or the apical 5-8cm (2-3 inches) of the stem of the plant is whole.

Table 2: Minimum Samples Required

Harvest Batch Weight	Minimum # of Sub-samples
<10 lbs	8
10-20 lbs	12
20-30 lbs	15
30-40 lbs	18
40-100 lbs	23
>100 lbs	29

When curing in buckets, there are multiple locations to sample from (see Figure 3). To remain consistent the inspector shall choose from three (3) locations in the bucket: top, middle, and bottom. One (1) flower from each location shall be chosen and added to the sample container.

Figure 3: Potential Container Sampling Locations



*Plant inflorescence material may also be dried in trays, which should be organized on shelves or racks. The location of sampling on each individual tray may vary.*

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

*Ground or Milled Plant Sampling:*

*Occasionally products may require that the plants be ground or milled into fine pieces to be extracted or to separate seeds. Should this product need sampling, a glove or scoop should be used to take a minimum of five (5) grams of material from the storage container(s), taking one (1) gram from each of five separate locations. The sampling should be conducted in a similar manner to that of cured plant material in buckets (as described above) with a random distribution throughout. These samples must be double bagged in paper bags to help prevent leakage.*

## **ATTACHMENT 4: THC DISPOSAL REQUIREMENTS (p. 10 of Policy)**

*v. If sample results show THC levels exceed 0.3%, then the Crop is no longer considered Hemp and the Grower is prohibited from harvesting the Crop for Commercial purposes or engaging in any other activities under this Policy. The Grower may also be subject to civil or criminal liability under state and federal marijuana laws. The Grower may opt for a second round of sampling at his/her own cost. If the second round of sampling of the Crop show THC levels higher than 0.3%, then the Grower may opt for a third round of sampling of the Crop while still in the ground or harvested Crop at his/her own cost. In the event that testing results show THC levels higher than 0.3%, the Grower will be instructed to destroy the Crop. The Grower and Department will enter into a written agreement setting forth the terms of such resolution and the Department will be present for the harvest and disposal of any Crop that does not comply with M.G.L. c. 128, Sections 116 through 123.*

## ATTACHMENT 5: INSPECTION POLICY (p. 8 of Policy)

### *Inspections*

*a. All Growers are subject to testing and inspections of Crops. The Department will make every effort to provide advanced notice of testing and inspections to the Grower unless such notice would impact the Department's ability to conduct necessary enforcement activities authorized by M.G.L. c. 128, Sections 116 through 123. Inspections will occur at the following stages:*

*i. License application process: Prior to issuing a license, the Department may schedule a site visit to the property. The purpose of this visit will be to review information that was provided during the application process and to also ensure a better understanding of the growing operation.*

*ii. Routine Sampling: The Department will test the Crop in order to ensure that the Crop does not exceed the 0.3% THC level, as required by the M.G.L. c. 128, Section 116. Sampling shall be conducted for all licensees prior to harvest and with the Grower present. Routine sampling will be scheduled in advance with the Grower or an authorized representative of the Grower*

*iii. Record Inspections: The Department may conduct routine record inspections to ensure that the Grower is maintaining all necessary information. This may include plant nutrient applications (330 CMR 31.00) and any other record keeping required by law.*

*iv. Follow up Inspection: The Department may conduct follow up inspections in order to determine if information provided by the Grower is true and accurate. This follow up may include planting and harvesting observations; sampling of the Crop; or additional record reviews. These inspections may be announced or unannounced.*

# ATTACHMENT 6: GROWER APPLICATION



MA Hemp Producer License Application

## Directions

Complete all parts of the following application to be licensed for growing industrial hemp in the Commonwealth and submit along with the \$100 non-refundable application fee, and all required attachments.

**Massachusetts Department of Agricultural Resources  
Hemp Program**  
**Mail to:** 251 Causeway Street; Suite 500  
 Boston, MA 02114  
 attn.: Sarah Grubin

*Please type or print clearly. Incomplete or illegible forms will be returned. Please list the Applicant Name as the individual or business entity to which the License will be issued.*

## Applicant Information

Is this a renewal? <input type="checkbox"/> Yes <input type="checkbox"/> No            If Yes, previous license number*:		
Applicant Name (Individual or Business Entity):		
Primary Contact Name:		
Business Name (if different):		
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:
Will you be breeding hemp? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes,</i> <input type="checkbox"/> seeds <input type="checkbox"/> clones		

*\*Beginning in 2020 new license numbers will be issued upon renewal to comply with the requirements of the USDA Interim Final Rule.*

## Directory Information Opt-in

*Our program discloses limited information to the public about you and/or your business regarding your MA Hemp Producer License. This information, including your name, business name, and license number will be placed in an online directory on the mass.gov website. If you would like additional contact information to be available, please opt-in below.*

Yes    No

I would like my contact information available in the online directory. The contact information

available on the directory may include your mailing address, phone number, email address and/or website.

### 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.*

### Key Participant Information

Key Participant Name:

Key Participant Title:

Convicted of a drug-related felony within the last ten (10) years?  Yes  No

Key Participant Name:

Key Participant Title:

Convicted of a drug-related felony within the last ten (10) years?  Yes  No

Key Participant Name:

Key Participant Title:

Convicted of a drug-related felony within the last ten (10) years?  Yes  No

Key Participant Name:

Key Participant Title:

Convicted of a drug-related felony within the last ten (10) years?  Yes  No



**Growing Location Information** Please provide the following information for each Growing Location. You may have multiple growing areas (i.e. fields or greenhouses) at each location. If you would like to license multiple locations, you may attach additional copies of this sheet.

<p><b>Site Designation and Maps:</b></p> <p>Each location must be designated by a specific address. You may have multiple growing sites at each location. For each site, you are <u>required</u> to provide an aerial photograph map that includes</p> <ul style="list-style-type: none"> <li>➤ Site Name and Address</li> <li>➤ GPS coordinates in <b>decimal degrees</b> (ex. 42.3664, -71.0588)</li> <li>➤ Site features including <i>clearly marked boundaries of the proposed growing areas</i></li> </ul>
---

<b>Growing Location and Property Information</b>		
Growing Location Name:		
<p><b>Statement of Property Ownership:</b> Are you the owner of the property listed below?</p> <p><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></p>		
Property Owner or Manager Name (if different from Applicant):		
Owner/Manager Phone:	Owner/Manager Email:	
Growing Location Address:		
City:	State:	Zip Code:
Total acreage of all hemp to be planted <b>outdoors</b> at this location:		
Total square footage of all hemp to be planted <b>indoors</b> at this location:		
<p>Agricultural Preservation Restriction (APR): Is any property listed in this application subject to an APR? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, please include written approval from the holder of the APR. All applications will be reviewed by the Department's APR Program to confirm the status of any APR held by the Department.</i></p>		
<p>Is this property subject to an Agricultural Covenant? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, please include written approval from the holder of the Agricultural Covenant. All applications will be reviewed by the Department's Farm Viability Program to confirm the status of any Agricultural Covenant held by the Department.</i></p>		

Please provide the following information for each Growing Area at the Location listed above (attach separate sheets if necessary):

<b>Growing Area Detail</b>			
Growing Area Name:	<input type="checkbox"/> indoor	<input type="checkbox"/> outdoor	Size: <input type="checkbox"/> acres <input type="checkbox"/> ft <sup>2</sup>
Latitude:	Longitude:		
Site Description:			
<b>Growing Area Detail</b>			
Growing Area Name:	<input type="checkbox"/> indoor	<input type="checkbox"/> outdoor	Size: <input type="checkbox"/> acres <input type="checkbox"/> ft <sup>2</sup>
Latitude:	Longitude:		
Site Description:			
<b>Growing Area Detail</b>			
Growing Area Name:	<input type="checkbox"/> indoor	<input type="checkbox"/> outdoor	Size: <input type="checkbox"/> acres <input type="checkbox"/> ft <sup>2</sup>
Latitude:	Longitude:		
Site Description:			

Note: If your sites are approved, site names and grow 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, USDA Interim Final Rules, and M.G.L. c. 128.

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

(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.

(please initial): I understand that any individual/entity registered by the Department to grow or process 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, stored, and processed.

(please initial): I understand that upon approval of my application, the Department 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.

**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 level 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.

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 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:
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# THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



## Department of Agricultural Resources

251 Causeway Street, Suite 500, Boston, MA 02114  
617-626-1700 fax: 617-626-1850 www.mass.gov/agr



CHARLES D. BAKER  
Governor

KARYN E. POLITO  
Lt. Governor

KATHLEEN A. THEOHARIDES  
Secretary

JOHN LEBEAUX  
Commissioner

### Application Checklist

- Signed and dated application for Hemp Producer License
- Maps for each growing site (including name, address, GPS coordinates, site features, and *clearly marked boundaries of the growing or processing area*)
- \$100 non-refundable application fee
- Criminal history report for each Individual Applicant and/or Key Participant. *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>
- Please keep a copy of this application for your records.

***Please mail application, supporting materials, and payment to:***

**Massachusetts Department of Agricultural Resources**

**Hemp Program**

251 Causeway Street; Suite 500

Boston, MA 02114

attn.: Sarah Grubin

**Make checks payable to:**

*Commonwealth of Massachusetts*

**Questions?** [sarah.grubin@mass.gov](mailto:sarah.grubin@mass.gov)

Or visit: <https://www.mass.gov/industrial-hemp-program>

## ATTACHMENT 7: LETTER OF AUTHORITY

# THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS

## Department of Agricultural Resources

251 Causeway Street, Suite of Agricultural 500, Boston, MA 02114 Resources N DART  
617-626-1700 fax: 617-626-1850 www.mass.gov/agr

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CHARLES D. BAKER  
Governor

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Secretary

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Commissioner

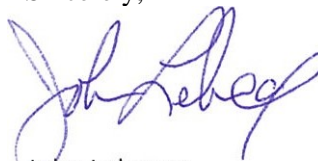
March 9, 2020

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,



John Lebeaux  
Commissioner

Massachusetts Department of Agricultural Resources

## **ATTACHMENT 8: MASSACHUSETTS HEMP POLICY**

### **Interim Policy** **Commercial Industrial Hemp Program**

**Effective Date:** April 30, 2018

**Program Application:** Commercial Growers and Processors of Industrial Hemp

**Approved By:** John Lebeaux, Commissioner

**Authority:** M.G.L. c. 128, Sections 116 through 123

**Policy Number:** 2018-1

On July 28, 2017, Governor Baker signed H. 3818, An Act to Ensure Safe Access to Marijuana (“Act”), which updates the Commonwealth’s laws that governs the use of marijuana. This legislation also created a distinction between marijuana, Hemp and Industrial Hemp, allowing Hemp to be grown commercially for Industrial Hemp or as part of an Agricultural Pilot Program.

Through newly added Sections 116 through 123 of M.G.L. c. 128, the Massachusetts Department of Agricultural Resources (“Department”) now has the authority to oversee Hemp and Industrial Hemp within the Commonwealth of Massachusetts.

#### **Purpose**

This document sets forth the Department’s Commercial Industrial Hemp Program (“Program” or “Commercial Industrial Hemp Program”) policy (“Policy”) for the 2018 growing season. The Department will consider all permitted activities under this Policy as falling under the definition of “Industrial Hemp” in M.G.L. c. 128, Section 116. All references to “Hemp” or “Industrial Hemp” in this Policy shall mean Industrial Hemp. The Policy establishes the Department’s expectations related to the commercial growing and processing of Industrial Hemp and provides information on how to become a licensed Grower and Processor. During the interim Policy period the Department is focusing on licensing requirements under M.G.L. c. 128, Section 118. All proposed commercial activities related to the growing and processing of Industrial Hemp will need to obtain a license under this Policy in order to be considered in compliance with M.G.L. c. 128, Sections 116 through 123. The Department will address activities that may solely require registration at a later date and will not be issuing any registrations at this time. If there is a question as to whether a proposed activity requires a license under M.G.L. c. 128, Section 118, please contact the Department to determine whether the activity falls under this Policy.

The Department will be promulgating regulations for future growing seasons after initiating stakeholder engagement and conducting the necessary public process to solicit input before final promulgation. This Policy will remain in place until such time as regulations are promulgated. While the Act and M.G.L. c. 128, Sections 116 through 123 authorize activities related to marijuana and Industrial Hemp in the Commonwealth, both are still considered illegal by the federal government as they remain Schedule I Controlled Substances under Title 21 of the Controlled Substances Act, 21 U.S.C. § 811. The only exception is for certain activities under Section 7606 of the 2014 Farm Bill (H.R. 2642), which allows for industrial hemp research conducted through state departments of agriculture and/or universities and institutions of higher education when the state has also authorized such activities. Section 7606 does not, however, allow for any activities related to marijuana or general commercial activities related to Industrial Hemp.

#### **Table of Contents**

This Policy contains the following sections:

I. General Information

- A. Definitions
- B. Approved Uses for Industrial Hemp
- C. Application Requirements and Process for a Licensed Industrial Hemp Grower or Processor
- II. Grower Information
  - A. General Grower Information
  - B. Inspections and Testing
  - C. Post-Harvest Activities
- III. Processor Information
- IV. Enforcement

### **Key Risks and Considerations**

As noted above, while M.G.L. c. 128, Sections 116 through 123 authorize certain activities related to Industrial Hemp in the Commonwealth, such activities are still considered illegal by the federal government, with limited exceptions.<sup>2</sup>As a result, the Department encourages all potential Program participants to consider the following risks and considerations.

#### **Risks**

- If you currently participate in or receive assistance from any activities or programs that are provided by the federal government or that utilize federal funds (i.e., loans, insurance, grants, management plans, etc.), you may no longer be entitled to continue or benefit from such activities or programs by virtue of engaging in activities permitted under this Policy.
- If the property on which you intend to grow your Crop is subject to an Agricultural Preservation Restriction (“APR”) that was acquired with federal funds or that contains language prohibiting activities in violation of federal law, your ability to engage in activities permitted under this Policy may be limited or prohibited, and your eligibility for technical assistance or grants may be similarly restricted.
- If the total number of acres you intend to use to grow your Crop is less than two (2) acres, you will not be afforded any zoning enforcement protections afforded to commercial agricultural activities under M.G.L. c. 40A, Section 3.
- If your Crop tests higher than 0.3% THC, you will run the risk of being subject to an order of destruction of the Crop.

#### **Other Considerations**

- In order to ensure a Department-approved end use for your Crop, you will need to determine such end use prior to applying for a license and may wish to consider entering into an agreement with a Processor prior to cultivation. A Processor may also want to consider entering into an agreement with a Grower.
- Because Hemp is a relatively new Crop with limited or varied information about it, especially for cultivation in Massachusetts, you may wish to consider and think carefully about agricultural factors that may be unique to this Crop, including climate, size of acres grown, Crop loss, and soil conditions, such as high metal content.
- You should consider how the application of plant nutrients may be affected by regulations promulgated at 330 CMR 31.00.
- You should consider existing restrictions on the use of pesticides that may impact the ability to grow the Crop.

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<sup>2</sup>Section 7606 of the 2014 Farm Bill recognizes the legitimacy of industrial hemp research conducted through state departments of agriculture and/or universities and institutions of higher education (as defined in section 101 of the Higher Education Act of 1965 ([20 U.S.C. 1001](#))) or a State department of agriculture. It does not, however, allow for the general commercial growing of hemp or industrial hemp in the United States and views both as Schedule I Controlled Substances under Title 21 of the Controlled Substances Act.

- You may wish to consider whether indoor or outdoor growing, or a combination of both, would be best suited to the type and volume of Crop required for your business needs.

All questions related to the Commercial Industrial Hemp Program or this Policy can be directed to the Department at 617-626-1700.

## **I. GENERAL INFORMATION**

### **A. Definitions**

As used in this Policy, the following words shall have the following meanings:

- Cannabidiol or CBD: One of the several compounds produced by cannabis plants that have medical effects.
- Cannabinoids: Any of several compounds produced by cannabis plants that have medical and psychotropic effects. This includes but is not limited to CBD and THC.
- Cannabinoid profile: The amounts expressed as the dry weight percentages, of delta-nine-tetrahydrocannabinol, Cannabidiol, tetrahydrocannabinolic acid and cannabidiolic acid in a Hemp product.
- Certificate: Documentation stating that the Department has sampled and tested the Crop and determined that the Crop demonstrates that it is at 0.3% THC or below.
- Commercial: Growing and/or Processing Industrial Hemp for sale. This excludes the growing of the Crop under the Agricultural Pilot Program.
- Crop: Hemp grown for the purposes of Industrial Hemp.
- Department: Massachusetts Department of Agricultural Resources.
- Extractor: A Processor that creates Industrial Hemp products from the Hemp plant. The Extractor will produce items such as fiber, seed, or oil from the plant.
- Grower: A person that cultivates Industrial Hemp.
- Harvest Form: A form required at least fourteen (14) days prior to harvest which includes location, variety and amount of Hemp produced, and an expected harvest or destruction date, whichever is applicable, and which allows the Department to coordinate with the Grower to schedule the required inspections and sampling required by M.G.L. c. 128, Section 122.
- 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. The Department will consider all permitted activities under this Policy as falling under the definition of “Industrial Hemp” in M.G.L. c. 128, Section 116. All references to “Hemp” or “Industrial Hemp” in this Policy shall mean Industrial Hemp.



- Manufacturer: A Processor that creates an end product that is packaged, labeled and ready for sale from Industrial Hemp including but not limited to cloth, infused products, building products, and edibles
- Person: A natural person, corporation, association, partnership or other legal entity.
- Planting Form: A form, required no later than ten (10) days after planting, that indicates the location, variety, source, intended use, and expected harvest date of the Crop along with an inventory of any remaining Hemp seeds that were not planted after acquisition, and associated plans for storage or transfer to another licensed Program participant.
- Processor: A person that converts Industrial Hemp into a marketable form, including through extraction or manufacturing.
- THC: Delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid.
- Volunteer Plant: Any cannabis plant which grows of its own accord from seeds or roots in the years following an intentionally planted cannabis crop. Volunteer plants are not intentionally planted.

## **B. Approved Uses for Industrial Hemp**

Pursuant to M.G.L. c. 128, Section 117(c), Industrial Hemp shall only be used for the following: (i) research purposes; and (ii) Commercial purposes considered reasonable by the commissioner. The Department considers the following uses for Industrial Hemp as reasonable:

- Fiber
- Seed
- Hemp seed oil
- Cannabidiol (CBD) that is derived from a Crop that is certified by the Department as Industrial Hemp
- Seed for cultivation
- Seed, seed meal, and seed oil for consumption
- Other reasonable Commercial purposes approved in advance by the Department as consistent with the purposes of M.G.L. c. 128, Sections 116 through 123.

If a Grower or Processor would like to use Industrial Hemp for a purpose not listed in this Policy, the Grower must submit a written request for that use to the Department prior to engaging in the proposed use. The Department will review the request and make a written determination as to whether the proposed use satisfies this Policy.

## **C. Application Requirements and Process for a Licensed Industrial Hemp Grower or Processor**

At this time, any Person proposing to engage in the planting, growing, harvesting, possession, processing or selling of Industrial Hemp must obtain a license issued by the Department, depending on the type of activity.

## Licenses

1. Licenses are required for both Growers and Processors prior to engaging in any activity authorized by M.G.L. c. 128, Sections 118 through 123 or this Policy. A Grower is defined as a Person who is cultivating the Crop and Processors are separated into two different categories: Extractor; and/or Manufacturer. Each applicant for a Commercial Industrial Hemp Grower or Processor license shall submit to the Department, in a form and manner determined by the Department, a complete application, which includes the following information:
  - i. Full name and address of applicant(s);
  - ii. Name and address of the Industrial Hemp operation;
  - iii. GPS coordinates provided in decimal degrees taken at the approximate center of the growing field or building entrance; A map of the growing or processing area illustrating clear boundaries;
  - iv. If Industrial Hemp is cultivated in a field, the area in acres of each field;
  - v. If Industrial Hemp is cultivated in a greenhouse or other building, the approximate dimension or square feet of the growing area
  - vi. Written consent by the applicant to the Department to conduct inspections, sampling, and testing under the terms of this policy;
  - vii. A non-refundable application fee in an amount which shall be established by the commissioner and;
  - viii. Any other information reasonably requested by the Department to fulfill its oversight obligations pursuant to M.G.L. c. 128, Sections 118 through 123.

In addition to the application form, each applicant shall submit a nonrefundable application fee. If the application fee does not accompany the application, the license application will be deemed incomplete and will not be processed until such time as the fee is received. If an application is approved, an additional license fee shall also be required prior to issuance of a Grower or Processor license. All licenses will expire on December 31<sup>st</sup> of the year it was issued.

Upon the approval of an application for a Grower or Processor license, the Department will notify the state police as well as local police in the municipality where the Crop will be grown. This notification will include the address and GPS coordinates of the Crop. The Department will also notify the chief administrative or executive officer<sup>3</sup> in the municipality where the Crop will be grown or processed in order to answer any questions or concern that they may have relative to the program. The licensee's address and security schematic or global positioning system coordinates that are provided to the chief administrator/executive officer and police shall not be subject to public disclosure as set forth in M.G.L. c 128, Section 118 and any transmittal of this information from the Department shall include the fact that it is exempt from public disclosure by statute.

2. Grower/Processor Dual License: A Person proposing to participate in growing and processing activities may apply for a Grower/Processor license and fill out the appropriate application form and submit the appropriate application and license fees.

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<sup>3</sup> "Chief administrative officer," when used in connection with the operation of municipal governments, shall include the mayor of a city and the board of selectmen in a town unless some other local office is designated to be the chief administrative officer under the provisions of a local charter... 'Chief executive officer', when used in connection with the operation of municipal governments shall include the mayor in a city and the board of selectmen in a town unless some other municipal office is designated to be the chief executive officer under the provisions of a local charter." *See* M.G.L. c. 4, Section 7.

Fee Schedule applicable to Grower and Processor Licenses<sup>4</sup>

<b>Industry</b>	<b>Type</b>	<b>Fee</b>
Grower	License Application Fee	\$100 non-refundable (annual)
Processor (Extractor, Manufacturer or both)	License Application Fee	\$100 non-refundable (annual)
Grower & Processor	License Application Fee	\$100 non-refundable (annual)
Grower	License	\$300 (annual)
Processor	License	\$300 (annual)
Grower & Processor	License	\$500 (annual)

3. Approval/Denial of license application; Renewal

Pursuant to M.G.L. c. 128, Section 119, the Department shall grant or deny a license application after reviewing and ensuring all statutory and Policy requirements have been met. Any applicant denied a license or license renewal may appeal no later than twenty one (21) days after receipt of the notice of the licensure action pursuant to M.G.L. c. 128, section 123. A request for an appeal should be submitted in writing to the Department. An adjudicatory hearing shall be conducted in accordance of M.G.L. c. 30A.

4. Approval

If approved, the Department may issue a license that will contain, at a minimum, the following:

- Full name and address of the applicant(s);
- Name and address of the Industrial Hemp operation;
- Department issued license number;
- Signature of Department representative;
- A written finding that the Grower/Processor has complied with M.G.L. c. 128, Section 116-123 and licensure is in the best interest of the Commonwealth; and
- Expiration date (all licenses will expire on December 31<sup>st</sup> of the year issued).

In the event of any material change to the information provided to the Department in the license application, including the growing location, the Licensee shall immediately notify the Department. Once notified, the Department will review the change to determine whether a new license application or an amendment to an existing license will be required. A licensee shall not implement any proposed changes without prior written approval from the Department.

5. Denial

Pursuant to M.G.L. c. 128, Section 119(b), the Department “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.” Good cause to deny an application may include, but not be limited to the following: failure to comply with this Policy or other statutes or regulations

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<sup>4</sup>These fees will be promulgated as part of 801 C.M.R. 4.00, in consultation with the Executive Office for Administration and Finance. Until further notice, applicants shall pay the fees listed above.

that govern the operation, problematic site location, or failure to provide additional information reasonably requested by the Department.

#### 6. Renewal

All Growers and Processors will be required to submit a license renewal application prior to the expiration date of their current license. In order to ensure that the Department has ample time to review and issue the renewal, renewal applications must be submitted to the Department between October 1<sup>st</sup> and November 15<sup>th</sup>. The Department will review all renewal applications in accordance, with M.G.L. c. 128, Sections 116 through 123 and all regulations, policies, and guidance that may be in effect at the time the renewal application is submitted. The Department will also evaluate the Grower or Processors previous participation with the Program. The Department may deny a renewal under the Section 119(b) if it determines the Grower or Processor have not complied with this Policy or other statutes or regulations that govern the operation.

## II. GROWER INFORMATION

### A. General Grower Information

#### 1. Seed Acquisition

Pursuant to M.G.L. c. 128, Section 117(b) (ii), a Grower shall only acquire Hemp seeds from a distributor that has been approved by the Department. The Department shall deem a distributor to be an “approved distributor” if it:

- Produces certified seeds that contain no more than 0.3% THC; and
- Provides documentation to the Grower showing THC levels are no more than 0.3% at the time the seed is received by the Grower.

An applicant for a Growers license will be required to certify that they agree to obtain seed with the necessary documentation and to provide this documentation to the Department prior to planting the Crop, or otherwise upon request.

The Department may require that a distributor provide additional information before the distributor is approved to distribute seeds in the Commonwealth

A Grower may not obtain seeds without first obtaining a license issued by the Department.

#### 2. Sign Posting

- a. A Grower must post a Department-approved sign at conspicuous points of entry to the area (greenhouse/field) where the Crop is grown. If there is more than one point of entry, a Grower must post a sign every 200 feet.
- b. Signs should be at least fourteen (14) inches by sixteen (16) inches with letters one (1) inch high and contain, at a minimum, the following:
  - i. Statement “*Crop grown in this field is Industrial Hemp that is licensed by the Massachusetts Department of Agricultural Resources pursuant to M.G.L. c. 128, Sections 116-123.*”;
  - ii. Department issued license number;
  - iii. Emergency contact information (Name and phone number); and
  - iv. Department contact information: (617) 626-1700.

#### 3. Reporting of planting information to the Department

- a. Upon the Grower receiving the seed, the Grower must provide the Department with a copy of the seed certification obtained from the seed distributor demonstrating that the seed is at or below the 0.3% THC level.
- b. No later than ten (10) days after planting of the Crop, the Grower must submit the Department approved Planting Form to the Department.

## **B. Inspection and Testing**

The Department is authorized to conduct inspections and testing to ensure compliance of all activities authorized under M.G.L. c. 128, Sections 116 through 123. This includes compliance with the Policy as well as testing to ensure that THC levels of the Crop meet the limitations set by M.G.L. c. 128, Section 116.<sup>5</sup>

### 1. Inspections

- a. All Growers are subject to testing and inspections of Crops. The Department will make every effort to provide advanced notice of testing and inspections to the Grower unless such notice would impact the Department's ability to conduct necessary enforcement activities authorized by M.G.L. c. 128, Sections 116 through 123. Inspections will occur at the following stages:
  - i. License application process: Prior to issuing a license, the Department may schedule a site visit to the property. The purpose of this visit will be to review information that was provided during the application process and to also ensure a better understanding of the growing operation.
  - ii. Routine Sampling: The Department will test the Crop in order to ensure that the Crop does not exceed the 0.3% THC level, as required by the M.G.L. c. 128, Section 116. Sampling shall be conducted for all licensees prior to harvest and with the Grower present. Routine sampling will be scheduled in advance with the Grower or an authorized representative of the Grower
  - iii. Record Inspections: The Department may conduct routine record inspections to ensure that the Grower is maintaining all necessary information. This may include plant nutrient applications (330 CMR 31.00) and any other record keeping required by law.
  - iv. Follow-up Inspection: The Department may conduct follow up inspections in order to determine if information provided by the Grower is true and accurate. This follow up may include planting and harvesting observations; sampling of the Crop; or additional record reviews. These inspections may be announced or unannounced.

### 2. Testing

- a. The Grower shall contact the Department no later than fourteen (14) days prior to harvest of the Crop or any portion of the Crop to schedule sampling for testing.
  - i. The Department will collect samples of the Crop and bring material to a Department-approved lab for testing. The Grower or an authorized representative of the Grower must be present during the sampling.
  - ii. The Grower shall harvest within ten (10) days of the collection of samples, unless otherwise authorized in writing by the Department. If harvesting after collection of samples but prior to receiving the sample results, the Grower must hold onto all harvested Crop material until a Certificate is issued from the Department.

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<sup>5</sup> M.G.L. c. 128, Section 122 provides that “[t]he 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.”

- iii. The Grower shall submit the Department approved Harvest Form to the Department within ten (10) days of harvest.
- iv. If sample results show THC levels do not exceed 0.3% then a Certificate will be issued by the Department to the Grower. Upon receipt of a Certificate, the Grower may move the Crop off the licensed site if needed for processing or sale.
- v. If sample results show THC levels exceed 0.3%, then the Crop is no longer considered Hemp and the Grower is prohibited from harvesting the Crop for Commercial purposes or engaging in any other activities under this Policy. The Grower may also be subject to civil or criminal liability under state and federal marijuana laws. The Grower may opt for a second round of sampling at his/her own cost. If the second round of sampling of the Crop show THC levels higher than 0.3%, then the Grower may opt for a third round of sampling of the Crop while still in the ground or harvested Crop at his/her own cost. In the event that testing results show THC levels higher than 0.3%, the Grower will be instructed to destroy the Crop. The Grower and Department will enter into a written agreement setting forth the terms of such resolution and the Department will be present for the harvest and disposal of any Crop that does not comply with M.G.L. c. 128, Sections 116 through 123.

### 3. Pesticide Use

The Department is charged with regulating pesticide use in the Commonwealth under M.G.L. c. 132B. The Department does not register any product that is not already registered by the United States Environmental Protection Agency (“EPA”). Currently, EPA does not allow the use of a registered pesticide on marijuana or hemp. There are products that are exempt from EPA registration as these products or the ingredients within them are considered minimum risk by EPA. Please refer to the following EPA website to find a list of products and active and inert ingredients that are exempt from registration:

<https://www.epa.gov/minimum-risk-pesticides>. The Department does not approve or provide for the registration of products for use on marijuana, including Hemp.

In the event a Grower uses a pesticide in violation of M.G.L. c. 132B or the regulations promulgated thereunder at 333 CMR 2.00 through 14.00, they may be subject to enforcement action by the Department.

### 4. Energy Efficiency and Environmental Standards

Until such time that the Department issues its own policy on energy efficiency and environmental standards, any indoor facility used for Industrial Hemp cultivation, including greenhouses, must comply with guidelines issued by the Cannabis Control Commission, in consultation with the working group established under section 78(b) of the Act. If the Commission has not adopted guidelines by the time a Grower license is approved by the Department, the Grower is responsible for reviewing and understanding any guidelines that are adopted after that time. The Grower must ensure compliance with such guidelines, or other Department policies, issued by the time of the Grower’s application for license renewal.

## **C. Post-Harvest Activities**

### 1. Transport of Crop

Only a Grower or Processor licensed by the Department may transport Industrial Hemp and no Crop, or any portion thereof, may be transported without a copy of the Certificate issued by the Department. The Licensee must ensure that this Certificate stays with the Crop at all times and accompanies all shipments of the Crop, including any portion, so that anyone coming into contact with the Crop has access to written documentation demonstrating that the Crop was grown in compliance with M.G.L. c. 128, Section 116 and this Policy.

2. End of the year reporting

The Grower shall submit an end-of-year report, on a form prescribed by the Department, with their renewal application or December 1<sup>st</sup> if not applying for renewal for the following year to the Department indicating, at a minimum, the following information:

- i. Variety Grown
- ii. Purpose of Crop
- iii. Harvested amount
- iv. End destination or use of Crop
- v. Volunteer Plants, if any occurred and how they were managed

3. Volunteer Plants

It shall be the responsibility of the license holder to monitor and destroy Volunteer Plants that are discovered outside of the licensed growing area.

### III. PROCESSOR INFORMATION

Processors are divided into two different categories based upon their activities:

- Extractor: Processor that removes Industrial Hemp from the plant. The Extractor will produce items such as fiber, seed, and oil from the plant.
- Manufacturer: Processor that creates an end product that is packaged, labeled and ready for sale from Industrial Hemp such as but not limited to cloth, infused products, building products, and edibles.

There are different duties and responsibilities as described below depending on the type of Processor activity. A Processor can be both an Extractor and a Manufacturer. A Processor may only take Industrial Hemp from a Massachusetts licensed Grower, unless otherwise authorized by federal law. The Department will require documentation demonstrating that such federal authorization is permitted.

1. Duties and Responsibilities of the Extractor:

- a. An Extractor may only receive Crops from a Massachusetts licensed Grower.
- b. The Crop must have the Department issued Certificate accompanying the Crop, which certifies that the Crop does not exceed 0.3% THC.
- c. At the time of the receipt, the Extractor must assign the Crop a lot number that corresponds with Grower information such as name, address, contact information and maintain records relative to the receipt of the Crop. The records shall include, but not be limited to:
  - i. Date of receipt
  - ii. quantity received
  - iii. Grower information, including name, address of fields that were grown on, license information and contact information.
  - iv. Copy of the Certificate
  - v. Lot number assigned by Extractor
- d. An Extractor shall keep records for each batch processed. The records shall be kept for a minimum of three (3) years and shall include, but not be limited to:
  - i. Date of extraction
  - ii. Batch number, including the lot number
  - iii. Type of extraction method
  - iv. Amount extracted
  - v. What was extracted (grain, seed, fiber, oil, CBD)
  - vi. Lab testing results

## 2. Testing Requirements for the Extractor

- a. If the Crop will be used for human consumption or absorption (including but not limited to, inhaling, eating, drinking, swallowing or topical application), the finished extraction must be tested at the times required by and for the following in accordance with Department of Public Health (“DPH”) testing protocol (“Protocol”)<sup>6,7</sup>:
  - i. Cannabinoid profile
  - ii. Solvents
  - iii. Pesticides
  - iv. Metals
- b. All testing is the responsibility of the Extractor and must be done at a lab that has been registered by DPH to perform such testing<sup>8</sup>.
- c. All lab results must be sent to the Manufacturer with the finished extracted product.
- d. The Extractor shall send all lab reports to the Department within seven (7) business days of receipt of the results.
- e. If test results for the finished extraction exceed the limits set forth in the Protocol, then the finished extraction shall not be used in any product for human consumption or absorption. The Extractor therefore shall not sell the finished extraction to any Manufacturer or any other entity, or otherwise sell or use the extraction for human consumption or absorption. Instead, the Extractor may either destroy the product or work with the Department to find an alternate use for the finished extraction. Should an alternate use be found, the Extractor will enter into a written agreement with the Department setting forth the terms of any such resolution.

## 3. Duties and Responsibilities of the Manufacturer

- a. The Manufacturer shall only receive extracted product (such as oil, seed, and fiber) from a Massachusetts licensed Extractor
- b. At the time of the receipt, the Manufacturer shall assign the extracted product a lot number and maintain records relative to the receipt of the extracted product. The records shall be kept for a minimum of three (3) years and include, but not be limited to:
  - i. Date of receipt
  - ii. Amount received
  - iii. Extractor or Grower information including name, license number, and contact information.
  - iv. Lab results indicating cannabinoid profile, solvents, pesticides and metals
  - v. Extractor assigned batch and lot number
- c. When the Manufacturer produces an end product, records shall be kept for a minimum for three (3) years for each batch of the end product. The records shall include, but not be limited to:
  - i. Date of production
  - ii. Batch number (must include lot number)

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<sup>6</sup><https://www.mass.gov/files/documents/2017/12/20/105cmr725.pdf>

<sup>7</sup><https://www.mass.gov/service-details/medical-use-of-marijuana-program-product-testing>

<sup>8</sup><https://www.mass.gov/files/documents/2017/12/20/mmj-laboratory-registration-policy.pdf>



- iii. Amount produced
  - iv. Name of product
4. Labeling Requirements for the Manufacturer
- a. Manufacturers shall ensure that any products that will be used for human consumption and absorption (including but not limited to inhaling, eating, drinking, swallowing or topical application), are labeled in clear, legible wording no less than 1/16 inch in size on each container.
  - b. Labels shall be firmly affixed and shall include the following:
    - i. Manufacturer name, license number and address
    - ii. Cannabinoid profile (Must include THC and CBD concentrations, if any)
    - iii. Batch number
    - iv. Statement “*This product is derived from Industrial Hemp.*”
    - v. Statement “*This product has not been analyzed or approved by the FDA.*”
    - vi. Statement “*This product derived from Industrial Hemp has not been tested or approved by the Massachusetts Department of Agricultural Resources.*”

## IV. Enforcement

The Department will make every effort to work with Growers and Processors to provide compliance assistance. However, it is the responsibility of the Grower or Processor to review and understand M.G.L. c. 128, Sections 116 through 123 and this Policy. Failure to comply with the Department’s requirements under this Policy may result in revocation or denial of a license. In addition, failure to comply with the requirements may result in the issuance of fines. An entity has the right to appeal any enforcement action under M.G.L. c. 128, Section 123.

Pursuant to M.G.L. c. 128, Section 123, “[t]he 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.”

The Department will determine the amount of any fines imposed based on the nature of the violation, and considering all relevant factors including the ability for the violation to be corrected, severity of the violation, willfulness, impact to public health and safety.