



TEXAS DEPARTMENT OF AGRICULTURE COMMISSIONER SID MILLER

January 7, 2020

The Honorable Sonny Perdue
Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Avenue SW
Washington, DC 20250

Dear Secretary Perdue:

The Texas Department of Agriculture (TDA) previously submitted a state plan to the United States Department of Agriculture (USDA) on December 2, 2019. We received comments from your team by email on December 23, 2019, and we have made the requested changes to the proposed Texas rules (amended proposed rules).

Specifically, the "signatories for its license" language has been deleted in amended proposed rule §24.11. Language requiring a producer to report to the Farm Service Agency any changes in a lot or facility where hemp is grown has been added to amended proposed rule §24.13(k). Language requiring a State Laboratory to register with the Federal Drug Enforcement Administration has been added to amended proposed rule §24.24(c)(4). Additionally, TDA will enforce the 15 day before harvest sampling requirement, as stated in amended proposed rule §24.21 and in accordance with federal rules and guidelines. Although the 15 day requirement conflicts with the "20 day" language in §122.154 and §122.201 of Texas House Bill 1325 (HB 1325), §122.004 of HB 1325 invalidates a provision of HB 1325 if USDA "determines that the provision...conflicts with 7 U.S.C. Chapter 38, Subchapter VII, and prevents the approval of the state plan submitted under Chapter 121." For this reason, TDA assures that it can and will enforce the 15 day requirement in accordance with federal rules and guidelines.

We have also made other minor changes to the proposed Texas rules to increase efficiencies that do not impact upon the requirements of the 2018 Farm Bill, or the proposed interim USDA hemp rules. TDA now resubmits the amended Texas state plan. This updated version (*see attached*) includes HB 1325 and TDA's amended proposed rules for TDA's Hemp Program. TDA's amended proposed rules incorporate the federal rules and guidelines, and expand on key provisions in HB 1325.

(1) Maintain Relevant Information Regarding Land.

The following sections demonstrate the state's plan *'to maintain relevant information*

regarding land on which hemp is produced in the State ... including a legal description of the land, for a period of not less than 3 calendar years[.]” See Sec. 297B(a)(2)(A)(i).

See Texas Agriculture Code Chapter 122. Cultivation of Hemp.

Subchapter C. Hemp Grower’s License

See §122.101. License Required; Exceptions.

See §122.103. Application; Issuance.

See TDA’s Proposed Rules Subchapter A. General Provisions.

See §24.3. Records Retention.

See TDA’s Proposed Rules Subchapter C. Licensing

See §24.8. License Application.

See §24.9. Ineligibility for a License.

See §24.10. Criteria for Evaluation of License Application.

See §24.11. Criminal Background Check.

See §24.12. Administrative Appeal from Denial of License Application.

See §24.13. Terms and Conditions for License Holders.

See §24.14. Restrictions for License Holders.

See §24.15. License Holders who Transplant.

See §24.16. Facility Addition or Modification.

See §24.17. Lot Permit.

See §24.18. Reporting and Recordkeeping.

See §24.19. Registration of Processors.

(2) Testing Procedures.

The following sections and procedures demonstrate the state’s “*procedure[s] for testing, using postdecarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of hemp produced in the State ...*” See Sec. 297B(a)(2)(A)(ii).

See Texas Agriculture Code Chapter 122. Cultivation of Hemp. Subchapter D. Testing.

See §122.151. Testing Laboratories.

See §122.152. Registration of Independent Testing Laboratories.

See §122.153. Preharvest Testing Required.

See §122.154. Preharvest Sample Collection.

See §122.156. Shipping Documentation for Testing Samples.

See §122.157. False Laboratory Report; Criminal Offense.

See Texas Health & Safety Code Chapter 443. Manufacture, Distribution, and Sale of Consumable Hemp Products. Subchapter D. Testing of Consumable Hemp Products.

See §443.151. Testing Required.

See §443.152. Provisions Related to Testing.

See TDA’s Proposed Rules Subchapter E. Testing.

See §24.24. Testing Laboratory.

See §24.25. Standards for Testing.
See §24.26. Methods for Testing.
See §24.27. Testing Procedure.
See §24.28. Reporting Test Results.
See §24.29. Retest.

See TDA Testing Procedure.

(3) Disposal of Plants and Products.

The following sections demonstrate the state's "*procedure for the effective disposal of plants, whether growing or not, that are produced in violation of this subtitle, and products derived from those plants[.]*" *See* Sec. 297B(a)(2)(A)(iii)(I)-(II).

See Texas Agriculture Code Chapter 122. Cultivation of Hemp. Subchapter E. Harvest and Use or Disposal of Plants.
See §122.202. Use or Disposal of Harvested Plants.

See Texas Health & Safety Code Chapter 443. Manufacture, Distribution, and Sale of Consumable Hemp Products. Subchapter B. Powers and Duties.
See §443.051. Rulemaking Authority of Executive Commissioner.

See TDA's Proposed Rules Subchapter F. Disposal.
See §24.30. Notice Procedures.
See §24.31. Non-Compliant Cannabis Plants.

See TDA Disposal Procedure.

(4) Enforcement Procedures for Violations of the Hemp Program.

The following sections demonstrate "*procedure[s] to comply with the enforcement procedures under subsection (e)...*" regarding negligent and other violations by hemp producers in Texas. *See* 297B(a)(2)(A)(iv).

See Texas Agriculture Code Chapter 12. Powers and Duties.
See §12.020. Administrative Penalties.

See Texas Agriculture Code Chapter 122. Cultivation of Hemp.
See §122.055. Shipping Certificate or Cargo Manifest.
See §122.102. License Ineligibility.
See §122.105. Revocation.
See §122.157. False Laboratory Report; Criminal Offense.
See §122.359. Civil Penalty.
See §122.360. Criminal Offense.

See Texas Agriculture Code Chapter 122. Cultivation of Hemp.

Subchapter I. Enforcement; Penalties.

See §122.401. Penalty Schedule.

See §122.402. Administrative Penalty.

See §122.403. Negligent Violations by License Holder.

See §122.404. Other Violations by License Holder.

See TDA's Proposed Rules Subchapter G. Enforcement.

See §24.32. Complaints.

See §24.33. Negligent Violations.

See §24.34. Violations with a Culpable Mental State Greater than Negligence.

See §24.35. License Suspension.

See §24.36. License Revocation.

See §24.37. Penalties.

See §24.38. Appeals.

(5) Annual Inspections of Hemp Producers.

The following sections and procedures demonstrate “*a procedure for conducting annual inspections of, at a minimum, a random sample of hemp producers to verify that hemp is not produced in violation of this subtitle[.]*” *See* 297B(a)(2)(A)(v).

See Texas Agriculture Code Chapter 122. Cultivation of Hemp. Subchapter B. Powers and Duties of Department.

See §122.053. Inspections.

See §122.055. Shipping Certificate or Cargo Manifest.

See §122.358. Powers and Duties of Peace Officers.

See TDA's Proposed Rules Subchapter D. Inspections.

See §24.20. Site Access for Representatives of the Department
and Law Enforcement Agencies.

See §24.21. Sampling and Collection.

See §24.22. Lot Report.

See §24.23. Other Activities.

See TDA Sampling and Collection Procedure.

(6) Information Sharing for Law Enforcement and the Secretary of Agriculture.

The following sections include “*a procedure for submitting the information described in section 297C(d)(2), as applicable, to the Secretary not more than 30 days after the date on which the information is received,*” which includes the hemp producers contact information, a legal description of the land, and the license status and any changes in that status. *See* 297B(a)(2)(A)(vi).

See Texas Agriculture Code Chapter 121. State Hemp Production Plan. Subchapter F.

Hemp.

See §121.004. Rules.

See TDA's Proposed Rules Subchapter A. General Provisions.

See §24.2. Information Submitted to the United States Secretary of Agriculture

See TDA Information Gathering and Sharing Procedure

(7) State Certification of Resources and Personnel Necessary to Administer the State Hemp Program.

See attached document titled "Hemp Program Certification by Commissioner Sid Miller, Texas Department of Agriculture," dated January 7, 2020. See 297B(a)(2)(A)(vii).

(8) Other Procedures.

The following sections include "other procedures consistent with the 2018 Farm Bill", as stated in section 297B(a)(2)(B), which includes definition of terms, fee schedules, transport manifests, hemp seed, and academic hemp related research.

See TDA's Proposed Rules Subchapter A. General Provisions

See §24.1. Definitions.

See §24.4. Information Submitted to the Department Subject to Open Records Act.

See TDA's Proposed Rules Subchapter B. Fees.

See §24.5. Schedule of Licensing and Registration Fees.

See §24.6. Schedule of Sampling, Collection, and Testing Fees.

See §24.7. Other Fees.

See TDA's Proposed Rules Subchapter H. Transportation

See §24.39. Transport Manifest Required.

See §24.40. Transport Manifest for Test Samples.

See §24.41. Transport of Pests Prohibited.

See §24.42. Transplants Originating Outside the State of Texas Prohibited.

See §24.43. Mixed Cargo Prohibited.

See TDA's Proposed Rules Subchapter I. Seed

See §24.44. Certified or Approved Hemp Seed.

See §24.45. License Required to Sell, Possess, Hold or Purchase Hemp Seed.

See §24.46. Hemp Seed Quality and Labeling Requirements.

See §24.47. Hemp Seed Recordkeeping.

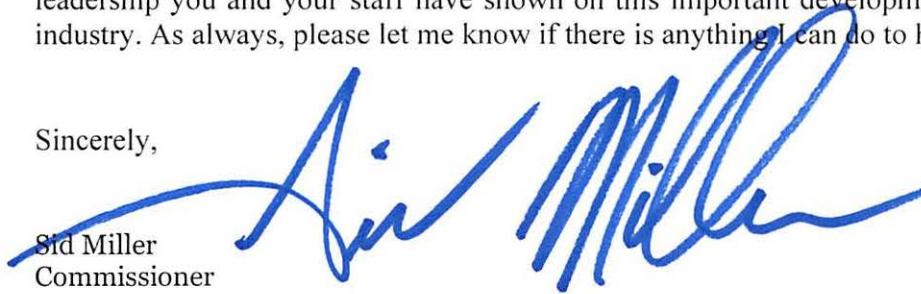
See §24.48. Certification and Approval of Hemp Seed.

See TDA's Proposed Rules Subchapter J. Agricultural or Academic Hemp Related Research

See §24.49. Hemp Research License.
See §24.50. Hemp Research Plan.

For your convenience, TDA completed the “USDA Checklist for Approving State and Tribal Hemp Plans” (*see attached*), and cited the applicable sections of the Texas Agriculture Code and TDA amended proposed rules that satisfy the federal requirements. Thank you for the leadership you and your staff have shown on this important development for the agricultural industry. As always, please let me know if there is anything I can do to help.

Sincerely,



Sid Miller
Commissioner

Attachments:

Hemp Program Certification
USDA Checklist for Approving State and Tribal Hemp Plans
HB 1325
TDA amended Proposed Rules
TDA Information Gathering and Sharing Procedure
TDA Sampling and Collection Procedure
TDA Testing Procedure
TDA Disposal Procedure

Cc: Honorable Greg
Abbott Honorable
Ken Paxton

HEMP PROGRAM CERTIFICATION

Commissioner Sid Miller, Texas Department of Agriculture

Date: January 7, 2020

Pursuant to Section 297B(a)(2)(A)(vii) of the Agricultural Improvement Act of 2018, I certify that the Texas Department of Agriculture has the resources and personnel necessary to carry out each of the practices and procedures identified in Section 297B(a)(2) of the Act.

Respectfully,

A handwritten signature in blue ink, appearing to read "Sid Miller", is written over the printed name and title.

Sid Miller
Commisioner

1 AN ACT
2 relating to the production and regulation of hemp; requiring
3 occupational licenses; authorizing fees; creating criminal
4 offenses; providing civil and administrative penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 12.020(c), Agriculture Code, is amended
7 to read as follows:

8 (c) The provisions of law subject to this section and the
9 applicable penalty amounts are as follows:

10	Provision	Amount of Penalty
11		
12		
13	Chapters 13, 14A, 17, 18, 19, 41,	
14	46, 61, 72, 73, 74, 76, 94, 95, 101,	
15	102, 103, <u>122</u> , 125, 132,	
16	and 134	not more than \$5,000
17		
18		
19		
20	Subchapters A, B, and C, Chapter 71	not more than \$5,000
21	Chapter 14	not more than \$10,000
22	Chapter 1951, Occupations Code	not more than \$5,000
23	Chapter 153, Natural Resources	
24	Code	not more than \$5,000
25	Section 91.009	not more than \$5,000.

26 SECTION 2. Title 5, Agriculture Code, is amended by adding
27 Subtitle F to read as follows:

28 SUBTITLE F. HEMP

29 CHAPTER 121. STATE HEMP PRODUCTION PLAN

30 Sec. 121.001. DEFINITION. In this chapter, "hemp" means
31 the plant Cannabis sativa L. and any part of that plant, including
32 the seeds of the plant and all derivatives, extracts, cannabinoids,

1 isomers, acids, salts, and salts of isomers, whether growing or
2 not, with a delta-9 tetrahydrocannabinol concentration of not more
3 than 0.3 percent on a dry weight basis.

4 Sec. 121.002. LEGISLATIVE INTENT. It is the intent of the
5 legislature that this state have primary regulatory authority over
6 the production of hemp in this state.

7 Sec. 121.003. STATE PLAN. (a) The department, after
8 consulting with the governor and attorney general, shall develop a
9 state plan to monitor and regulate the production of hemp in this
10 state. The plan must comply with:

11 (1) 7 U.S.C. Section 1639p;

12 (2) Chapter 122; and

13 (3) Chapter 443, Health and Safety Code.

14 (b) The department shall submit the plan developed under
15 Subsection (a) to the secretary of the United States Department of
16 Agriculture as this state's plan for monitoring and regulating the
17 production of hemp as provided by 7 U.S.C. Section 1639p.

18 (c) If a plan submitted under Subsection (b) is disapproved
19 by the secretary of the United States Department of Agriculture,
20 the department, after consulting with the governor and attorney
21 general, shall amend the plan as needed to obtain approval and
22 submit an amended plan.

23 (d) The department shall, as necessary, seek technical
24 assistance from the secretary of the United States Department of
25 Agriculture and other state agencies in developing the plan under
26 this section.

27 Sec. 121.004. RULES. The department may adopt any rules

1 necessary to implement and administer the state plan under Section
2 121.003.

3 CHAPTER 122. CULTIVATION OF HEMP

4 SUBCHAPTER A. GENERAL PROVISIONS

5 Sec. 122.001. DEFINITIONS. In this chapter:

6 (1) "Cultivate" means to plant, irrigate, cultivate,
7 or harvest a hemp plant.

8 (2) "Governing person" has the meaning assigned by
9 Section 1.002, Business Organizations Code.

10 (3) "Handle" means to possess or store a hemp plant:

11 (A) on premises owned, operated, or controlled by
12 a license holder for any period of time; or

13 (B) in a vehicle for any period of time other than
14 during the actual transport of the plant from a premises owned,
15 operated, or controlled by a license holder to:

16 (i) a premises owned, operated, or
17 controlled by another license holder; or

18 (ii) a person licensed under Chapter 443,
19 Health and Safety Code.

20 (4) "Hemp" has the meaning assigned by Section
21 121.001.

22 (5) "Institution of higher education" has the meaning
23 assigned by Section 61.003, Education Code.

24 (6) "License" means a hemp grower's license issued
25 under Subchapter C.

26 (7) "License holder" means an individual or business
27 entity holding a license.

1 (8) "Nonconsumable hemp product" means a product that
2 contains hemp, other than a consumable hemp product as defined by
3 Section 443.001, Health and Safety Code. The term includes cloth,
4 cordage, fiber, fuel, paint, paper, particleboard, and plastics
5 derived from hemp.

6 (9) "Plot" means a contiguous area in a field,
7 greenhouse, or indoor growing structure containing the same variety
8 or cultivar of hemp throughout the area.

9 Sec. 122.002. LOCAL REGULATION PROHIBITED. A municipality,
10 county, or other political subdivision of this state may not enact,
11 adopt, or enforce a rule, ordinance, order, resolution, or other
12 regulation that prohibits the cultivation, handling,
13 transportation, or sale of hemp as authorized by this chapter.

14 Sec. 122.003. STATE HEMP PRODUCTION ACCOUNT. (a) The state
15 hemp production account is an account in the general revenue fund
16 administered by the department.

17 (b) The account consists of:

18 (1) appropriations of money to the account by the
19 legislature;

20 (2) public or private gifts, grants, or donations,
21 including federal funds, received for the account;

22 (3) fees received under Section 122.052;

23 (4) interest and income earned on the investment of
24 money in the account;

25 (5) penalties collected under this chapter other than
26 a civil penalty collected under Subchapter H; and

27 (6) funds from any other source deposited in the

1 account.

2 (c) The department may accept appropriations and gifts,
3 grants, or donations from any source to administer and enforce this
4 subtitle. Money received under this subsection shall be deposited
5 in the account.

6 (d) Money in the account may be appropriated only to the
7 department for the administration and enforcement of this subtitle.

8 Sec. 122.004. SEVERABILITY. (a) A provision of this
9 chapter or its application to any person or circumstance is invalid
10 if the secretary of the United States Department of Agriculture
11 determines that the provision or application conflicts with 7
12 U.S.C. Chapter 38, Subchapter VII, and prevents the approval of the
13 state plan submitted under Chapter 121.

14 (b) The invalidity of a provision or application under
15 Subsection (a) does not affect the other provisions or applications
16 of this chapter that can be given effect without the invalid
17 provision or application, and to this end the provisions of this
18 chapter are declared to be severable.

19 SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT

20 Sec. 122.051. DEPARTMENT RULES AND PROCEDURES. (a) The
21 department shall adopt rules and procedures necessary to implement,
22 administer, and enforce this chapter.

23 (b) Rules adopted under Subsection (a) must:

24 (1) prescribe sampling, inspection, and testing
25 procedures, including standards and procedures for the calibration
26 of laboratory equipment, to ensure that the delta-9
27 tetrahydrocannabinol concentration of hemp plants cultivated in

1 this state is not more than 0.3 percent on a dry weight basis; and
2 (2) provide due process consistent with Chapter 2001,
3 Government Code, including an appeals process, to protect license
4 holders from the consequences of imperfect test results.

5 Sec. 122.052. FEES. (a) The department shall set and
6 collect:

7 (1) an application fee for an initial license in an
8 amount not to exceed \$100;

9 (2) a license renewal fee in an amount not to exceed
10 \$100;

11 (3) a participation fee for each location described by
12 Section 122.103(a)(1) and each location added after the application
13 is submitted in an amount not to exceed \$100;

14 (4) a site modification fee for each change to a
15 location described by Section 122.103(a)(1) in an amount not to
16 exceed \$500; and

17 (5) a collection and testing fee for each preharvest
18 test or postharvest test if performed by the department in an amount
19 not to exceed \$300.

20 (b) A fee set by the department under this section may not
21 exceed the amount necessary to administer this chapter. The
22 comptroller may authorize the department to collect a fee described
23 by Subsection (a) in an amount greater than the maximum amount
24 provided by that subsection if necessary to cover the department's
25 costs of administering this chapter.

26 (c) The department may not set or collect a fee associated
27 with the cultivation of hemp that is not listed in Subsection (a),

1 other than:

2 (1) a fee for the organic certification of hemp under
3 Chapter 18 or for participation in another optional marketing
4 program; or

5 (2) a fee for the certification of seed or plants under
6 Chapter 62.

7 (d) Fees collected by the department under this chapter are
8 not refundable and may be appropriated only to the department for
9 the purpose of administering this chapter.

10 Sec. 122.053. INSPECTIONS. (a) The department may
11 randomly inspect land where hemp is grown to determine whether hemp
12 is being cultivated in compliance with this chapter.

13 (b) The department may enter onto land described by Section
14 122.103(a)(1), conduct inspections, and collect and test plant
15 samples.

16 (c) Using participation fees set and collected under
17 Section 122.052(a)(3), the department shall pay the cost of
18 inspections under this section.

19 (d) The Department of Public Safety may inspect, collect
20 samples from, or test plants from any portion of a plot to ensure
21 compliance with this chapter. A license holder shall allow the
22 Department of Public Safety access to the plot and the property on
23 which the plot is located for purposes of this subsection.

24 (e) If, after conducting an inspection or performing
25 testing under this section, the department or the Department of
26 Public Safety determines any portion of a plot is not compliant with
27 this chapter, the department or the Department of Public Safety may

1 report the license holder to the other department or to the attorney
2 general.

3 Sec. 122.054. SAMPLE COLLECTION AND TESTING. The
4 department may collect samples and perform testing or contract with
5 a laboratory for the performance of that collection and testing on
6 behalf of the department. A test performed by a laboratory on behalf
7 of the department is considered to be performed by the department
8 for purposes of this chapter.

9 Sec. 122.055. SHIPPING CERTIFICATE OR CARGO MANIFEST. (a)
10 The department shall develop a shipping certificate or cargo
11 manifest which the department shall issue to a license holder in
12 connection with the transportation of a shipment of hemp plant
13 material originating in this state, other than sterilized seeds
14 that are incapable of beginning germination.

15 (b) A certificate or manifest developed under Subsection
16 (a) must include a unique identifying number for the shipment and
17 the department's contact information to allow law enforcement
18 during a roadside inspection of a motor vehicle transporting the
19 shipment to verify that the shipment consists of hemp cultivated in
20 compliance with this chapter.

21 (c) The department may coordinate with the Department of
22 Public Safety to determine whether information included on a
23 certificate or manifest issued under Subsection (a), including the
24 unique identifying number, may be made available to law enforcement
25 personnel through the Texas Law Enforcement Telecommunications
26 System or a successor system of telecommunication used by law
27 enforcement agencies and operated by the Department of Public

1 Safety.

2 (d) A person commits an offense if the person, with intent
3 to deceive law enforcement, forges, falsifies, or alters a shipping
4 certificate or cargo manifest issued under this section. An
5 offense under this subsection is a third degree felony.

6 SUBCHAPTER C. HEMP GROWER'S LICENSE

7 Sec. 122.101. LICENSE REQUIRED; EXCEPTIONS. (a) Except as
8 provided by Subsection (b), a person or the person's agent may not
9 cultivate or handle hemp in this state or transport hemp outside of
10 this state unless the person holds a license under this subchapter.

11 (b) A person is not required to hold a license under this
12 subchapter to manufacture a consumable hemp product in accordance
13 with Subtitle A, Title 6, Health and Safety Code.

14 Sec. 122.102. LICENSE INELIGIBILITY. (a) An individual
15 who is or has been convicted of a felony relating to a controlled
16 substance under federal law or the law of any state may not, before
17 the 10th anniversary of the date of the conviction:

18 (1) hold a license under this subchapter; or

19 (2) be a governing person of a business entity that
20 holds a license under this subchapter.

21 (b) The department may not issue a license under this
22 subchapter to a person who materially falsifies any information
23 contained in an application submitted to the department under
24 Section 122.103.

25 Sec. 122.103. APPLICATION; ISSUANCE. (a) A person may
26 apply for a license under this subchapter by submitting an
27 application to the department on a form and in the manner prescribed

1 by the department. The application must be accompanied by:

2 (1) a legal description of each location where the
3 applicant intends to cultivate or handle hemp and the global
4 positioning system coordinates for the perimeter of each location;

5 (2) written consent from the applicant or the property
6 owner if the applicant is not the property owner allowing the
7 department, the Department of Public Safety, and any other state or
8 local law enforcement agency to enter onto all premises where hemp
9 is cultivated or handled to conduct a physical inspection or to
10 ensure compliance with this chapter and rules adopted under this
11 chapter;

12 (3) the application fee; and

13 (4) any other information required by department rule.

14 (b) Except as provided by Subsection (c), the department
15 shall issue a license to a qualified applicant not later than the
16 60th day after the date the department receives the completed
17 application and the required application fees.

18 (c) A qualified applicant who along with the application
19 submits proof to the department that the applicant holds a license
20 under Chapter 487, Health and Safety Code, is not required to pay an
21 application fee, and the department shall issue the license to the
22 applicant within the time prescribed by Subsection (b).

23 Sec. 122.104. TERM; RENEWAL. (a) A license is valid for
24 one year and may be renewed as provided by this section.

25 (b) The department shall renew a license if the license
26 holder:

27 (1) is not ineligible to hold the license under

1 Section 122.102;

2 (2) submits to the department the license renewal fee;

3 and

4 (3) does not owe any outstanding fee described by

5 Section 122.052.

6 Sec. 122.105. REVOCATION. The department shall revoke a

7 license if the license holder is convicted of a felony relating to a

8 controlled substance under federal law or the law of any state.

9 SUBCHAPTER D. TESTING

10 Sec. 122.151. TESTING LABORATORIES. (a) Subject to

11 Subsection (b), testing under this subchapter or Section 122.053

12 must be performed by:

13 (1) the department;

14 (2) an institution of higher education; or

15 (3) an independent testing laboratory registered

16 under Section 122.152.

17 (b) To perform testing under this chapter, a laboratory

18 described by Subsection (a) must be accredited by an independent

19 accreditation body in accordance with International Organization

20 for Standardization ISO/IEC 17025 or a comparable or successor

21 standard.

22 (c) A license holder shall select a laboratory described by

23 Subsection (a) to perform preharvest or postharvest testing of a

24 sample taken from the license holder's plot. A license holder may

25 not select an independent testing laboratory under Subsection

26 (a)(3) unless the license holder has:

27 (1) no ownership interest in the laboratory; or

1 (2) less than a 10 percent ownership interest in the
2 laboratory if the laboratory is a publicly traded company.

3 (d) A license holder must pay the costs of preharvest or
4 postharvest sample collection and testing in the amount prescribed
5 by the laboratory selected by the license holder.

6 (e) The department shall recognize and accept the results of
7 a test performed by an institution of higher education or an
8 independent testing laboratory described by Subsection (a). The
9 department shall require that a copy of the test results be sent by
10 the institution of higher education or independent testing
11 laboratory directly to the department and the license holder.

12 (f) The department shall notify the license holder of the
13 results of the test not later than the 14th day after the date the
14 sample was collected under Section 122.154 or the date the
15 department receives test results under Subsection (e).

16 Sec. 122.152. REGISTRATION OF INDEPENDENT TESTING
17 LABORATORIES. (a) The department shall register independent
18 testing laboratories authorized to conduct testing under Section
19 122.151(a)(3).

20 (b) A laboratory is eligible for registration if the
21 laboratory submits to the department proof of accreditation by an
22 independent accreditation body in accordance with International
23 Organization for Standardization ISO/IEC 17025 or a comparable or
24 successor standard and any required fee.

25 (c) The department shall annually prepare a registry of all
26 independent testing laboratories registered by the department and
27 make the registry available to license holders.

1 (d) The department may charge a registration fee to recover
2 the costs of administering this section.

3 Sec. 122.153. PREHARVEST TESTING REQUIRED. (a) A license
4 holder may not harvest a hemp plant or plant intended or believed to
5 be hemp unless a representative sample of plants from the plot where
6 the plant is grown is collected before harvest and subsequently
7 tested using post-decarboxylation, high-performance liquid
8 chromatography, or another similarly reliable method to determine
9 the delta-9 tetrahydrocannabinol concentration of the sample in the
10 manner required by this subchapter.

11 (b) For purposes of Subsection (a), a representative sample
12 of plants from a plot consists of cuttings taken from at least five
13 plants throughout the plot. The department by rule shall prescribe
14 the minimum distance between plants from which cuttings may be
15 taken based on the size of the plot.

16 (c) A laboratory performing preharvest testing under this
17 section shall homogenize all the cuttings in the sample and test the
18 delta-9 tetrahydrocannabinol concentration of a random sample of
19 the homogenized material.

20 (d) This section does not prohibit a license holder from
21 harvesting plants immediately after a preharvest sample is
22 collected.

23 Sec. 122.154. PREHARVEST SAMPLE COLLECTION. (a) A license
24 holder shall notify the department at least 20 days before the date
25 the license holder expects to harvest plants from a plot in the
26 manner prescribed by department rule.

27 (b) A sample must be collected by the department or another

1 entity described by Section 122.151(a) for purposes of preharvest
2 testing under Section 122.153.

3 (c) The department by rule may prescribe reasonable
4 procedures for submitting a preharvest sample collected under this
5 section to a testing laboratory selected by the license holder.

6 Sec. 122.155. OPTIONAL POSTHARVEST TESTING. (a) The
7 department by rule shall allow a license holder to have a single
8 postharvest test performed on a representative sample of plants
9 from a plot if the results of the preharvest test representing the
10 plot show a delta-9 tetrahydrocannabinol concentration of more than
11 0.3 percent on a dry weight basis.

12 (b) The department by rule shall prescribe the requirements
13 for a representative sample and for sample collection under this
14 section.

15 (c) If a license holder fails to request postharvest testing
16 on or before the 15th day after the date the license holder is
17 notified of the results of the preharvest test, the results of the
18 preharvest test are final.

19 Sec. 122.156. SHIPPING DOCUMENTATION FOR TEST SAMPLES. The
20 department shall issue documentation to an entity authorized to
21 collect samples of plants for testing that authorizes the
22 transportation of those samples from the place of collection to a
23 testing laboratory described by Section 122.151(a).

24 Sec. 122.157. FALSE LABORATORY REPORT; CRIMINAL OFFENSE.
25 (a) A person commits an offense if the person, with the intent to
26 deceive, forges, falsifies, or alters the results of a laboratory
27 test required or authorized under this chapter.

1 (b) An offense under Subsection (a) is a third degree
2 felony.

3 SUBCHAPTER E. HARVEST AND USE OR DISPOSAL OF PLANTS

4 Sec. 122.201. HARVEST. (a) A license holder shall harvest
5 the plants from a plot not later than the 20th day after the date a
6 preharvest sample is collected under Section 122.154 unless field
7 conditions delay harvesting or the department authorizes the
8 license holder to delay harvesting. This subsection does not
9 prohibit the license holder from harvesting the plants immediately
10 after the preharvest sample is collected.

11 (b) A license holder may not sell or use harvested plants
12 before the results of a preharvest and, if applicable, postharvest
13 test performed on a sample representing the plants are received. If
14 the test results are not received before the plants are harvested,
15 the license holder shall dry and store the harvested plants until
16 the results are received.

17 (c) A license holder may not commingle harvested plants
18 represented by one sample with plants represented by another sample
19 until the results of the tests are received.

20 Sec. 122.202. USE OR DISPOSAL OF HARVESTED PLANTS. (a) If
21 the results of a preharvest or postharvest test performed on a
22 sample show a delta-9 tetrahydrocannabinol concentration of not
23 more than 0.3 percent on a dry weight basis, the license holder may
24 sell or use the plants represented by the sample for any purpose
25 allowed by law.

26 (b) If the results of a preharvest and, if applicable,
27 postharvest test performed on a sample show a delta-9

1 tetrahydrocannabinol concentration of more than 0.3 percent on a
2 dry weight basis:

3 (1) the license holder shall dispose of or destroy all
4 plants represented by the sample:

5 (A) in the manner prescribed by federal law; or

6 (B) in a manner approved by the department that
7 does not conflict with federal law; or

8 (2) if the department determines the plants
9 represented by the sample reached that concentration solely as a
10 result of negligence, the license holder is subject to Section
11 122.403(c) and may:

12 (A) trim the plants until the delta-9
13 tetrahydrocannabinol concentration of the plants is not more than
14 0.3 percent on a dry weight basis and dispose of the noncompliant
15 parts of the plants in a manner approved by the department;

16 (B) process the plants into fiber with a delta-9
17 tetrahydrocannabinol concentration of not more than 0.3 percent on
18 a dry weight basis and dispose of any remaining parts of the plants
19 in a manner approved by the department; or

20 (C) take any other corrective action consistent
21 with federal regulations adopted under 7 U.S.C. Chapter 38,
22 Subchapter VII.

23 SUBCHAPTER F. HEMP SEED

24 Sec. 122.251. APPLICABILITY OF SUBCHAPTER. This subchapter
25 does not apply to sterilized seeds that are incapable of beginning
26 germination.

27 Sec. 122.252. CERTIFICATION OR APPROVAL. (a) The

1 department or an entity authorized to certify seed under Chapter 62
2 shall identify and certify or approve seed confirmed to produce
3 hemp.

4 (b) The department or entity may not certify or approve a
5 variety of hemp seed if the seed is tested and confirmed to produce
6 a plant that has delta-9 tetrahydrocannabinol concentration of more
7 than 0.3 percent on a dry weight basis. For purposes of this
8 subsection, the department may partner with a private entity or an
9 institution of higher education to test seed for the purpose of
10 certification or approval under this section.

11 (c) The department may authorize the importation of hemp
12 seed certified in accordance with the law of another state or
13 jurisdiction that requires as a condition of certification that
14 hemp be produced in compliance with:

15 (1) that state or jurisdiction's plan approved by the
16 United States Department of Agriculture under 7 U.S.C. Section
17 1639p; or

18 (2) a plan established under 7 U.S.C. Section 1639q if
19 that plan applies in the state or jurisdiction.

20 (d) The department shall maintain and make available to
21 license holders a list of hemp seeds certified or approved under
22 this section.

23 Sec. 122.253. PROHIBITED USE OF CERTAIN HEMP SEED. A person
24 may not sell, offer for sale, distribute, or use hemp seed in this
25 state unless the seed is certified or approved under Section
26 122.252.

1 SUBCHAPTER G. NONCONSUMABLE HEMP PRODUCTS

2 Sec. 122.301. MANUFACTURE. (a) Except as provided by
3 Subsection (b), a state agency may not prohibit a person who
4 manufactures a product regulated by the agency, other than an
5 article regulated under Chapter 431, Health and Safety Code, from
6 applying for or obtaining a permit or other authorization to
7 manufacture the product solely on the basis that the person intends
8 to manufacture the product as a nonconsumable hemp product.

9 (b) A state agency may not authorize a person to manufacture
10 a product containing hemp for smoking, as defined by Section
11 443.001, Health and Safety Code.

12 Sec. 122.302. POSSESSION, TRANSPORTATION, AND SALE. (a)
13 Notwithstanding any other law, a person may possess, transport,
14 sell, and purchase legally produced nonconsumable hemp products in
15 this state.

16 (b) The department by rule must provide to a retailer of
17 nonconsumable hemp products fair notice of a potential violation
18 concerning hemp products sold by the retailer and an opportunity to
19 cure a violation made unintentionally or negligently.

20 Sec. 122.303. RETAIL SALE OF OUT-OF-STATE PRODUCTS. A
21 nonconsumable hemp product manufactured outside of this state may
22 be sold at retail in this state unless:

23 (1) the hemp used to manufacture the product was
24 cultivated illegally; or

25 (2) the retail sale of the product in this state
26 violates federal law.

27 Sec. 122.304. TRANSPORTATION AND EXPORTATION OUT OF STATE.

1 Nonconsumable hemp products may be legally transported across state
2 lines and exported to foreign jurisdictions in a manner that is
3 consistent with federal law and the laws of respective foreign
4 jurisdictions.

5 SUBCHAPTER H. TRANSPORTATION REQUIREMENTS

6 Sec. 122.351. DEFINITION. In this subchapter, "peace
7 officer" has the meaning assigned by Article 2.12, Code of Criminal
8 Procedure.

9 Sec. 122.352. POLICY. It is the policy of this state to not
10 interfere with the interstate commerce of hemp or the transshipment
11 of hemp through this state.

12 Sec. 122.353. INTERSTATE TRANSPORTATION. To the extent of
13 a conflict between a provision of this chapter and a provision of
14 federal law involving interstate transportation of hemp, including
15 a United States Department of Agriculture regulation, federal law
16 controls and conflicting provisions of this chapter do not apply.

17 Sec. 122.354. DEPARTMENT RULES. The department, in
18 consultation with the Department of Public Safety, shall adopt
19 rules regulating the transportation of hemp in this state to ensure
20 that illegal marihuana is not transported into or through this
21 state disguised as legal hemp.

22 Sec. 122.355. HEMP TRANSPORTATION ACCOUNT. (a) The hemp
23 transportation account is a dedicated account in the general
24 revenue fund administered by the department. The account consists
25 of:

26 (1) civil penalties collected under this subchapter;
27 and

1 (2) interest and income earned on the investment of
2 money in the account.

3 (b) Money in the account may be appropriated only to the
4 department for the administration and enforcement of this
5 subchapter. The department may transfer money appropriated under
6 this subsection to the Department of Public Safety for the
7 administration and enforcement of that department's powers and
8 duties under this subchapter, unless prohibited by other law.

9 Sec. 122.356. DOCUMENTATION AND OTHER SHIPPING
10 REQUIREMENTS. (a) A person may not transport hemp plant material
11 in this state unless the hemp:

12 (1) is produced in compliance with:

13 (A) a state or tribal plan approved by the United
14 States Department of Agriculture under 7 U.S.C. Section 1639p; or

15 (B) a plan established under 7 U.S.C. Section
16 1639q if the hemp was cultivated in an area where that plan applies;
17 and

18 (2) is accompanied by:

19 (A) a shipping certificate or cargo manifest
20 issued under Section 122.055 if the hemp originated in this state;
21 or

22 (B) documentation containing the name and
23 address of the place where the hemp was cultivated and a statement
24 that the hemp was produced in compliance with 7 U.S.C. Chapter 38,
25 Subchapter VII, if the hemp originated outside this state.

26 (b) A person transporting hemp plant material in this state:

27 (1) may not concurrently transport any cargo that is

1 not hemp plant material; and

2 (2) shall furnish the documentation required by this
3 section to the department or any peace officer on request.

4 Sec. 122.357. AGRICULTURAL PESTS AND DISEASES. A person
5 may not transport in this state hemp that contains an agricultural
6 pest or disease as provided by department rule.

7 Sec. 122.358. POWERS AND DUTIES OF PEACE OFFICERS. (a) A
8 peace officer may inspect and collect a reasonably sized sample of
9 any material from the plant Cannabis sativa L. found in a vehicle to
10 determine the delta-9 tetrahydrocannabinol concentration of the
11 plant material. Unless a peace officer has probable cause to
12 believe the plant material is marihuana, the peace officer may not:

13 (1) seize the plant material; or

14 (2) arrest the person transporting the plant material.

15 (b) A peace officer may detain any hemp being transported in
16 this state until the person transporting the hemp provides the
17 documentation required by Section 122.356. The peace officer shall
18 immediately release the hemp to the person if the person produces
19 documentation required by that section.

20 (c) If a peace officer has probable cause to believe that a
21 person transporting hemp in this state is also transporting
22 marihuana or a controlled substance, as defined by Section 481.002,
23 Health and Safety Code, or any other illegal substance under state
24 or federal law, the peace officer may seize and impound the hemp
25 along with the controlled or illegal substance.

26 (d) This subchapter does not limit or restrict a peace
27 officer from enforcing to the fullest extent the laws of this state

1 regulating marihuana and controlled substances, as defined by
2 Section 481.002, Health and Safety Code.

3 Sec. 122.359. CIVIL PENALTY. (a) A person who violates
4 Section 122.356 is liable to this state for a civil penalty in an
5 amount not to exceed \$500 for each violation.

6 (b) The attorney general or any district or county attorney
7 may bring an action to recover the civil penalty.

8 (c) A civil penalty collected under this section must be
9 deposited in the hemp transportation account under Section 122.355.

10 Sec. 122.360. CRIMINAL OFFENSE. (a) A person commits an
11 offense if the person violates Section 122.356.

12 (b) An offense under this section is a misdemeanor
13 punishable by a fine of not more than \$1,000.

14 SUBCHAPTER I. ENFORCEMENT; PENALTIES

15 Sec. 122.401. PENALTY SCHEDULE. (a) The department by rule
16 shall adopt a schedule of sanctions and penalties for violations of
17 this chapter and rules adopted under this chapter that does not
18 conflict with 7 U.S.C. Section 1639p(e).

19 (b) A penalty collected under this chapter other than a
20 civil penalty collected under Subchapter H must be deposited in the
21 state hemp production account under Section 122.003.

22 Sec. 122.402. ADMINISTRATIVE PENALTY. Except as provided
23 by Section 122.403 and to the extent permitted under 7 U.S.C.
24 Section 1639p(e), the department may impose an administrative
25 penalty or other administrative sanction for a violation of this
26 chapter or a rule or order adopted under this chapter, including a
27 penalty or sanction under Section 12.020 or 12.0201.

1 Sec. 122.403. NEGLIGENT VIOLATIONS BY LICENSE HOLDER. (a)
2 If the department determines that a license holder negligently
3 violated this chapter or a rule adopted under this chapter, the
4 department shall enforce the violation in the manner provided by 7
5 U.S.C. Section 1639p(e).

6 (b) A license holder described by Subsection (a) is not
7 subject to a civil, criminal, or administrative enforcement action
8 other than an enforcement action provided by this chapter.

9 (c) A license holder who violates this chapter by
10 cultivating plants described by Section 122.202(b)(2):

11 (1) must comply with an enhanced testing protocol
12 developed by the department;

13 (2) shall pay a fee in the amount of \$500 for each
14 violation to cover the department's costs of administering the
15 enhanced testing protocol; and

16 (3) shall be included on a list maintained by the
17 department of license holders with negligent violations, which is
18 public information for purposes of Chapter 552, Government Code.

19 (d) A person who negligently violates this chapter three
20 times in any five-year period may not cultivate, process, or
21 otherwise produce hemp in this state before the fifth anniversary
22 of the date of the third violation. The department shall include
23 each person subject to this subsection on a list of banned
24 producers, which is public information for purposes of Chapter 552,
25 Government Code.

26 Sec. 122.404. OTHER VIOLATIONS BY LICENSE HOLDER. If the
27 department suspects or determines that a license holder violated

1 this chapter or a rule adopted under this chapter with a culpable
2 mental state greater than negligence, the department shall
3 immediately report the license holder to:

- 4 (1) the United States attorney general; and
5 (2) the attorney general of this state, who may:
6 (A) investigate the violation;
7 (B) institute proceedings for injunctive or
8 other appropriate relief on behalf of the department; or
9 (C) report the matter to the Department of Public
10 Safety and any other appropriate law enforcement agency.

11 SECTION 3. Subchapter A, Chapter 141, Agriculture Code, is
12 amended by adding Section 141.008 to read as follows:

13 Sec. 141.008. HEMP IN COMMERCIAL FEED. The service may
14 adopt rules authorizing, defining, and controlling the use of hemp
15 and hemp products in commercial feed.

16 SECTION 4. Subchapter A, Chapter 431, Health and Safety
17 Code, is amended by adding Section 431.011 to read as follows:

18 Sec. 431.011. APPLICABILITY OF CHAPTER TO CONSUMABLE HEMP
19 PRODUCTS AND MANUFACTURERS. (a) This chapter applies to a
20 consumable hemp product subject to Chapter 443. An article
21 regulated under this chapter may not be deemed to be adulterated
22 solely on the basis that the article is a consumable hemp product.

23 (b) Except as provided by Subsection (c), this chapter
24 applies to the conduct of a person who holds a license under Chapter
25 443.

26 (c) A person who holds a license under Chapter 443 related
27 to the processing of hemp or the manufacturing of a consumable hemp

1 product regulated under that chapter and is engaging in conduct
2 within the scope of that license is not required to hold a license
3 as a food manufacturer or food wholesaler under Subchapter J.

4 SECTION 5. Section 431.043, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 431.043. ACCESS TO RECORDS. A person who is required
7 to maintain records under this chapter or Section 519 or 520(g) of
8 the federal Act or a person who is in charge or custody of those
9 records shall, at the request of the department or a health
10 authority, permit the department or health authority at all
11 reasonable times access to and to copy and verify the records,
12 including records that verify that the hemp in a consumable hemp
13 product was produced in accordance with Chapter 122, Agriculture
14 Code, or 7 U.S.C. Chapter 38, Subchapter VII.

15 SECTION 6. Section 431.2211, Health and Safety Code, is
16 amended by adding Subsection (a-3) to read as follows:

17 (a-3) A person is not required to hold a license under this
18 subchapter if the person holds a license under Chapter 443 and is
19 engaging in conduct within the scope of that license.

20 SECTION 7. Subtitle A, Title 6, Health and Safety Code, is
21 amended by adding Chapter 443 to read as follows:

22 CHAPTER 443. MANUFACTURE, DISTRIBUTION, AND SALE OF CONSUMABLE

23 HEMP PRODUCTS

24 SUBCHAPTER A. GENERAL PROVISIONS

25 Sec. 443.001. DEFINITIONS. In this chapter:

26 (1) "Consumable hemp product" means food, a drug, a
27 device, or a cosmetic, as those terms are defined by Section

1 431.002, that contains hemp or one or more hemp-derived
2 cannabinoids, including cannabidiol.

3 (2) "Department" means the Department of State Health
4 Services.

5 (3) "Establishment" means each location where a person
6 processes hemp or manufactures a consumable hemp product.

7 (4) "Executive commissioner" means the executive
8 commissioner of the Health and Human Services Commission.

9 (5) "Hemp" has the meaning assigned by Section
10 121.001, Agriculture Code.

11 (6) "License" means a consumable hemp product
12 manufacturer's license issued under this chapter.

13 (7) "License holder" means an individual or business
14 entity holding a license.

15 (8) "Manufacture" has the meaning assigned by Section
16 431.002.

17 (9) "Process" means to extract a component of hemp,
18 including cannabidiol or another cannabinoid, that is:

19 (A) sold as a consumable hemp product;

20 (B) offered for sale as a consumable hemp
21 product;

22 (C) incorporated into a consumable hemp product;

23 or

24 (D) intended to be incorporated into a consumable
25 hemp product.

26 (10) "QR code" means a quick response machine-readable
27 code that can be read by a camera, consisting of an array of black

1 and white squares used for storing information or directing or
2 leading a user to additional information.

3 (11) "Smoking" means burning or igniting a substance
4 and inhaling the smoke or heating a substance and inhaling the
5 resulting vapor or aerosol.

6 Sec. 443.002. APPLICABILITY OF OTHER LAW. Except as
7 provided by Section 431.011(c), Chapter 431 applies to a license
8 holder and a consumable hemp product regulated under this chapter.

9 Sec. 443.003. LOCAL REGULATION PROHIBITED. A municipality,
10 county, or other political subdivision of this state may not enact,
11 adopt, or enforce a rule, ordinance, order, resolution, or other
12 regulation that prohibits the processing of hemp or the
13 manufacturing or sale of a consumable hemp product as authorized by
14 this chapter.

15 Sec. 443.004. SEVERABILITY. (a) A provision of this
16 chapter or its application to any person or circumstance is invalid
17 if the secretary of the United States Department of Agriculture
18 determines that the provision or application conflicts with 7
19 U.S.C. Chapter 38, Subchapter VII, and prevents the approval of the
20 state plan submitted under Chapter 121, Agriculture Code.

21 (b) The invalidity of a provision or application under
22 Subsection (a) does not affect the other provisions or applications
23 of this chapter that can be given effect without the invalid
24 provision or application, and to this end the provisions of this
25 chapter are declared to be severable.

26 SUBCHAPTER B. POWERS AND DUTIES

27 Sec. 443.051. RULEMAKING AUTHORITY OF EXECUTIVE

1 COMMISSIONER. The executive commissioner shall adopt rules and
2 procedures necessary to administer and enforce this chapter. Rules
3 and procedures adopted under this section must be consistent with:

4 (1) an approved state plan submitted to the United
5 States Department of Agriculture under Chapter 121, Agriculture
6 Code; and

7 (2) 7 U.S.C. Chapter 38, Subchapter VII, and federal
8 regulations adopted under that subchapter.

9 SUBCHAPTER C. CONSUMABLE HEMP PRODUCT MANUFACTURER LICENSE

10 Sec. 443.101. LICENSE REQUIRED; EXCEPTIONS. A person may
11 not process hemp or manufacture a consumable hemp product in this
12 state unless the person holds a license under this subchapter.

13 Sec. 443.102. LICENSE INELIGIBILITY. (a) An individual
14 who is or has been convicted of a felony relating to a controlled
15 substance under federal law or the law of any state may not, before
16 the 10th anniversary of the date of the conviction:

17 (1) hold a license under this subchapter; or

18 (2) be a governing person of an establishment that
19 holds a license under this subchapter.

20 (b) The department may not issue a license under this
21 subchapter to a person who materially falsifies any information
22 contained in an application submitted to the department under
23 Section 443.103.

24 Sec. 443.103. APPLICATION; ISSUANCE. An individual or
25 establishment may apply for a license under this subchapter by
26 submitting an application to the department on a form and in the
27 manner prescribed by the department. The application must be

1 accompanied by:

2 (1) a legal description of each location where the
3 applicant intends to process hemp or manufacture consumable hemp
4 products and the global positioning system coordinates for the
5 perimeter of each location;

6 (2) written consent from the applicant or the property
7 owner if the applicant is not the property owner allowing the
8 department, the Department of Public Safety, and any other state or
9 local law enforcement agency to enter onto all premises where hemp
10 is processed or consumable hemp products are manufactured to
11 conduct a physical inspection or to ensure compliance with this
12 chapter and rules adopted under this chapter;

13 (3) any fees required by the department to be
14 submitted with the application; and

15 (4) any other information required by department rule.

16 Sec. 443.104. TERM; RENEWAL. (a) A license is valid for
17 one year and may be renewed as provided by this section.

18 (b) The department shall renew a license if the license
19 holder:

20 (1) is not ineligible to hold the license under
21 Section 443.102;

22 (2) submits to the department any license renewal fee;
23 and

24 (3) does not owe any outstanding fees to the
25 department.

26 Sec. 443.105. REVOCATION. The department shall revoke a
27 license if the license holder is convicted of a felony relating to a

1 controlled substance under federal law or the law of any state.

2 SUBCHAPTER D. TESTING OF CONSUMABLE HEMP PRODUCTS

3 Sec. 443.151. TESTING REQUIRED. (a) A consumable hemp
4 product must be tested as provided by:

5 (1) Subsections (b) and (c); or

6 (2) Subsection (d).

7 (b) Before a hemp plant is processed or otherwise used in
8 the manufacture of a consumable hemp product, a sample representing
9 the plant must be tested, as required by the executive
10 commissioner, to determine:

11 (1) the concentration of various cannabinoids; and

12 (2) the presence or quantity of heavy metals,
13 pesticides, and any other substance prescribed by the department.

14 (c) Before material extracted from hemp by processing is
15 sold as, offered for sale as, or incorporated into a consumable hemp
16 product, the material must be tested, as required by the executive
17 commissioner, to determine:

18 (1) the presence of harmful microorganisms; and

19 (2) the presence or quantity of:

20 (A) any residual solvents used in processing, if
21 applicable; and

22 (B) any other substance prescribed by the
23 department.

24 (d) Except as otherwise provided by Subsection (e), before a
25 consumable hemp product is sold at retail or otherwise introduced
26 into commerce in this state, a sample representing the hemp product
27 must be tested:

1 (1) by a laboratory that is accredited by an
2 accreditation body in accordance with International Organization
3 for Standardization ISO/IEC 17025 or a comparable or successor
4 standard to determine the delta-9 tetrahydrocannabinol
5 concentration of the product; and

6 (2) by an appropriate laboratory to determine that the
7 product does not contain a substance described by Subsection (b) or
8 (c) in a quantity prohibited for purposes of those subsections.

9 (e) A consumable hemp product is not required to be tested
10 under Subsection (d) if each hemp-derived ingredient of the
11 product:

12 (1) has been tested in accordance with:

13 (A) Subsections (b) and (c); or

14 (B) Subsection (d); and

15 (2) does not have a delta-9 tetrahydrocannabinol
16 concentration of more than 0.3 percent.

17 Sec. 443.152. PROVISIONS RELATED TO TESTING. (a) A
18 consumable hemp product that has a delta-9 tetrahydrocannabinol
19 concentration of more than 0.3 percent may not be sold at retail or
20 otherwise introduced into commerce in this state.

21 (b) A person licensed under Chapter 122, Agriculture Code,
22 shall provide to a license holder who is processing hemp harvested
23 by the person or otherwise using that hemp to manufacture a
24 consumable hemp product the results of a test conducted under that
25 chapter, if available, as proof that the delta-9
26 tetrahydrocannabinol concentration of the hemp does not exceed 0.3
27 percent, including for purposes of Section 443.151(b)(1).

1 (c) A license holder shall make available to a seller of a
2 consumable hemp product processed or manufactured by the license
3 holder the results of testing required by Section 443.151. The
4 results may accompany a shipment to the seller or be made available
5 to the seller electronically. If the results are not able to be
6 made available, the seller may have the testing required under
7 Section 443.151 performed on the product and shall make the results
8 available to a consumer.

9 SUBCHAPTER E. RETAIL SALE OF CONSUMABLE HEMP PRODUCTS

10 Sec. 443.201. POSSESSION, TRANSPORTATION, AND SALE OF
11 CONSUMABLE HEMP PRODUCTS. (a) A person may possess, transport,
12 sell, or purchase a consumable hemp product processed or
13 manufactured in compliance with this chapter.

14 (b) The executive commissioner by rule must provide to a
15 retailer of consumable hemp products fair notice of a potential
16 violation concerning consumable hemp products sold by the retailer
17 and an opportunity to cure a violation made unintentionally or
18 negligently.

19 Sec. 443.202. REGULATION OF CERTAIN CANNABINOID OILS. (a)
20 This section does not apply to low-THC cannabis regulated under
21 Chapter 487.

22 (b) Notwithstanding any other law, a person may not sell,
23 offer for sale, possess, distribute, or transport a cannabinoid
24 oil, including cannabidiol oil, in this state:

25 (1) if the oil contains any material extracted or
26 derived from the plant Cannabis sativa L., other than from hemp
27 produced in compliance with 7 U.S.C. Chapter 38, Subchapter VII;

1 and

2 (2) unless a sample representing the oil has been
3 tested by a laboratory that is accredited by an independent
4 accreditation body in accordance with International Organization
5 for Standardization ISO/IEC 17025 or a comparable or successor
6 standard and found to have a delta-9 tetrahydrocannabinol
7 concentration of not more than 0.3 percent.

8 (c) The department and the Department of Public Safety shall
9 establish a process for the random testing of cannabinoid oil,
10 including cannabidiol oil, at various retail and other
11 establishments that sell, offer for sale, distribute, or use the
12 oil to ensure that the oil:

13 (1) does not contain harmful ingredients;

14 (2) is produced in compliance with 7 U.S.C. Chapter
15 38, Subchapter VII; and

16 (3) has a delta-9 tetrahydrocannabinol concentration
17 of not more than 0.3 percent.

18 Sec. 443.2025. REGISTRATION REQUIRED FOR RETAILERS OF
19 CERTAIN PRODUCTS. (a) This section does not apply to low-THC
20 cannabis regulated under Chapter 487.

21 (b) A person may not sell consumable hemp products
22 containing cannabidiol at retail in this state unless the person
23 registers with the department each location owned, operated, or
24 controlled by the person at which those products are sold. A person
25 is not required to register a location associated with an employee
26 or independent contractor described by Subsection (d).

27 (c) The department may issue a single registration under

1 Subsection (b) covering multiple locations owned, operated, or
2 controlled by a person.

3 (d) A person is not required to register with the department
4 under Subsection (b) if the person is:

5 (1) an employee of a registrant; or

6 (2) an independent contractor of a registrant who
7 sells the registrant's products at retail.

8 (e) A registration is valid for one year and may be renewed
9 as prescribed by department rule.

10 (f) The department by rule may adopt a registration fee
11 schedule that establishes reasonable fee amounts for the
12 registration of:

13 (1) a single location at which consumable hemp
14 products containing cannabidiol are sold; and

15 (2) multiple locations at which consumable hemp
16 products containing cannabidiol are sold under a single
17 registration.

18 (g) The department shall adopt rules to implement and
19 administer this section.

20 Sec. 443.203. DECEPTIVE TRADE PRACTICE. (a) A person who
21 sells, offers for sale, or distributes a cannabinoid oil, including
22 cannabidiol oil, that the person claims is processed or
23 manufactured in compliance with this chapter commits a false,
24 misleading, or deceptive act or practice actionable under
25 Subchapter E, Chapter 17, Business & Commerce Code, if the oil is
26 not processed or manufactured in accordance with this chapter.

27 (b) A person who sells, offers for sale, or distributes a

1 cannabinoid oil commits a false, misleading, or deceptive act or
2 practice actionable under Subchapter E, Chapter 17, Business &
3 Commerce Code, if the oil:

- 4 (1) contains harmful ingredients;
5 (2) is not produced in compliance with 7 U.S.C.
6 Chapter 38, Subchapter VII; or
7 (3) has a delta-9 tetrahydrocannabinol concentration
8 of more than 0.3 percent.

9 Sec. 443.204. RULES RELATED TO SALE OF CONSUMABLE HEMP
10 PRODUCTS. Rules adopted by the executive commissioner regulating
11 the sale of consumable hemp products must to the extent allowable by
12 federal law reflect the following principles:

- 13 (1) hemp-derived cannabinoids, including cannabidiol,
14 are not considered controlled substances or adulterants;
15 (2) products containing one or more hemp-derived
16 cannabinoids, such as cannabidiol, intended for ingestion are
17 considered foods, not controlled substances or adulterated
18 products;
19 (3) consumable hemp products must be packaged and
20 labeled in the manner provided by Section 443.205; and
21 (4) the processing or manufacturing of a consumable
22 hemp product for smoking is prohibited.

23 Sec. 443.205. PACKAGING AND LABELING REQUIREMENTS. (a)
24 Before a consumable hemp product that contains or is marketed as
25 containing more than trace amounts of cannabinoids may be
26 distributed or sold, the product must be labeled in the manner
27 provided by this section with the following information:

- 1 (1) batch identification number;
2 (2) batch date;
3 (3) product name;
4 (4) a uniform resource locator (URL) that provides or
5 links to a certificate of analysis for the product or each
6 hemp-derived ingredient of the product;
7 (5) the name of the product's manufacturer; and
8 (6) a certification that the delta-9
9 tetrahydrocannabinol concentration of the product or each
10 hemp-derived ingredient of the product is not more than 0.3
11 percent.

12 (b) The label required by Subsection (a) may be in the form
13 of:

- 14 (1) a uniform resource locator (URL) for the
15 manufacturer's Internet website that provides or links to the
16 information required by that subsection; and
17 (2) a QR code or other bar code that may be scanned and
18 that leads to the information required by that subsection.

19 (c) The label required by Subsection (a) must appear on each
20 unit of the product intended for individual retail sale. If that
21 unit includes inner and outer packaging, the label may appear on any
22 of that packaging.

23 (d) This section does not apply to sterilized seeds
24 incapable of beginning germination.

25 Sec. 443.206. RETAIL SALE OF OUT-OF-STATE CONSUMABLE HEMP
26 PRODUCTS. Retail sales of consumable hemp products processed or
27 manufactured outside of this state may be made in this state when

1 the products were processed or manufactured in another state or
2 jurisdiction in compliance with:

3 (1) that state or jurisdiction's plan approved by the
4 United States Department of Agriculture under 7 U.S.C. Section
5 1639p;

6 (2) a plan established under 7 U.S.C. Section 1639q if
7 that plan applies to the state or jurisdiction; or

8 (3) the laws of that state or jurisdiction if the
9 products are tested in accordance with, or in a manner similar to,
10 Section 443.151.

11 Sec. 443.207. TRANSPORTATION AND EXPORTATION OF CONSUMABLE
12 HEMP PRODUCTS OUT OF STATE. Consumable hemp products may be legally
13 transported across state lines and exported to foreign
14 jurisdictions in a manner that is consistent with federal law and
15 the laws of respective foreign jurisdictions.

16 SECTION 8. Sections 481.002(5) and (26), Health and Safety
17 Code, are amended to read as follows:

18 (5) "Controlled substance" means a substance,
19 including a drug, an adulterant, and a dilutant, listed in
20 Schedules I through V or Penalty Group 1, 1-A, 2, 2-A, 3, or 4. The
21 term includes the aggregate weight of any mixture, solution, or
22 other substance containing a controlled substance. The term does
23 not include hemp, as defined by Section 121.001, Agriculture Code,
24 or the tetrahydrocannabinols in hemp.

25 (26) "Marihuana" means the plant Cannabis sativa L.,
26 whether growing or not, the seeds of that plant, and every compound,
27 manufacture, salt, derivative, mixture, or preparation of that

1 plant or its seeds. The term does not include:

2 (A) the resin extracted from a part of the plant
3 or a compound, manufacture, salt, derivative, mixture, or
4 preparation of the resin;

5 (B) the mature stalks of the plant or fiber
6 produced from the stalks;

7 (C) oil or cake made from the seeds of the plant;

8 (D) a compound, manufacture, salt, derivative,
9 mixture, or preparation of the mature stalks, fiber, oil, or cake;
10 [~~or~~]

11 (E) the sterilized seeds of the plant that are
12 incapable of beginning germination; or

13 (F) hemp, as that term is defined by Section
14 121.001, Agriculture Code.

15 SECTION 9. (a) Not later than the 90th day after the
16 effective date of this Act, the Department of Agriculture shall
17 submit for approval a state plan to the secretary of the United
18 States Department of Agriculture as provided by Section 121.003,
19 Agriculture Code, as added by this Act.

20 (b) The Department of Agriculture shall submit amended
21 state plans as provided by Section 121.003(c), Agriculture Code, as
22 added by this Act, as necessary until the plan is approved.

23 (c) As soon as practicable after the effective date of this
24 Act, the executive commissioner of the Health and Human Services
25 Commission shall adopt rules necessary to implement the changes in
26 law made by this Act.

27 SECTION 10. The Department of Agriculture and the

1 Department of State Health Services shall begin implementing the
2 state plan approved by the secretary of the United States
3 Department of Agriculture not later than the 30th day after the date
4 on which the state plan is approved and shall fully implement the
5 state plan as soon as practicable after the state plan is approved.

6 SECTION 11. Notwithstanding Chapter 443, Health and Safety
7 Code, as added by this Act, a retailer may possess, transport, or
8 sell a consumable hemp product, as defined by Section 443.001,
9 Health and Safety Code, as added by this Act, that becomes part of
10 the retailer's inventory before rules under Section 443.051, Health
11 and Safety Code, as added by this Act, become effective unless the
12 product:

13 (1) is unsafe for consumption based on the presence or
14 quantity of heavy metals, pesticides, harmful microorganisms, or
15 residual solvents; or

16 (2) has a delta-9 tetrahydrocannabinol concentration
17 of more than 0.3 percent.

18 SECTION 12. Notwithstanding Section 443.2025, Health and
19 Safety Code, as added by this Act, a person is not required to
20 register a location to sell a consumable hemp product containing
21 cannabidiol at retail in this state before the 60th day after the
22 date the Department of State Health Services begins issuing
23 registrations.

24 SECTION 13. This Act takes effect immediately if it
25 receives a vote of two-thirds of all the members elected to each
26 house, as provided by Section 39, Article III, Texas Constitution.
27 If this Act does not receive the vote necessary for immediate

H.B. No. 1325

1 effect, this Act takes effect September 1, 2019.

President of the Senate

Speaker of the House

I certify that H.B. No. 1325 was passed by the House on April 24, 2019, by the following vote: Yeas 144, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1325 on May 22, 2019, by the following vote: Yeas 140, Nays 3, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1325 was passed by the Senate, with amendments, on May 15, 2019, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

TITLE 4 AGRICULTURE
PART 1. TEXAS DEPARTMENT OF AGRICULTURE
CHAPTER 24. HEMP PROGRAM
§§24.1 - §§24.50

The Texas Department of Agriculture (TDA or the Department) proposes new Title 4, Part 1, Chapter 24, Hemp Program, Subchapter A, General Provisions, §§24.1-4, relating to General Provisions; Subchapter B, Fees, §§24.5-7; Subchapter C, Licensing, §§24.8-19; Subchapter D, Inspections, Sampling and Collection, §§24.20-23; Subchapter E, Testing, §§24.24-29; Subchapter F, Disposal, §§24.30-31; Subchapter G, Enforcement, §§24.32-38; Subchapter H, Transportation, §§24.39-43; Subchapter I, Seed, §§24.44-48; and Subchapter J, Agricultural or Academic Hemp Related Research, §§24.49-50. The proposed new rules are for TDA's administration of hemp production to comply with the Agricultural Improvement Act of 2018 (2018 Farm Bill) enacted by the 115th United States Congress, and House Bill 1325 (HB 1325) enacted by the 86th Texas Legislature. The proposed rules will regulate and license the growth and distribution of hemp and nonconsumable hemp products in Texas.

Phillip Wright, Administrator for Agriculture and Consumer Protection, Texas Department of Agriculture, has determined that there will be significant fiscal impact to state government as a result of implementing the proposed rules. The program and all associated direct and indirect costs will be absorbed by TDA during the first year at a minimum. TDA does not expect any cost to local governments at this time. As hemp production has not been legal in Texas, TDA lacks sufficient information to estimate revenues or engage in cost recovery calculations for this program at this time. However, TDA anticipates that it will be able to recover the costs of the program based on the number of licenses issued and sampling conducted. As a reference, Kentucky Department of Agriculture issued 1030 applications and 1000 permits, and the Tennessee Department of Agriculture received 2600 applications for the 2019 growing season under their Hemp Research Pilot Programs, which limited hemp production to research purposes only, in accordance with the Agriculture Act of 2014. Since the proposed rules allow for hemp production outside and beyond research purposes, in accordance with the 2018 Farm Bill and HB 1325, TDA anticipates a higher number of applications received and permits issued for Texas' 2020 growing season compared to Kentucky's and Tennessee's 2019 growing season.

Mr. Wright has also determined that for each year of the first five years the proposed rules are in effect, the anticipated public benefit as a result of administering the proposed rules will be to provide Texas farmers with new agricultural opportunities to produce and handle hemp. As with many state regulations, affected producers and industry will absorb costs associated with the compliance of these rules. However, TDA lacks sufficient data to quantify the effect on small and micro-businesses at this time. The cost of compliance with the rules related to hemp production will depend on various factors, including the size of the operation. TDA does not anticipate that there will be an adverse fiscal impact on rural communities related to the implementation of this proposal. Any potential increases in the cost of doing business will be offset by the increased marketing and sales opportunities for Texas producers.

Mr. Wright has also provided the following information related to the government growth impact statement, as required pursuant to Texas Government Code, §2001.0221. As a result of

implementing the proposal, for the first five years the proposed rules are in effect:

- (1) the TDA Hemp Program will be created;
- (2) an additional 7.1 full time employee positions may be created over the course of 5 years, and no existing Department staff positions will be eliminated; and
- (3) there may be an increase in future legislative appropriations to the Department of at least \$3,127,336 to cover costs to include the creation of new employee positions, and the regulation and administration of the hemp program, over the course of 5 years.

Additionally, Mr. Wright has determined that for the first five years the proposed rules are in effect:

- (1) there will be an increase in fees paid to the Department, as this program is entirely new and TDA is required to assess license and/or inspection fees in order to implement or finance this program;
- (2) new regulations will be created by the proposal;
- (3) the number of individuals subject to the proposal will increase, as this is a new program; and
- (4) the proposal will positively affect the Texas economy by allowing producers to grow hemp in the State.

The Texas Department of Agriculture invites comments on the proposed new rules from any member of the public. Comments may be submitted to Philip Wright, Administrator for Agriculture and Consumer Protection, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to RuleComments@TexasAgriculture.gov. Comments must be received by TDA no later than Monday, February 10, 2020.

New Title 4, Part 1, Chapter 24, Hemp Program, Subchapters A through J is proposed in compliance with the 2018 Farm Bill and HB 1325, which authorize the Department to establish rules concerning the production of hemp in the State of Texas.

The proposal is made under §§121.003-004 and §122.051 of the Texas Agriculture Code (the Code), which designate the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and, §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12, 121 and 122 of the Code are affected by the proposal.

<rule>

Subchapter A. General Provisions.

§24.1. Definitions.

Words used in this chapter in the singular form shall be deemed to impart the plural, and vice versa, as the case may demand. For the purposes of provisions and regulations of this chapter, unless the context otherwise requires, the following terms shall mean:

- (1) "Act" means Texas House Bill 1325, relating to the production and regulation of hemp in Texas, as codified in Chapters 121 and 122 of the Code.

- (2) “Acceptable hemp THC level” means a delta-9 tetrahydrocannabinol content concentration level on a dry weight basis, that, when reported with the laboratory’s measurement of uncertainty, produces a distribution or range that includes a result of 0.3% or less. For example, if the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is 0.35% and the measurement of uncertainty is +/- 0.06%, the measured delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the acceptable hemp THC level for the purpose of plan compliance. This definition of “acceptable hemp THC level” affects neither the statutory definition of hemp, in 7 U.S.C. §1639o(1) and Texas Agriculture Code §121.001, nor the definition of “marihuana,” in 21 U.S.C. §802(16) and in Texas Health and Safety Code §481.002(26).
- (3) “Administrative action” includes a denial, revocation or suspension of a license, or an assessed penalty.
- (4) "Applicant" means a person, or a person who is authorized to sign for a business entity, who submits an application to participate in the Department’s hemp program.
- (5) "Cannabis" means a genus of flowering plants in the family Cannabaceae of which *Cannabis sativa* is a species, and *Cannabis indica* and *Cannabis ruderalis* are subspecies thereof. Cannabis refers to any form of the plant in which the delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.
- (6) “Certified or Approved hemp seed” means seed that meets the legal standards for seed quality and labeling required by Texas and federal law, the legal standards of the jurisdictions from where the seed is originally sold and produced, and the additional hemp seed quality and labeling requirements required by the Department.
- (7) "Commissioner" means the Commissioner of the Texas Department of Agriculture.
- (8) “Contiguous” means all of the lots in or on a location owned or controlled by one owner or tenant, or the same owner and tenant, and no lot is separated from the other lots on the location by different ownership or control, or a public right of way, a navigable waterway, or an area greater than sixty feet.
- (9) “Controlled Substance” is defined in Tex. Health & Safety Code §481.002(5). The term does not include hemp, as defined by Tex. Agric. Code §121.001, or the tetrahydrocannabinols in hemp.
- (10) “Conviction” means any plea of guilty or nolo contendere, or any finding of guilt, except when the finding of guilt is subsequently overturned on appeal, pardoned, or expunged. For purposes of this chapter, a conviction is expunged when the conviction is removed from the individual’s criminal history record and there are no legal disabilities or restrictions associated with the expunged conviction, other than the fact that the conviction may be used for sentencing purposes for subsequent convictions. In addition, where an individual is allowed to withdraw an original plea of guilty or nolo contendere and enter a plea of not guilty and the case is subsequently dismissed, the individual is no longer considered to have a conviction for purposes of this chapter.
- (11) “Corrective action plan” means a plan established by the Department for a licensed hemp producer to correct a negligent violation or non-compliance with the hemp program, this chapter, or other state or federal statute.
- (12) “Criminal History Report” means the results of a criminal background investigation conducted by the Department.
- (13) “Culpable mental state greater than negligence” means to act intentionally, knowingly,

willfully, or recklessly.

(14) "Cultivate" as defined by Tex. Agric. Code §122.001(1) means to plant, irrigate, cultivate or harvest a hemp plant.

(15) "Days" means business days unless otherwise specified.

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

(17) "Decarboxylated" means the completion of the chemical reaction that converts THC-acid into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven tenths (87.7) percent of THC-acid.

(18) "Delta-9 tetrahydrocannabinol or THC or Delta-9-THC" means the primary psychoactive component of cannabis. For the purposes of this chapter, the terms delta-9-THC and THC are interchangeable.

(19) "Department or TDA" means the Texas Department of Agriculture.

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

(21) "DPS" means the Texas Department of Public Safety.

(22) "Dry weight basis" means the ratio of the amount of moisture in a sample to the amount of dry solid in a sample. Dry weight is a basis for expressing the percentage of a chemical in a substance after removing the moisture from the substance. The percentage of THC on a dry weight basis means the percentage of THC, by weight, in a cannabis item (plant, extract, or other derivative), after excluding moisture from the item.

(23) "Entity" means a corporation, general partnership, joint stock company, association, limited partnership, limited liability partnership, limited liability company, series limited liability company, irrevocable trust, estate, charitable organization, or other similar organization, including any such organization participating in hemp production as a partner in a general partnership, a participant in a joint venture, or a participant in a similar organization. The term entity includes a domestic or foreign entity defined in Texas Business Organizations Code §1.002 that will be, or proposes to be, in hemp production within the State of Texas.

(24) "Facility" means a location with a legal description and is within the legal control of a person or entity. A facility may consist of multiple fields, greenhouses, storage, and/or lots.

(25) "Farm Service Agency or FSA" means an agency of the United States Department of Agriculture.

(26) "Field" means an outdoor area of land consisting of one or more lots on which the producer will produce or store hemp.

(27) "Final test" means the last Department-authorized laboratory test conducted from a final sample collected.

(28) "Final sample" means the last Department-authorized sample collected from a lot.

(29) "Gas chromatography or GC" means a type of chromatography in analytical chemistry used to separate, identify, and quantify each component in a mixture. GC relies on heat for separating and analyzing compounds that can be vaporized without decomposition.

(30) "Geospatial location" means a location designated through a global system of navigational satellites used to determine the precise ground position of a place or object. This includes GPS coordinates.

(31) "Greenhouse" means any indoor structure consisting of one or more lots on which the producer will produce or store hemp.

- (32) "Governing person" has the meaning assigned by Tex. Bus. Orgs. Code §1.002.
- (33) "GPS" means Global Positioning System.
- (34) "Handle" as defined by Tex. Agric. Code §122.001(3) means to possess or store a hemp plant on premises owned, operated, or controlled by a license holder for any period of time, or in a vehicle for any period of time other than during the actual transport of the plant from a premises owned, operated or controlled by a license holder to a premises owned, operated or controlled by another license holder, or a person licensed under Tex. Health & Safety Code, Chapter 443. "Handle" also means to harvest or store hemp plants or hemp plant parts prior to the delivery of such plants or plant parts for further processing. "Handle" also includes the disposal of cannabis plants that are not hemp for purposes of chemical analysis and disposal of such plants.
- (35) "Harvest" means to cut, gather, take, or remove all or part of the cannabis plants growing in a lot or lots, for the purpose of disposal, cloning, distribution, processing, storage, sale, or any other use. "Harvest" does not include transplants from one lot to another lot if both lots are within the same license holder's control, and the plants are transplanted according to the hemp program rules and procedures.
- (36) "Hemp" or "industrial hemp" as defined Tex. Agric. Code §121.001 means the plant species *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 percent on a dry weight basis.
- (37) "Hemp research license" means a license issued to an institution of higher education to produce or handle hemp for research purposes.
- (38) "High-performance liquid chromatography or HPLC" means a type of chromatography technique in analytical chemistry used to separate, identify, and quantify each component in a mixture. HPLC relies on pumps to pass a pressurized liquid solvent containing the sample mixture through a column filled with a solid adsorbent material to separate and analyze compounds.
- (39) "Information sharing system" means the database which allows the Department to share Texas hemp program information with federal and state agencies.
- (40) "Institution of higher education" has the meaning assigned by Texas Education Code §61.003.
- (41) "Key participants" means a sole proprietor, a partner in a general partnership, a general partner in a limited partnership, or a person with executive managerial control in an entity. A person with executive managerial control includes persons such as a trustee, independent or dependent executor or administrator of an estate, chief executive officer, managing member, manager, president, vice president, general partner, chief operating officer and chief financial officer, or their equivalents. This definition does not include non-executive employees such as farm, field, or shift managers that do not make financial planning decisions and that do not vote or exercise control of an entity.
- (42) "Law enforcement agency" means any federal or Texas law enforcement agency.
- (43) "License" as defined by Tex. Agric. Code §122.001(6) means a hemp producer or handler license issued by the Department.
- (44) "License holder" as defined by Tex. Agric. Code §122.001(7) means an individual or business entity holding a license.
- (45) "License holder who transplants" means a license holder who cultivates cannabis plants for the purpose of transplanting all living parts of those same cannabis plants according to

Department rules and procedures.

(46) "Lot" means a contiguous area in a facility, field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout the area.

(47) "Marijuana or marihuana" means all parts of the plant *Cannabis sativa* L., whether growing or not, the seeds thereof, the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. The term 'marihuana' does not include hemp and does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination. "Marihuana" means all cannabis that tests as having a concentration level of THC on a dry weight basis of higher than 0.3 percent.

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

(49) "Negligence" means failure to exercise the level of care that a reasonably prudent person would exercise in complying with the regulations set forth under this chapter.

(50) "Nonconsumable hemp product" as defined by Tex. Agric. Code §122.001(8) means a product that contains hemp, other than a consumable hemp product as defined by Tex. Health & Safety Code §443.001. The term includes cloth, cordage, fiber, fuel, paint, paper, particleboard, construction materials, and plastics derived from hemp.

(51) "Permit or lot permit" means a document issued by the Department authorizing a license holder to produce or handle a hemp crop within a lot.

(52) "Person" means an individual or entity, unless otherwise indicated.

(53) "Phytocannabinoid" means the Cannabinoid chemical compounds found in the cannabis plant, two of which are Delta-9 tetrahydrocannabinol (delta-9 THC) and cannabidiol (CBD).

(54) "Postdecarboxylation" means a value determined after the process of decarboxylation that determines the total potential delta-9 tetrahydrocannabinol content derived from the sum of the THC and THC-A content and reported on a dry weight basis. The postdecarboxylation value of THC can be calculated by using a chromatograph technique using heat, and gas chromatography, through which THC-A is converted from its acid form to its neutral form, THC. Thus, this test calculates the total potential THC in a given sample. The postdecarboxylation value of THC can also be calculated by using a high-performance liquid chromatograph technique, which keeps the THC-A intact, and requires a conversion calculation of that THC-A to calculate total potential THC in a given sample. See the definition for decarboxylation.

(55) "Processing" means converting an agricultural commodity into a marketable form.

(56) "Produce" means to cultivate hemp plants in Texas.

(57) "Producer" means a person who produces hemp. A producer also means a person who stores the hemp plants they produced within Department-registered locations.

(58) "Program or hemp program" means the process created by the state of Texas and federal statutes and regulations to facilitate the regulation and cultivation of hemp as a crop.

(59) "Reverse distributor" means a person who is registered with the DEA in accordance with 21 C.F.R. §1317.15 to dispose of marijuana.

(60) "Sample" means a composite, representative portion from one variety of hemp plants in a hemp lot, collected prior to harvest in accordance with Department guidelines and procedures.

(61) "Sample collection date" means the date a hemp sample is collected by the Department or

an authorized entity. To determine the sample collection date, the Department may take into consideration events of force majeure or unusual circumstances, including situations beyond a reasonable person's control.

(62) "Sampler" means a person or entity authorized by the Department to conduct the sampling and collection of hemp plants.

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

(64) "Signing authority" means an individual of a sole proprietorship, or an officer or agent of an entity with written authorization to commit the entity to a binding agreement or verify the contents of a governmental document.

(65) "Specimen" means a cutting taken from a hemp plant.

(66) "Storage" means any structure or container, whether temporary or permanent in nature, in which the producer or handler will store hemp. "Storage" does not include containers used to deliver samples.

(67) "The Code" means the Texas Agriculture Code.

(68) "Transplant" means to move a fully germinated seedling, mature plant, cutting, or clone from one lot and to replant it in another permanent lot under the control of the same license holder, for later harvest by the same license holder. "Transplant" also means a plant, cutting, or clone that has been moved from its initial lot of germination or cultivation for the purpose being transplanted.

(69) "Transport manifest" includes a shipping certificate, cargo manifest or transport document developed by the Department or a U.S authority, authorizing transport of a hemp product within the State of Texas, any other state, the United States of America, or its territories.

(70) "TPIA" means the Texas Public Information Act, Texas Government Code, Chapter 52.

(71) "Unique ID" means the unique identifier established by the Department's hemp program.

(72) "USDA" means the United States Department of Agriculture.

(73) "U.S. authority" means the United States of America, USDA or a sub-agency thereof, a state, a US territory, or an Indian Nation, or federal, state or local law enforcement agency.

§24.2. Information Submitted to the United States Secretary of Agriculture.

(a) Not more than thirty (30) days after receiving and compiling the following information, the Department shall provide to the United States Secretary of Agriculture, or the Secretary's designee, the following information related to Department-licensed producers, in accordance with the Department's Information Gathering and Sharing Procedure:

(1) Full name of individual or entity, residential or principal business address, telephone number, email address, name and title of each key participant of the entity, and employer identification number, if applicable;

(2) Street address, and to the extent practicable, geospatial location for each production location where hemp will be produced in Texas;

(3) Acreage dedicated to the production of hemp, or greenhouse or indoor square footage dedicated to the production of hemp;

(4) The total acreage of hemp planted, or square footage for greenhouses, harvested and if applicable, disposed; and

(5) The status and license number of the license holder.

(b) The Department shall provide real-time updates to USDA for all information that it reports to USDA under this rule, 7 C.F.R. §990.3, or 7 C.F.R. §990.70.

§24.3. Record Retention.

The Department shall collect and retain, for a period of at least three (3) calendar years information for every license holder, and location where the Department has approved hemp to be produced, handled, or sampled and collected.

§24.4. Information Submitted to the Department Subject to Open Records Act.

(a) Except as established in subsection (b) of this section, information and documents generated or obtained by the Department in connection with the program shall be subject to disclosure pursuant to the TPIA.

(b) With the exception of information that must or may be reported or provided to USDA, the DEA, DPS, or local law enforcement, the Department shall withhold all personally identifiable information from disclosure as required or permitted by the TPIA, including physical address, mailing address, driver's license numbers, background checks, geospatial location, telephone, and email addresses.

*n

The proposal is made under §§121.003-004 and §122.051 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and, §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12, 121 and 122 of the Code are affected by the proposal.

<rule>

Subchapter B. Fees.

§24.5. Schedule of Licensing and Registration Fees.

- (a) The initial application fee shall be at least \$100 for each license application.
- (b) The renewal fee shall be at least \$100 for each annual license renewal application.
- (c) The participation fee shall be at least \$100. A participation fee shall be assessed for the following, at a minimum for:
 - (1) each facility;
 - (2) each lot; and
 - (3) a processor registration.
- (d) The facility modification fee shall be at least \$500 for each modified facility.

§24.6. Schedule of Sampling, Collection, and Testing Fees.

- (a) The laboratory registration fee shall be in an amount established by the Department.
- (b) The fee for sampling and collection conducted by the Department shall be \$300.
- (c) The license holder shall be responsible for all fees payable to a licensed sampler contracted with the Department to conduct sampling and collection under the Department's hemp program.
- (d) The license holder shall be responsible for all fees related to the actual shipment or transport of a hemp sample to the laboratory.
- (e) The license holder shall be responsible for all testing fees payable to the laboratory.

§24.7. Other Fees.

- (a) The fee for each Department-issued transport manifest shall be in an amount established by the Department.
- (b) The fee for the organic certification of hemp shall be in an amount established by the Department.
- (c) The fee to participate in an optional marketing program shall be in an amount established by the Department.
- (d) The fee for certification of seed or plants shall be in an amount established by the Department.

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The proposal is made under §§121.003-004 and §122.051 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and, §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12, 121 and 122 of the Code are affected by the proposal.

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Subchapter C. Licensing.

§24.8. License Application.

- (a) Any person who wishes to produce, handle, or sample and collect hemp at any location in the State of Texas shall submit to the Department annually a completed license application in a form prescribed by the Department.
- (b) A person who does not hold a valid license from the Department shall not produce, handle, or sample and collect hemp within the State of Texas.
- (c) An applicant shall pay the required annual fee for each application, renewal or modification of a license.
- (d) A license shall not be issued unless:
 - (1) the application is submitted online to the Department;
 - (2) the application is complete and accurate;
 - (3) the applicant has completed a Department mandatory orientation course;
 - (4) the applicant for a sampler license has completed an additional Department sampling and collection training course;
 - (5) the applicant has paid all required fees, in the amounts established by the Department or statute;
 - (6) the applicant's criminal history confirms that all key participants covered by the license have not been convicted of a felony, under state or federal law, relating to a controlled substance within the past ten (10) years, unless the person was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before December 20, 2018;
 - (7) the application contains no false statements or misrepresentations and the applicant has not previously submitted an application with any false statements or misrepresentations; and
 - (8) the applicant's hemp license has not been terminated or suspended.
- (e) Each applicant shall provide the following information for each license application:
 - (1) full name, Texas address, telephone number, and email address;
 - (2) if the applicant is submitting an application on behalf of an entity, the full name of the entity, the principal Texas business location address, the full names, titles, addresses, and emails of key participants, the full name, title, and email of the applicant who will have signing authority, and the Texas taxpayer ID number;
 - (3) for a producer or handler license:
 - (A) street address and geospatial location including GPS for each facility where hemp will be

cultivated or stored; and

(B) proof of ownership or control over the location where hemp will be cultivated or stored.

(4) for a sampler license, proof of a contract with the Department to conduct sampling and collection under the Department's hemp program; and

(5) all other information required by the Department.

(f) Licenses will not be automatically renewed, and must be renewed annually prior to license expiration. Renewal applications are subject to the same terms, information collection requirements, and approval criteria as required for initial applications.

(g) A license holder must submit a license modification if there is any change to the information submitted in the application including, but not limited to, sale of a business, a change in or new location of the facility for the production, handling, or storage of hemp in Texas, or a change in the key participants.

(h) The Department shall notify each applicant by letter or email of the denial or approval of the person's application.

§24.9. Ineligibility for a License.

(a) A person under the age of eighteen (18) years of age at the time the application is submitted to the Department is ineligible for a license.

(b) A person who has had a hemp license revoked by the Department, USDA, another state, Indian nation, or U.S. territory is ineligible to apply for participation in the Department hemp program for a period of five (5) years from the date of revocation. Upon application following the five-year exclusionary period, the Department may deny an application for any lawful reason, including previous conduct that occurred while licensed by the Department, USDA, another state, Indian nation, or U.S. territory.

(c) A person who is or has been convicted of a felony relating to a controlled substance under federal law or the law of any state may not, before the 10th anniversary of the date of the conviction, hold a license or be a governing person of a business entity that holds a license unless the person was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before December 20, 2018.

(d) A person who falsifies any information contained in a license application to the Department, or has previously submitted an application to the Department, USDA, another state, Indian nation, or U.S. territory with any materially false statements or misrepresentations is ineligible for a license.

(e) A person is ineligible for a sampler license unless they have a valid contract with the Department to conduct sampling and collection under the Department's hemp program. A sampler license is invalid upon the termination or expiration of a contract with the Department to conduct sampling and collection under the Department's hemp program.

§24.10. Criteria for Evaluation of License Application.

(a) The applicant shall submit a complete application with all required components and attachments.

(b) The applicant's history with other TDA programs, if any, shall demonstrate a willingness to comply with the Department's rules and instructions from Department staff.

(c) The applicant shall be in good standing with TDA.

(d) The applicant must not have a criminal conviction described in this subchapter.

§24.11. Criminal Background Check.

- (a) Each applicant, including each key participant of an entity, shall undergo and pay for an annual criminal background check.
- (b) Each license holder must undergo and pay for an additional criminal background check if it changes or adds, prior to the anniversary date of its license, a key participant not previously identified on an application or renewal application.
- (c) Each license holder or applicant is required to pay, as a condition to initial or continued licensure under the program, all required criminal background check fees assessed by the Department.

§24.12. Administrative Appeal from Denial of License Application.

- (a) A license applicant may appeal the denial of a license application.
- (b) If the Department sustains an applicant's appeal of a licensing denial, the applicant will be issued a license.
- (c) If the Department denies an appeal, the applicant's license application will be denied. The applicant may request a formal adjudicatory proceeding within 30 days in writing to review the decision. Such proceeding shall be conducted pursuant to Chapter 12 of the Code.

§24.13. Terms and Conditions for License Holders.

- (a) As an initial and continuing condition of licensure under the Department's hemp program, a license holder consents to entry on and inspection of all locations identified in an initial or renewal application, and all land and premises where hemp or other cannabis plants or materials are located. Such consent includes representatives of the Department or U.S. authority, who may enter such location(s), land, and premise(s) with or without cause, and with or without advance notice.
- (b) As an initial and continuing condition of licensure under the Department's hemp program, a license holder has a legal duty and obligation to destroy, at the license holder's expense, in accordance with DEA reverse distributor regulations found at 21 C.F.R. §1317.15, and without compensation from the State of Texas, USDA or the federal government, any:
 - (1) material found in excess of an acceptable hemp THC level;
 - (2) plants located in an area that is not licensed by the Department; and
 - (3) plants not accounted for in required reporting to the Department;
- (c) A license holder shall not sell, assign, loan, transfer, pledge or otherwise dispose of, alienate or encumber a license. A license is not transferrable upon the death of a license holder, except upon the death of a license holder the independent or dependent executor of the deceased license holder may contract with another license holder to cultivate, harvest, handle, test, and convey the hemp crop existing at the time of the license holder's death.
- (d) A license holder shall not produce or handle hemp in any location other than the location listed in an initial or renewal application or facility addition or modification request.
- (e) A license holder, other than a Hemp Research License Holder, shall not interplant hemp with any other crop without express written permission from the Department.
- (f) A license holder shall comply with restrictions established by the Department limiting the movement of hemp plants and plant parts.
- (g) A license holder shall ensure that at any time hemp is in transit, whether in intrastate or interstate commerce, a Department issued transport manifest shall be available for inspection

upon the request of a representative of the Department, or U.S. authority.

(h) Upon request from a representative of the Department, or U.S. authority, a license holder shall immediately produce a copy of his or her license for inspection.

(i) A license holder shall notify the Department of any interaction with any U.S. authority, within twenty-four (24) hours following such interaction, by telephone call to the Department and follow-up in writing to the Department within three (3) calendar days of the occurrence.

(j) A license holder shall notify the Department of any theft of cannabis materials, whether growing or not.

(k) A license holder shall report to the USDA, Agricultural Marketing Service (AMS), or Farm Service Agency (FSA), consistent with USDA requirements:

(1) their license or authorization number, street address, and facility and lot geospatial location, including all transplanted areas, where hemp is and will be produced;

(2) the acreage dedicated to the production of hemp, or greenhouse indoor square footage dedicated to the production of hemp, and the total acreage or square footage of hemp planted, harvested and if applicable, disposed; and

(3) any change in the facility or lot geospatial location or amount of acreage dedicated to the production of hemp, and any change in the facility or lot geospatial location or amount of greenhouse indoor square footage dedicated to the production of hemp, including the total acreage or square footage of hemp planted, harvested and if applicable, disposed due to said changes.

(l) Failure to comply with this chapter, or any procedure or process established by the Department related to the cultivation, handling, sampling and collection, processing, testing, storage or transport of hemp, or any request by the Department related to the cultivation, handling, sampling and collection, processing, testing, storage or transport of hemp, shall constitute grounds for appropriate enforcement action including, without limitation, the assessment of administrative penalties, the requirement to undertake corrective action, the denial of an initial or renewal application, the revocation of a license, the referral to other state and federal agencies for civil or criminal action, or any combination of such remedies by the Department.

§24.14. Restrictions for License Holders.

(a) A license holder shall not produce or handle any cannabis that is not hemp.

(b) A license holder shall not produce or handle hemp or other cannabis on a facility unless the facility is identified on an application, renewal application or facility addition or modification request approved by the Department.

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

(d) An applicant or license holder shall not include any real property on an application or facility addition or modification request that is not owned or completely controlled by the applicant or license holder, to produce or handle hemp.

(e) A license holder shall not produce or handle hemp or other cannabis on real property owned by or leased from:

(1) a person who is ineligible for licensure under the Department's hemp program; or

(2) a person whose application or renewal application for participation in the Department's hemp program was denied, or whose license was terminated or revoked.

(f) The legal cultivation of cannabis in another state pursuant to the authorization granted by said

state shall not prevent a person from holding a license in Texas.

(g) A person who holds a producer and sampler license with the Department shall not conduct the sampling and collection of their own hemp product.

§24.15. License Holders who Transplant.

(a) In order to be eligible to transplant cannabis plants:

(1) a license holder must acquire a lot permit for the initial area of cultivation, and a lot permit for each final transplantation area.

(2) a license holder who transplants must indicate in the lot permit application for the initial area of cultivation, all final transplantation areas, and anticipated dates of transplants; and

(3) a license holder who transplants shall maintain all recordkeeping required for each lot permit, including submission of all lot reports.

(b) The area where a license holder who transplants initially cultivates cannabis plants and the final transplantation areas shall constitute separate lots. The license holder who transplants shall pay the associated fee for each lot permit.

(c) In the event the initial area of cultivation is not within the same facility as the final transplantation area, the license holder who transplants must request a transport manifest from the Department before transporting a lot of cannabis plants to a separate facility for transplanting purposes. A transport manifest shall be valid for five (5) days from the date of issuance.

(d) A sale or transfer of a lot of cannabis plants from a license holder to another license holder for transplant is considered a harvest.

§24.16. Facility Addition or Modification.

(a) A license holder who elects to produce or handle hemp in a facility other than the facility specified by the geospatial location in the applicant's original licensing application shall register the new facility by submitting a *facility addition or modification request form* and obtain written approval from the Department for the new facility.

(b) In the event the geospatial location of a facility previously registered with the Department changes, the license holder must submit a *facility addition or modification request form* and obtain written approval from the Department for the modified facility.

(c) Once a license holder obtains approval from the Department, the license holder may cultivate, handle or produce hemp at the newly added or modified facility.

(d) The Department shall not process or approve a facility addition or modification request until the Department has received the required forms and fees.

§24.17. Lot Permit.

(a) A license holder must acquire a lot permit from the Department for each lot where the license holder intends to produce or handle hemp prior to producing or handling hemp. The applicant shall submit, at a minimum the license number, geospatial location of the lot where the hemp variety will be planted, the facility where the lot is located, and anticipated dates of cultivation.

(b) An application that is missing required information shall be subject to denial.

(c) A change in the geospatial location of a lot where the hemp variety will be planted will be considered by the Department as a new lot.

§24.18. Reporting and Recordkeeping.

(a) License holders shall maintain records and reports of all hemp plants acquired, produced,

handled, sampled and collected, or disposed for at least three years, using a Department form.

(b) All records shall be maintained and made available for inspection by Department inspectors, US authorities, or their representatives, during reasonable business hours. The following records must be made available:

(1) records regarding acquisition of hemp seed or cultivars;

(2) records regarding production of hemp;

(3) records regarding handling of hemp;

(4) records regarding sampling and collection of hemp;

(5) records regarding disposal of all cannabis plants that, upon testing by the Department, the license holder, or US authority, exceeds the acceptable hemp THC level; and

(6) records regarding the transport or proposed transport of hemp, including transport manifests.

(c) All reports and records required to be submitted to the Department as part of participation in this program which include confidential data or business information, including but not limited to information constituting a trade secret or disclosing a trade position, financial condition, or business operations of the particular license holder or their customers, shall be received by, and at all times kept in the custody and control of, the Department and its employees in accordance with the requirements of Texas law and the Department's information security procedures and policies. Confidential data or business information may be shared with US authorities, or their designees. License holders are responsible for identifying all of the license holder's confidential data or business information, including but not limited to information constituting a trade secret or trade positions, financial conditions, or business operations of the particular license holder or its customers which the license holder deems to be protected from disclosure by the Department. Such identification must be made by separate written communication to the Department specifically identifying the information sought to be protected by the license holder.

§24.19. Registration of Nonconsumable Hemp Processors.

(a) All persons who intend to process nonconsumable hemp products shall register with the Department.

(b) Only a processor registered with the Department shall process nonconsumable hemp products in the State of Texas.

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Chapters 12, 121 and 122 of the Code are affected by the proposal.

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Subchapter D. Inspections, Sampling, and Collection.

§24.20. Site Access for Representatives of the Department and Law Enforcement Agencies.

- (a) The Department, the DEA, DPS, and local law enforcement agencies, along with their representatives and employees, shall be provided with complete and unrestricted access to all hemp plants, whether growing or harvested, and all facilities used for the production and storage of all hemp in all locations where hemp is produced or handled.
- (b) The Department or its representative shall conduct random inspections of license holders to verify the production and handling of hemp complies with applicable state and federal law.
- (c) During a scheduled sample collection, the producer or an authorized representative of the producer shall be present at each lot undergoing sampling and testing.

§24.21. Sampling and Collection.

(a) Sampling and Collection Notification

- (1) A completed *sample request form* from a license holder shall be submitted to the Department at least fifteen (15) days prior to the expected harvest date.
- (2) The Department's receipt of a *sample request form* triggers a site inspection and sample collection by the Department or its representative.

(b) Sampling and Collection

- (1) The material selected for sampling will be determined by the Department's Sampling and Collection Procedure.
- (2) If the license holder fails to complete harvest within fifteen (15) days of sample collection, a secondary sample of each lot to be harvested shall be collected and submitted for testing. The license holder must notify the Department of a delay in harvesting by submitting another, or second, complete, *sample request form* to initiate a second or subsequent sample collection from each lot to be harvested.
- (3) The Department will grant or conduct no more than two (2) sample requests per lot. The Department may grant or conduct additional sample requests under unusual circumstances, including an event unforeseeable by a reasonable person.
- (4) A separate sample must be taken for each lot.
- (5) Samples shall be labeled and prepared for transport to the laboratory for testing in accordance with the Department's Sampling and Collection Procedure.

§24.22. Lot Report.

(a) A license holder shall provide a *lot report* to the Department no later than the 30th day after a final sample is collected from a lot, or no later than 180 days from the lot permit issue date, whichever is earlier.

(b) A *lot report* shall be provided using a Department form and must contain the following information at a minimum, regarding the particular lot:

(1) license holder account number;

(2) facility ID and lot ID;

(3) sample(s) ID(s) and test ID(s);

(4) disposition of cannabis plant materials produced or handled within the lot (e.g. harvest, disposal, transplanting, cloning, distribution, processing, sale, or other use) and any Department-issued transport manifest.

(5) total acres or square footage of cannabis plant material produced or handled; and

(6) a certified statement indicating whether or not any living cannabis plants remain in any lot identified in the *lot report*. In the event any living cannabis plants remain in any lot identified in the *lot report*, the license holder shall further provide a certified statement indicating whether the license holder intends to dispose of or cultivate the remaining, living cannabis plants.

(c) The license holder shall report and certify disposal of cannabis plants to the Department in the *lot report* and include a description of the date and method of disposal.

(d) In the event the license holder cultivates the remaining, living cannabis plants, the license holder shall register the location(s) of the remaining, living cannabis plants as new lots and pay the applicable participation fee.

§24.23. Other Activities.

(a) A license holder shall not harvest a cannabis crop prior to samples being collected.

(b) The license holder shall harvest the crop not more than 15 days following the date of sample collection by the Department, unless specifically authorized in writing by the Department.

(c) Prior to processing, cannabis from harvested lots shall not be commingled with cannabis from other harvested lots or other material without prior permission from the Department.

(d) A license holder may not sell or use harvested plants unless a test of the sample(s) for the lot associated with the harvested plants is at or below the acceptable hemp THC level.

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Chapters 12, 121 and 122 of the Code are affected by the proposal.

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Subchapter E. Testing.

§24.24. Testing Laboratory.

(a) Registration.

(1) An independent testing laboratory, or a laboratory in an institution of higher education, must be registered with the Department before performing any test related to the Department hemp program.

(2) An independent testing laboratory or a laboratory in an institution of higher education shall submit a complete application for registration in a form prescribed by the Department.

(3) An independent testing laboratory or a laboratory in an institution of higher education must be accredited by an independent accreditation body in accordance with International Organization for Standardization ISO/IEC 17025 and must be registered with DEA.

(b) Registered Laboratories

(1) A list of Department-registered laboratories shall be available to license holders on the Department website.

(2) A license holder may test a hemp sample using a registered laboratory in accordance with Tex. Agric. Code §122.151(c).

(3) A license holder who uses a registered laboratory shall pay that laboratory's fees.

(c) State of Texas Laboratory

(1) A license holder may test a hemp sample using a State of Texas Laboratory operated by the Department or its representative (State Laboratory).

(2) The State Laboratory shall be used if the license holder fails to use a registered laboratory.

(3) A license holder shall pay the State laboratory fees.

(4) The State Laboratory shall be registered with DEA.

§24.25. Standards for Testing.

Analytical testing for purposes of detecting the concentration levels of delta-9 tetrahydrocannabinol (THC) in the flower material of the cannabis plant shall meet the following standards:

(1) laboratory quality assurance must ensure the validity and reliability of test results;

(2) analytical method selection, validation, and verification must ensure that the testing method used is appropriate (fit for purpose) and that the laboratory can successfully perform the testing;

(3) the demonstration of testing validity must ensure consistent, accurate analytical performance;

and

(4) method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this subchapter.

§24.26. Methods for Testing.

(a) Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate the measurement of uncertainty.

(b) At a minimum, analytical testing of samples for delta-9 tetrahydrocannabinol concentration levels must use post-decarboxylation or other similarly reliable methods approved by the Department.

(c) The testing methodology must consider the potential conversion of delta-9 tetrahydrocannabinolic acid (THCA) in hemp into delta-9 tetrahydrocannabinol (THC) and the test result reflect the total available THC derived from the sum of the THC and THC-A content. Testing methodologies meeting these requirements include, but are not limited to, gas or liquid chromatography with detection.

(d) Alternative testing protocols will be considered by the Department if they are comparable and similarly reliable to the baseline established under the Department program. Alternative testing protocols must be requested of the Department in writing and approved in writing by the Department, provided they meet the requirements of this subchapter.

§24.27. Testing Procedure.

(a) The laboratory shall test samples in accordance with the Department “Testing Procedure”.

(b) The laboratory shall maintain the chain of custody of each sample using a form prescribed by the Department.

(c) The laboratory shall retain the sample for a minimum of thirty (30) business days from the sample collection date.

§24.28. Reporting Test Results.

(a) The laboratory shall send the test results electronically to the Department and license holder no later than the fourteenth (14th) business day from the sample collection date.

(b) The total delta-9 tetrahydrocannabinol concentration level shall be determined and reported on a dry weight basis. Additionally, measurement of uncertainty (MU) must be estimated and reported with the test results.

(c) Any sample test result showing with at least 95% confidence that the THC content of the sample exceeds the acceptable hemp THC level shall be conclusive evidence that one or more cannabis plants or plant products from the lot represented by the sample contain a THC concentration in excess of that allowed. If the results of a test conclude that the THC levels of a sample conclusively exceeds the acceptable hemp THC level, the laboratory will promptly notify the producer and the Department or its authorized agent.

§24.29. Retest.

(a) A license holder may request a retest of the original sample within five (5) days from the date the license holder receives the results of the first test.

(b) A license holder requesting a retest must use the laboratory that conducted the initial test.

(c) The laboratory shall use the original sample, used in the first test, for the retest.

(d) The results of the retest are final.

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Chapters 12, 121 and 122 of the Code are affected by the proposal.

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Subchapter F. Disposal.

§24.30. Notice Procedures.

- (a) The license holder shall submit a completed *disposal report* to the Department no later than seven (7) days after the license holder receives a final test result exceeding the acceptable hemp THC level.
- (b) The Department's receipt of a *disposal report* triggers a potential field inspection by the Department or its representative.
- (c) The Department will inform the license holder no later than seven (7) days after receiving the *disposal report* of the approved method of disposal.

§24.31. Non-compliant Cannabis Plants.

- (a) Cannabis plants exceeding the acceptable hemp THC level constitute marijuana, a Schedule I controlled substance, which must be disposed of in accordance with the federal Controlled Substances Act (CSA) in 21 C.F.R. §13 and DEA regulations in 21 C.F.R. §1317.15.
- (b) A final test result exceeding the acceptable hemp THC level shall be conclusive evidence that the lot represented by the sample is non-compliant with state and federal law. The cannabis on that lot may *not* be further handled, processed, or enter the stream of commerce, other than for disposal purposes in strict compliance with the CSA and DEA regulations.
- (c) Disposal of Non-compliant Cannabis Plants.
 - (1) Within five (5) days of receiving a notice of disposal from the Department, the license holder shall contact an appropriate DEA-registered reverse distributor or other authorized person or entity to request disposal of the non-compliant cannabis plants in strict compliance with the CSA and DEA regulations.
 - (2) The license holder shall pay all costs and fees required for the destruction of non-compliant cannabis plants and shall surrender such plants to the DEA-registered reverse distributor or other authorized person or entity for disposal in accordance with DEA regulations, without compensation from TDA, the State of Texas, or U.S. authorities.
 - (d) License holders must notify USDA and the Department of intent to dispose of non-compliant cannabis plants and verify disposal by maintaining and submitting records of the disposal.

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Chapters 12, 121 and 122 of the Code are affected by the proposal.

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Subchapter G. Enforcement.

§24.32. Complaints.

- (a) Any person with cause to believe that any provision of the Code or this chapter, related to the Department hemp program, has been violated or not complied with by a license holder, may file a complaint with the Department. The Department will accept either a written or oral complaint, but may require the completion and signing of a complaint form before conducting an investigation into the circumstances or situation giving rise to the complaint.
- (b) Upon receipt of an acceptable complaint, the Department will investigate the complaint and make a written report.
- (c) The Department's written report will be made available to the public to the extent authorized by the TPIA.
- (d) The Department shall, as soon as possible, notify the person(s) believed to be responsible for the acts, omissions, circumstance(s) and situation(s) described in the complaint, and the owner or lessee of the land where the incident(s) allegedly occurred of the existence of the complaint.
- (e) The Department will not find a violation based solely on the uncorroborated statements of an anonymous or unidentified complainant. However, the Department routinely investigates all such complaints. The Department will determine the extent of the investigation and resources which are necessary to address any particular complaint.

§24.33. Negligent Violations.

- (a) A hemp producer shall be subject to enforcement for negligently producing hemp or for negligently producing cannabis (marijuana) which exceeds the acceptable hemp THC level.
- (b) Negligent violations shall include, but not be limited to:
 - (1) failure to provide a legal description or geospatial location of the facility on which the license holder produces or stores hemp;
 - (2) failure to obtain a license or other required authorization from the Department; or
 - (3) production of cannabis with a delta-9 tetrahydrocannabinol concentration exceeding the acceptable hemp THC level.
- (c) Hemp producers do not commit a negligent violation under this chapter if they make reasonable efforts to grow hemp, and after sampling and testing, the cannabis (marijuana) does not produce a test result showing a delta-9 tetrahydrocannabinol concentration for the lot's sample of more than 0.5 percent on a dry weight basis.

(d) For each negligent violation, the Department will issue a Notice of Violation and require the license holder to submit a corrective action plan. The Department shall review the corrective action plan and determine if the corrective action plan meets the requirements of 7 C.F.R. §990, the Code, this chapter, and the Department's other requirements. If the Department approves the corrective action plan, the license holder shall comply with the corrective action plan to cure the negligent violation. If the Department denies the corrective action plan, the license holder's license shall be revoked. Corrective action plans will be in place for a minimum of two (2) years from the date of their approval. Corrective action plans will, at a minimum, include:

- (1) the date by which the license holder shall correct each negligent violation;
- (2) steps to correct each negligent violation; and
- (3) a description of the written procedures to demonstrate compliance with applicable law and the Department's policies and procedures, which may include additional reporting requirements to show such compliance.

(e) A license holder that negligently violates this chapter shall not, as a result of that violation, be subject to any criminal enforcement action in Texas.

(f) If a subsequent violation occurs while a corrective action plan is in place, a new corrective action plan must be submitted with a heightened level of quality control, staff training, and quantifiable action measures.

(g) A license holder that negligently violates the terms of a license three (3) times in a five-year period shall have their license revoked and be ineligible to produce hemp for a period of five (5) years, beginning on the date of the third violation.

(h) The Department or any U.S. authority along with their authorized representatives and employees shall conduct inspections to determine if the corrective action plan has been implemented.

§24.34. Violations with a Culpable Mental State Greater than Negligence.

(a) In addition to being subject to license suspension, license revocation, and monetary civil penalty procedures established in this chapter, a person who is found by the Department to have violated any statute or administrative regulation governing that person's participation in the hemp program with a culpable mental state greater than negligence shall be subject to the reporting requirements established in this section.

(b) The Department shall immediately report a person who is found by the Department to have violated any statute or administrative regulation governing that person's participation in the hemp program with a culpable mental state greater than negligence to the following law enforcement agencies:

- (1) the Attorney General of the United States;
- (2) the Texas Department of Public Safety;
- (3) the Office of the Texas Attorney General; and
- (4) other law enforcement authorities with jurisdiction over the producer's acts or omissions that are the subject of the report.

§24.35. License Suspension.

(a) The Department may issue a notice of suspension to a license holder if the Department or its representative receives credible evidence establishing that a license holder has:

- (1) engaged in conduct, being either an act or omission, violating a provision of this chapter; or
- (2) failed to comply with a written order from the Department related to negligence as defined in

this chapter.

(b) Any license holder whose license has been suspended shall not cultivate, handle or remove hemp or cannabis from any location where hemp or cannabis was located at the time when the Department issued its notice of suspension, without prior written authorization from the Department.

(c) Any person whose license has been suspended shall not produce or handle hemp during the period of suspension.

(d) A license holder whose license has been suspended may appeal that decision in accordance with this subchapter.

(e) A license holder whose license has been suspended and not restored on appeal may have their license restored after a waiting period of one year from the date of the suspension, subject to the terms of a five-year revocation.

(f) A license holder whose license has been suspended may be required to complete a corrective action plan to fully restore the license.

§24.36. License Revocation.

The Department shall immediately revoke a license if a person:

(1) pleads guilty to, or is convicted of, any felony related to a controlled substance under Texas law, federal law or the law of any other state;

(2) made a false statement or provided false information or documentation to the Department or its representatives, with a culpable mental state greater than negligence; or

(3) is found to be growing cannabis exceeding the acceptable hemp THC level with a culpable mental state greater than negligence, or negligently violated this chapter three (3) times in five (5) years.

§24.37. Penalties.

§12.020 of the Code, which provides for the assessment of administrative penalties, applies to a person who violates the Code or this chapter. Failure to pay an administrative penalty assessed by a final order of the Department is a violation of this chapter. Failure to pay a final judgment which assesses a civil penalty in which express findings of a violation are made, and which was entered pursuant to the Code or this chapter, shall also constitute a violation of this chapter.

§24.38. Appeals.

(a) Persons who believe they are adversely affected by the assessment of an administrative action may appeal such decision to the Department.

(b) If the Department sustains the appeal of an administrative action, the person will retain their license and not be subject to the administrative action proposed by the Department in all or part.

(c) If the Department denies the appeal of an administrative action, the license will be revoked or suspended and any administrative action will be imposed. The person may request a formal adjudicatory proceeding in accordance with Chapter 12 of the Code.

*n

The proposal is made under §§121.003-004 and §122.051 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and, §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12, 121 and 122 of the Code are affected by the proposal.

<rule>

Subchapter H. Transportation.

§24.39. Transport Manifest Required.

(a) A Department-issued transport manifest shall be required for the transportation of hemp outside a facility where the hemp is produced.

(b) Hemp produced outside of Texas and transported in Texas shall be accompanied by valid documentation authorized by another state, Indian Nation, or U.S. territory.

§24.40. Transport Manifests for Test Samples.

A Department-issued transport manifest shall accompany all samples collected and transported to a laboratory for testing.

§24.41. Transport of Pests Prohibited.

A person may not transport hemp in the State of Texas that contains an agricultural pest or disease listed in Title 4 of the Texas Administrative Code Chapter 19.

§24.42. Transplants Originating Outside the State of Texas Prohibited.

To the extent authorized by the laws and Constitution of the United States, no person shall bring into the State of Texas a cannabis transplant that originated from cannabis plants germinated outside of the State of Texas. A license holder may only cultivate cannabis transplants originating from cannabis plants germinated in Texas.

§24.43. Mixed Cargo Prohibited.

A person transporting hemp plant material in the State of Texas shall not concurrently transport any cargo that is not hemp material.

*n

The proposal is made under §§121.003-004 and §122.051 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and, §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12, 121 and 122 of the Code are affected by the proposal.

<rule>

Subchapter I. Hemp Seed.

§24.44. Certified or Approved Hemp Seed.

(a) The Department shall maintain and make available to license holders a list of businesses that sell hemp seeds certified or approved for production, sale, offered for sale, or distributed within the State of Texas.

(b) A person may not sell, offer for sale, distribute or use hemp seed in the State of Texas unless the seed is certified or approved by the Department.

§24.45. License Required to Sell, Possess, Hold or Purchase Hemp Seed.

After May 1, 2020, A person or entity may not sell, possess, hold or purchase hemp seed unless that person holds a valid and active license issued by the Department for the production and handling of hemp.

§24.46. Hemp Seed Quality and Labeling Requirements.

(a) Hemp seed sold, offered for sale, distributed, or used in the State of Texas must meet the legal standards for seed quality and seed labeling required by Texas and federal law, as well the legal standards of the jurisdictions from where the seed is originally sold and produced.

(b) Hemp seed sold, offered for sale, distributed, or used in the State of Texas must also meet the additional hemp seed quality and labeling requirements as provided for by the Department.

(c) Hemp seed sold, offered for sale, distributed, or used in the State of Texas must contain a clear, legible statement on the label in English in addition to any other language on the label indicating the:

- (1) specific variety of the hemp seed;
- (2) the seller or distributor; and
- (3) the location and jurisdiction of origin of the hemp seed.

§24.47. Hemp Seed Recordkeeping.

A person who sells, offers to sell, distributes, or uses hemp seed in Texas shall maintain records indicating:

- (1) the origin of the hemp seed for five (5) years;
- (2) the person or entity from whom the person purchased the hemp seed;
- (3) any documentation indicating certification or approval of the provenance, quality, and variety

of the hemp seed; and
(4) the location and jurisdiction of origin of the hemp seed.

§24.48. Certification or Approval of Hemp Seed.

- (a) A person may request the certification or approval of a hemp seed for a particular variety by submitting a completed form prescribed by the Department.
- (b) A person requesting for the certification or approval of hemp seed for a particular variety shall provide the following information to the Department:
- (1) name of kind and variety;
 - (2) a statement concerning the variety's origin, and the breeding procedure used, in its development including evidence on stability (evidence on stability must include any field test reports and sample test results demonstrating the hemp seed was used to grow hemp plants which tested within the acceptable hemp THC Level);
 - (3) a completed objective form for the crop as provided by the Department Seed Quality Program, if such form is available. The completed objective description form as provided by the U.S. Plant Variety Protection Office may be used in lieu of the Texas form;
 - (4) a statement delineating the geographic area or areas of adaptation of the variety; and
 - (5) such other information as may be requested by the Department which may include but is not limited to:
 - (A) special characteristics of the seed and of the plant as it passes through the seedling stage and flowering stage; and
 - (B) other evidence of performance of the variety (date, graphs, charts, pictures, etc.) supporting the identity of the variety, if known. If statements or claims are made concerning performance characteristics, such as yield, tolerance to insects or diseases, or lodging, there must be evidence to support such statements. Statistical analysis of data is encouraged.
 - (c) The Department may gather the information described in this section to conduct research and analysis to determine the quality and viability of hemp seed varieties for approval by the Department. The Department may partner with Texas A & M University or a State of Texas institution of higher education to conduct research and analysis pertaining to hemp seed varieties.
 - (d) The Department may revoke a hemp seed variety certification or approval if it determines that the hemp seed variety does not meet the standards described in this section.

*n

The proposal is made under §§121.003-004 and §122.051 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and, §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12, 121 and 122 of the Code are affected by the proposal.

<rule>

Subchapter J. Agricultural or Academic Hemp Related Research.

§24.49. Hemp Research License.

(a) Texas A&M University or a Texas institution of higher education may apply for a license to produce and handle hemp for agricultural or academic research. A license issued to Texas A&M University or a Texas Institution of higher education pursuant to this section is known as a “Hemp Research License.”

(b) In order to obtain a hemp research license, Texas A&M University or a Texas institution of higher education must submit an application and required fees to the Department.

(c) A hemp research license holder must comply with and is solely responsible for compliance with all state and federal laws, rules, and guidelines pertaining to the production and handling of hemp in addition to the laws, rules, and guidelines of any other jurisdiction where such hemp research license holder may produce or handle hemp.

§24.50. Hemp Research Plan.

(a) An applicant for a hemp research license must also submit a research plan providing the following information:

(1) a detailed statement specifying the nature and purpose of the hemp related research to be conducted;

(2) all locations where hemp related research will be conducted;

(3) the varieties of hemp to be utilized for the research purposes; and

(4) such other information as may be requested by the Department.

(b) A hemp research license holder must also submit an annual research plan detailing the location, activities, and the results of the hemp related research conducted by the hemp research license holder during the previous twelve (12) month period. Trade secret or patent information developed due to hemp research may be omitted from the annual research plan so long as there is a necessity for the research institution to protect such information.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency’s legal authority.

Filed with the office of Secretary of State on December 30, 2019.

Texas Department of Agriculture Information Gathering and Sharing Procedure

Pursuant to 7 C.F.R. § 990.3(a)(7), the Texas Department of Agriculture (TDA) provides below “a procedure for submitting information described in 7 C.F.R. §990.70 to the Secretary not more than 30 days after the date on which the information is received... in a format that is compatible with the United States Department of Agriculture’s information sharing system.”

Further, pursuant to 7 C.F.R. §990.3(a)(9), TDA is also providing “a procedure to share information with the United States Department of Agriculture (USDA) to support the information sharing requirements in 7 U.S.C. 1639q(d).”

TDA rules pertaining to information gathering and sharing are set out in TDA’s proposed rules included with TDA’s state plan. TDA intends to file its proposed rules with the Texas Register on Monday, December 2, 2019, for publication in Issue Number 50 on Friday, December 13, 2019.

A brief description of TDA’s information gathering and sharing procedure is provided below:

1. TDA has proposed rules requiring license applicants and license holders to submit to USDA, FSA, AMSA, and/or TDA the information required by 7 C.F.R. §990.3 and §990.70.
2. Until an electronic information sharing system is in place, TDA will utilize the reporting forms made available by USDA, or develop spreadsheets in substantial compliance and conformity with the current USDA forms, in order to share the required information with USDA. TDA intends to send the completed forms or spreadsheets on a timely basis to USDA via email.
3. TDA will maintain the information received from applicants and license holders in a searchable and transferable electronic format that can be provided to USDA in a format compatible with USDA’s information sharing system when that system becomes available.

Texas Department of Agriculture Testing Procedure

Purpose:

1. Standard testing procedures are specified for samples taken in accordance with the Sampling Procedures for the TDA Hemp Program to measure the delta-9 tetrahydrocannabinol (THC) concentration levels of those samples on a dry weight basis. Laboratories are required to be accredited by an independent accreditation body in accordance with the International Organization for Standardization ISO/IEC 17025 or a successor standard. All TDA-registered laboratories approved for THC testing must also be registered with DEA pursuant to 21 CFR §1301.13 to handle controlled substances under the federal Controlled Substances Act (CSA).
2. The results are intended to measure the THC content of composite hemp samples collected from a designated lot of hemp crop acreage designated by a hemp producer and reported to TDA as required under the TDA hemp program. The purpose of the measurements is to determine whether the THC concentration of the tested material is within the acceptable hemp THC level.
3. As required under the TDA hemp program, laboratories conducting testing of hemp must conduct analytical testing for purposes of detecting the concentration levels of delta-9 tetrahydrocannabinol THC and shall meet the following standards:
 - (a) Laboratory quality assurance must ensure the validity and reliability of test results;
 - (b) Analytical method selection, validation, and verification must ensure that the testing method used is appropriate (fit for purpose) and that the laboratory can successfully perform the testing;
 - (c) The demonstration of testing validity must ensure consistent, accurate analytical performance; and
 - (d) Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of detectability requirements.
 - (e) At a minimum, analytical testing of samples for delta-9 tetrahydrocannabinol concentration levels must use post-decarboxylation or other similarly reliable methods approved by TDA. The testing methodology must consider the potential conversion of delta-9 tetrahydrocannabinolic acid (THCA) in hemp into delta-9 tetrahydrocannabinol (THC) and the test result reflect the total available THC derived from the sum of the THC and THC-A content. Testing methodologies meeting these requirements include, but are not limited to, gas chromatography and high-performance liquid chromatography.
 - (f) The total delta-9 tetrahydrocannabinol concentration level shall be determined and reported on a dry weight basis.
 - (g) Any sample test result showing with at least 95% confidence that the THC content of the sample is higher than the acceptable hemp THC level shall be conclusive evidence that the lot represented by the sample is not in compliance with the Department program rules and procedures.
 - (h) Alternative testing protocols will be considered if they are comparable and similarly reliable to the baseline established under the TDA plan and procedures. Alternative testing protocols must be requested of TDA in writing and approved in writing by TDA, provided

they meet the requirements of this guidance.

General Sample Preparation and Testing Procedures are as follows:

1. Laboratory receives sample.
2. Dry sample to remove the majority of water.
3. Mill and “manicure” sample through a wire screen no larger than 1.5 x 1.5mm to discard mature seeds and larger twigs and stems.
4. Separate sample into a test and retain specimens.
 - a. Test specimen: go to step 5
 - b. Retain specimen: package and store until needed. When needed go to step 5.
5. Determine moisture content or dry to a consistent weight (meeting criteria).
6. Perform chemical analysis.
7. Calculate total THC on a dry weight basis. Test results should be determined and reported on a dry weight basis.

(A) Samples. Samples shall be received and prepared for testing in a TDA-registered laboratory as follows:

- (1) Once the composite sample is received by the laboratory, the laboratory shall dry all of the leaf and flower (not obvious stem and seeds) of the composite sample until brittle in a manner that maintains the THC level of sample. Samples are to be dried to a consistent loss (typically 5- 12% moisture content) so that the test can be performed on a dry weight basis, meaning the percentage of THC, by weight, in a cannabis sample, after excluding moisture from the sample. The moisture content is expressed as the ratio of the amount of moisture in the sample to the amount of dry solid in the sample.
- (2) The laboratory shall mill and manicure samples through a wire screen no larger than 1.5x 1.5mm to discard mature seeds and larger twigs and stems.
- (3) The laboratory shall form sieve a “Test Specimen” and a “Retain Specimen.” One sample part shall be selected for analysis and labeled "Test Specimen". The other sample part shall be marked "Retain Specimen" and shall be packaged and stored in a secured place.
- (4) The laboratory shall then determine moisture content or dry to a consistent weight.
- (5) The laboratory will then perform chemical analysis on the sample using post-decarboxylation or other similarly reliable methods where the total THC concentration level considers the potential to convert delta-9-tetrahydrocannabinolic *acid* (THCA) into THC. Testing methodologies meeting these requirements include those using gas chromatography and high-pressure liquid chromatography. High-performance liquid chromatography (HPLC) or (LC) is a scientific method (specifically, a type of chromatography) used in analytical chemistry used to separate, identify, and quantify each component in a mixture. It relies on pumps to pass a pressurized liquid solvent containing the sample mixture through a column filled with a solid adsorbent material to separate and analyze compounds. Under the terms of this part, HPLC is one of the valid methods by which laboratories may test for THC concentration levels.

Ultra-Performance Liquid Chromatography (UPLC) is an additional method that may also be used as well as other liquid or gas chromatography with detection.

(6) The laboratory will then calculate total THC on a dry weight basis.

(B) Testing Methods. The total available THC, derived from the sum of the THC and THCA content, shall be determined and reported on a dry weight basis. Alternative testing protocols will be considered if they are comparable to the baseline established under the TDA program and procedures. Alternative sampling and testing procedures must be requested in writing and approved in writing by TDA.

Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty. Laboratories shall meet the AOAC International standard method performance requirements (SMPR) for selecting an appropriate method. The range of estimated uncertainty is reported as a \pm value and is the same unit as the hemp THC threshold (0.3% THC), following best practices for significant figures and rounding.

There are resources available for defining, guiding, and calculating measurement uncertainty. They include the GUM, ISO, and Eurachem. It is necessary for the laboratory to determine the uncertainty of accuracy (u_{bias}), repeatability (u_r), and reproducibility (u_R) for each validated method. Once the expanded measurement uncertainty (U) is determined, then the confidence interval can be calculated around a designated threshold such as the hemp THC threshold (0.3% THC). Based on the aforementioned resources, the following equation is recommended:

Equation:

$$U = k \times u_c$$

Where,

$$u_c = \sqrt{u_r^2 + u_R^2 + u_{bias}^2}$$

And:

u = standard uncertainty (standard deviation)

u_r = uncertainty due to repeatability

u_R = uncertainty due to reproducibility

u_{bias} = uncertainty due to accuracy (bias)

u_c = combined standard uncertainty

U = Expanded uncertainty = $u/\text{mean} \times k$ 95% confidence level, $k = 2$

k = coverage factor, use 2 for a 95% confidence level

Texas Department of Agriculture Sampling and Collection Procedure

Purpose:

1. Standard sampling guidelines are specified for field and greenhouse sampling of hemp.
2. Samples are taken to obtain specimens for the measurement of tetrahydrocannabinol (THC) content, which determine whether the specimens are hemp or marijuana. The measurements are intended to be representative of the THC content in a lot of hemp crop acreage as identified by the producer. Hemp producers may not harvest hemp prior to the hemp being sampled and tested for THC concentration. Testing procedures are provided in a separate document.

Scope:

1. Samples collected under this procedure are acceptable for submission to a qualified, ISO accredited and DEA-registered laboratory for determination of THC in hemp.
2. Pursuant to 7 CFR §990.3(a)(2)(i), samples will be taken from a lot within 15 days prior to the anticipated harvest of cannabis plants.
3. Samples must be collected by a TDA Inspector or authorized representative, or a law enforcement agent authorized by TDA to collect samples. It is the responsibility of the licensed producer to pay any fees associated with sampling.

Summary of Practice:

1. This practice provides procedures for entering a growing area and collecting the minimum number of plant specimens necessary to represent a homogeneous composition of the lot that is to be sampled. An authorized representative enters a growing area, strategically examines the growing area, establishes an approach for navigating the growing area, and collects individual specimens of plants in order to obtain a representative sample of hemp in the designated lot. Samples will be collected in accordance with 7 CFR §990.3(a)(2)(ii) and applicable USDA guidance.
2. Cuttings from each lot of hemp crop acreage, as identified by the producer, and submitted to and uniquely identified by TDA per the requirements of the TDA hemp production program, shall be organized as composite samples.

Equipment and Supplies:

1. Garden pruners/shears (Cleaned prior to and following each composite sample. Some examples of appropriate cleaning agents and supplies to use on garden pruners/shears are bleach, rubbing alcohol, steel wool, and/or sandpaper.)
2. Sample bags, paper.
 - 2.1. The size of the bags will depend upon the number of clippings collected per plot.
 - 2.2. The bags should be made from material known to be free from THC and kept separate from any samples already collected.
3. Security tape
4. Permanent markers
5. Sample collection forms
6. GPS Unit
7. Disposable gloves – Nitrile

Sampling Guidelines:

1. The licensee or designated employee shall accompany the sampling agent throughout the sampling process.
2. Surveillance of the lot.
 - 2.1. The inspector shall verify the GPS coordinates of the lot as compared with the GPS coordinates submitted by the licensee to TDA.
 - 2.2. The inspector shall estimate the average height, appearance, approximate density, condition of the plants, and degree of maturity of the flowering material, meaning inflorescences (flowers/buds).
 - 2.3. The inspector shall visually establish the homogeneity of the stand to establish that the growing area is of like variety.
3. Time of Sampling:
 - 3.1. Within 15 days prior to the anticipated harvest of cannabis plants, an authorized person shall collect representative samples from such cannabis plants for THC concentration level testing.
4. Field Sampling:
 - 4.1. For purposes of determining the number of individual plants to select for sampling, the size of the growing area shall be considered. For sampling purposes, samples from separate lots must be kept separate and not be comingled.
 - 4.2. For lots of less than one acre, including greenhouses, select a minimum of 5 plants, then take a cutting from the plant to form a sample. For lots of 2 to 10 acres, including greenhouses, select a minimum of 5 plants per lot, then take cuttings of each plant, then combine to form a composite sample.
 - 4.3. For growing areas larger than ten (10) acres, including greenhouses, the number of plants that will be selected to form a composite sample is based upon the Codex Alimentarius Recommended Methods of Sampling for the Determination of Pesticide Residues for Compliance with MRLS CAC/GL 33-1999.
 - 4.3.1. The sample size is estimated in a two-step process. The first step is to estimate the number of primary plants to be sampled. The second step is to adjust the estimate of primary plants by the acreage under cultivation.
 - 4.3.2. The initial number of primary plants is estimated using

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

where p is the confidence level to detect hemp plants having THC content greater than the acceptable hemp THC level and i is the proportion of hemp plants having THC content greater than the acceptable hemp THC level. The values for i are based on past experience in the same or similar growing areas.

4.3.3. The initial primary plants estimate is adjusted by the number of acres to calculate the minimum number of primary plants for compositing as follows:

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

where n is the minimum number of primary plants to be selected for forming a composite sample, n_0 is the initial number of primary plants, and N is the number of acres under cultivation.

4.3.4. Example 1 : The initial primary plant sample size is 299 with a confidence level of 95% to detect hemp plants having THC content greater than the acceptable hemp THC level and a proportion of hemp plants having THC content of greater than the acceptable hemp THC level equal to 0.01 is considered appropriate. The adjusted primary plant sample sizes for lots from 11 to 173 acres in size are shown in the following table:

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

Example 2: The adjusted primary plant sample sizes for fields from less than 1 to 10 acres in size are shown in the following table:

Number of Acres "N"	Sample Size "n"
Less than 1	5
1	5
2	5
3	5
4	5
5	5
6	6
7	7
8	8
9	9
10	10



5. Collecting Samples from each lot:

5.1. Sampling agents shall always walk at right angles to the rows of plants, beginning at one point of the lot and walking towards another point on the opposite side of the lot.

5.2. While walking through the growing area, the inspector shall cut at least "n" flowering material, meaning inflorescences (the flower or bud of a plant) at random but convenient distances. Avoid collecting too many specimens from the borders of the field/greenhouse.

5.3. The cut shall be made just underneath a flowering material, meaning inflorescence (the flower or bud of a plant), located at the top one-third (1/3) of the plant. (See figure below.) The sample size must be of adequate volume to accommodate laboratory tests.

5.4. Utilize a paper sample bag for collecting sample cuttings. Ensure that each bag has the minimum number of cuttings, n, as calculated by 4.3.3, or in the Example Tables 1 and 2.

5.5. Seal each bag and record the sample number.

6. Sample identification:

6.1 The inspector shall seal each bag and record the sample identification number. The sample shall also be identified with the following information:

(1) The sample ID shall include: Sampling agent contact information; name and contact information of the producer; producer hemp license number ; date of sample; and "lot" ID as provided by TDA; any other information that may be required by mail delivery services.

Texas Department of Agriculture Non-compliant Cannabis Disposal Procedure

Pursuant to 7 C.F.R. §990.3(a)(3)(iii)(E), a state administering its hemp program must have an effective disposal procedure for non-compliant hemp plants. The procedure must be in accordance with DEA reverse distributor regulations found at 21 C.F.R. §1317.15.

TDA has proposed rules implementing the notice and disposal requirements pertaining to non-compliant cannabis plants referenced in 7 C.F.R. §990.3 and §990.27. TDA is coordinating with and will continue to coordinate with federal, state, and local law enforcement as well as other Texas State agencies to ensure non-compliant cannabis plants are disposed of in an appropriate manner.

A summary of TDA's disposal procedure is provided below:

1. In addition to mandatory pre-harvest testing, TDA, the producer or the Texas Department of Public Safety may take representative samples of cannabis plants at any time.
2. TDA shall be timely notified of test results.
3. Representative sample tests results exceeding the acceptable hemp THC level shall result in the disposal of the lot from which the sample was taken.
4. In the event disposal is warranted, the non-compliant cannabis plants may not be further handled, processed, or enter the stream of commerce other than for disposal purposes in strict compliance with the CSA and DEA regulations.
5. Within five (5) days of receiving notice of non-compliance or notice of disposal from TDA, the license-holder shall contact a DEA-registered reverse distributor or other authorized person or entity to request disposal in accordance with state and federal law.
6. The license holder shall surrender the non-compliant cannabis plants to the appropriate DEA-registered reverse distributor or other authorized person or entity in accordance with the CSA and DEA regulations.
7. The reverse distributor or other authorized person or entity shall destroy the non-compliant cannabis plants in accordance with the CSA and DEA regulations.
8. Producers must notify the USDA and TDA of their intent to dispose of non-compliant cannabis plants and verify disposal by submitting required documentation including test results.
9. TDA will timely notify USDA by certified mail or electronically of any non-compliant cannabis plants and attach to such notification the relevant disposal records.