

EXPRESS TERMS

Title 1, Part 159 of the NYCRR is repealed, and a new Part 159 is adopted to read as follows:

Part 159. License to Grow and Research Hemp.

§159.1. Applicability.

§159.2. Definitions.

§159.3. Licenses.

§159.4. License applications.

§159.5. Licensing conditions.

§159.6. License term, form, and amendment.

§159.7. License renewal.

§159.8. Granting, denying, and revoking licenses.

§159.9. Grower inspection.

§159.10. Sampling for Acceptable Hemp THC Levels.

§159.11. Regulatory THC testing.

§159.12. Disposition or remediation of non-compliant hemp.

§159.13. Recordkeeping.

§159.14. Reporting requirements.

§159.15. Infractions and Violations.

§159.16. License suspension.

§159.17. Registrations for Hemp Seed and Plant Sales.

§159.18. Aids to Enforcement.

§159.1. Applicability.

The provisions of this Part shall apply to all growers of hemp in the State, regardless of whether such hemp is sold or distributed in the State.

§159.2. Definitions.

For the purpose of this Part, the following terms shall have the following meanings:

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

(b) "Cannabis" means a genus of flowering plants in the family Cannabaceae of which *Cannabis sativa* L. is a species, and *Cannabis indica* and *Cannabis ruderalis* are subspecies.

(c) "Commissioner" means the Commissioner of Agriculture and Markets of the State of New York.

(d) "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 Part, 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 Part.

(e) "Corrective action plan" means a plan established or approved by the Department under this Part for a licensed hemp grower to correct a negligent violation or non-compliance with this Part.

(f) "Criminal history report" means the Federal Bureau of Investigation Identity History Summary.

(g) “Culpable mental state greater than negligence” means to act intentionally, knowingly, willfully, or recklessly.

(h) “Decarboxylated” means the completion of the chemical reaction that converts THC-acid (THCA) into delta-9 tetrahydrocannabinol, the intoxicating component of cannabis. The decarboxylated value is also calculated using a molecular mass conversion ratio that sums delta-9-THC and eighty-seven and seven tenths (87.7) percent of THCA ($[\text{delta-9THC}] + [0.877 * \text{THCA}]$).

(i) “Decarboxylation” means the removal or elimination of a carboxyl group from a molecule or organic compound.

(j) “Delta-9 tetrahydrocannabinol” “Delta-9 THC” or “THC” means the primary psychoactive cannabinoid of cannabis.

(k) “Department” means the New York State Department of Agriculture and Markets.

(l) “Dispose” and any variant thereof, means any activity that transitions the non-compliant product into a non-retrievable or non-ingestible form. Such activities include plowing, tilling, or discing plant material into soil; mulching, composting, chipping, or brush mowing plant material into green manure; burning plant material into the earth and covering it with soil; or as otherwise authorized in this Part or in writing by the Department.

(m) “Drug Enforcement Administration” or “DEA” means the United States Federal Law Enforcement Agency under the United States Department of Justice.

(n) “Drug Enforcement Administration Registered Reverse Distributor” means a person who is registered with the DEA in accordance with Title 21 Code of Federal Regulations Subpart 1317.15 to dispose of marijuana under the Controlled Substances Act.

(o) “Dry weight basis” means the method of determining the percentage of a chemical in a substance after removing the moisture from the substance.

(p) “Dwelling” means any residential building or portion thereof intended for human habitation.

(q) “Farm Service Agency” or “FSA” means the Farm Service Agency of the United States Department of Agriculture.

(r) “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.

(s) “Geospatial location” or “GPS” means a location designated through a global system of navigation satellites used to determine the precise ground position of a place or object.

(t) “Grower” means a person who is licensed by the Department to grow or cultivate hemp in the State.

(u) “Grow Location” means a contiguous land area or the greenhouses, hoop houses, or buildings for indoor cultivation, registered with the Department, on or in which a licensee or applicant will conduct licensed hemp cultivation activities. Each non-contiguous grow location must be registered separately.

(v) “Handle” means to harvest, dry, or store hemp plants or hemp plant parts prior to their introduction into commerce. Handling includes the processing of hemp only in connection with its growing and cultivation, the disposal of cannabis plants that fall outside the definition of hemp, and the remediation of hemp as permitted pursuant to this Part.

(w) “Hemp” 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.

(x) "Liquid chromatography" or "LC" means a type of chromatography technique in analytical chemistry used to separate, identify, and quantify each component in a mixture. LC 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.

(y) "Key participants" means a sole proprietor, a partner in partnership, or a person with executive managerial control in a business or educational entity. A person with executive managerial control includes, without limitation, persons such as a chief executive officer, chief operating officer and chief financial officer. This definition does not include non-executive managers such as farm, field, or shift managers.

(z) "Law enforcement agency" means any Federal, State, or local law enforcement agency.

(aa) "Lot" means a contiguous area in a field, sub-field, tract, greenhouse, or indoor growing structure containing the same variety or strain of hemp throughout the area.

(bb) "Marijuana" 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 marijuana does not include hemp, as defined in this Part, and does not include the mature stalks of *Cannabis sativa* L., fiber produced from its stalks, oil or cake made from its seeds and any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), its fiber, oil, cake, or sterilized seed incapable of germination. Except as otherwise provided by this Part, marijuana means all cannabis that tests as having a total THC concentration level of higher than 0.3 percent on a dry weight basis.

(cc) "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 quantity subject to measurement.

(dd) "Negligence" means the failure to exercise the level of care that a reasonably prudent person would exercise in complying with the provisions of this Part.

(ee) "Percentage of THC on a dry weight basis" means the percentage of THC, by weight, in a hemp plant, the segregated parts of a hemp plant or the comingled parts of harvested hemp plants, after excluding moisture from the plant matter.

(ff) "Performance-based sampling" means a sampling approach that sets a performance objective of collecting enough samples to ensure, at a confidence level of 95 percent, that no more than one percent of the plants in the lot exceed the acceptable hemp THC level. Performance-based sampling provides flexibility in the sampling approach to the extent that the approach provides an effective method of ensuring the overall acceptable hemp THC level. Performance-based sampling may be based on, among other things, the end-use categories of the plant varieties, such as fiber or grain, historical THC concentrations of varieties over time, or the characteristics and growing histories of certain farms or producers, certified seed, or clonal varieties, some or all of which may ensure effective criteria to ensure overall acceptable hemp THC levels and require less comprehensive sampling of hemp.

(gg) "Person" means an individual, partnership, corporation, limited liability company, association, or any business entity or institution of higher education, by whatever name designated and however formed or organized.

(hh) "Post-decarboxylation" means, in the context of testing methodologies for THC concentration levels in hemp, a value determined after the process of decarboxylation that determines the total

potential delta-9 THC content derived from the sum of the THC and THCA content, and reported on a dry weight basis. The post-decarboxylation value of THC may be calculated by using a chromatograph technique using heat, gas chromatography, through which THCA is converted from its acid form to its neutral form, THC. Thus, this test calculates the total potential THC in a given sample. The post-decarboxylation value of THC can also be calculated by using a liquid chromatography technique, which keeps the THCA intact, and requires a conversion calculation of that THCA to calculate total potential THC in a given sample.

(ii) "Processing of hemp in connection with its growing and cultivation" means the growing, cultivation, harvesting, drying, curing, grinding, and trimming of hemp plants. Processing of hemp includes the remediation of hemp in conformity with the requirements of this Part.

(jj) "Produce" or "Production" means to grow hemp plants for market, or for cultivation for market in the State or the United States.

(kk) "Remediation" means the process of rendering non-compliant hemp being cultivated by a licensed hemp grower to compliant hemp as set forth in this Part. For example, remediation can be achieved by separating and destroying non-compliant flowers while retaining stalks, leaves and seeds; or by shredding the entire hemp plant to create a homogeneous "biomass". Remediated hemp must be retested for THC compliance.

(ll) "Registered premises" means any facility, location, or property leased, licensed, owned, or otherwise used by a person to grow hemp that has been authorized by the Department as a site where hemp may be grown.

(mm) "Sampling" means the process of collecting cuttings from hemp plants for the purposes of compliance testing.

(nn) "Sampling Agent" means a person trained and certified by the Department on applicable State and United States Department of Agriculture (USDA) procedures to collect regulatory sample of hemp for THC compliance testing.

(oo) "State" means the State of New York.

(pp) "Total THC" means the value determined after the process of decarboxylation, or the application of a conversion factor, as set forth in this Part, if the testing does not include decarboxylation that expresses the potential total delta-9 THC content derived from the sum of the THC and THCA content and reported on a dry weight basis.

(qq) "Valid license" means a duly issued license that is unexpired, unsuspended, and unrevoked.

§159.3. Licenses.

(a) No person shall grow, cultivate, or handle hemp in this State without obtaining either a valid commercial or research license issued by the Department pursuant to this Part.

(i) A commercial hemp license authorizes the growth, cultivation, and handling of hemp plants in the State for commercial sale.

(ii) A research hemp grower license authorizes the growth, cultivation, and handling of hemp plants for scientific, academic, or commercial research purposes, but does not authorize the grower to grow, cultivate or handle hemp for commercial sale.

(b) Licenses issued by the Department are valid for a period of three years, with the term beginning on the date of issue shown on the license.

(c) Licenses issued under this Part authorize the licensee only to grow, cultivate and handle hemp on property owned or leased by the applicant, listed on the applicant's application for a license or license amendment application, and approved by the Department. A Department license does not authorize

non-cultivation related activities involving hemp for which other State hemp licenses, authorizations and/or permits may be issued.

(d) Licenses may not be sold, assigned, transferred, pledged, or otherwise disposed of, alienated, or encumbered.

§159.4. License applications.

(a) An applicant for a State issued license to grow hemp shall apply upon a form prepared by the Department, which application shall require, at a minimum, the following information:

(i) For individual applicants, the applicant's full name, address, telephone number, and email address (if available);

(ii) For business entities, the entity's complete legal name and trade name, if any; its principal business address, the full name and title of key participants, their respective email addresses (if available) and the entity's employer identification number (EIN);

(iii) A legal description of the land on which the hemp will be grown, cultivated, or handled, including, the acreage for outdoor growing locations, the square footage for indoor growing locations, and the geospatial location for each proposed growing and handling site;

(iv) A current criminal history report for all key participants issued no more than 60 days prior to submission of the application to grow hemp; and

(v) Information sufficient to demonstrate that the applicant has or will have adequate facilities and security to undertake the growth, cultivation, and handling of hemp and to comply with applicable State law, rules and regulations relating to the growth, cultivation, and handling of hemp.

(b) Applications shall not be processed by the Department unless fully completed and all required information is provided. The Department shall return all incomplete applications to the applicant

unless the Department, in its sole discretion, determines that it is more expedient to request the applicant to provide any missing information.

(c) License applications shall be signed by the applicant, if a natural person; by a managing member, if a limited liability company; by an officer, if a corporation; or by its partners or a partner authorized to sign on behalf of the partnership, if a partnership.

(d) All persons signing an application shall be required to verify the truth of the information submitted under the penalty of perjury.

(e) Any person who materially falsifies any information contained in an application for a license and/or provides material information known by the provider to be false or misleading shall be ineligible to be licensed.

(f) An application for a commercial hemp license shall be accompanied by a non-refundable license application fee of \$ 500.00 payable by check, draft or other form of payment authorized by the Department. Sampling and testing fees, if undertaken by the Department, shall be assessed separately as provided in this Part.

(g) An application for a research hemp grower license shall be accompanied by a non-refundable license application fee of \$500.00. Fees for sampling and testing, if undertaken by the Department, shall be assessed separately as provided in this Part.

§159.5. Licensing Conditions.

(a) Zoning Requirements. It is the responsibility of the applicant to ensure that their proposed growing location(s) are compliant with local zoning requirements.

(b) Site Requirements.

(i) The growing of hemp in an area zoned as residential or in a residential dwelling is not permitted.

(ii) The Department reserves the right to make determinations regarding the appropriateness of proposed growing, processing, and/or storage locations.

(iii) The applicant must have control over the proposed locations through ownership or lease agreements.

(c) Facility Requirements. The applicant must have adequate facilities, equipment, process controls, testing capability, and security to grow, cultivate, and process hemp in connection with its growing and cultivation or to sell hemp plants or hemp seed.

§159.6. License term, form, and amendment.

(a) The Department shall issue commercial and research licenses.

(i) All growers seeking a license to grow hemp for commercial sale or distribution shall apply for a commercial license.

(ii) All growers seeking to engage in hemp research, and that will not offer hemp for commercial sale or distribution, may seek a research license.

(iii) Unless a person is eligible for and obtains a license from the Department, such person shall not grow, cultivate, or handle hemp.

(b) The effective date of the license shall commence on the date of issuance set forth on the license.

(c) Licenses shall be issued on a form prepared by the Department, containing, among other things, the name of the grower, the grower's principal place of business, a unique license number, and the license's date of issuance and expiration.

(d) Amendment of a license is required if there is any change to the information submitted in the license application, including, among other things: the sale of a business, the growing or handling of hemp in a new location, the cessation of growing or handling of hemp at an authorized location, and/or the addition or removal key participants of the licensee.

(i) An application for an amendment of a license shall be made on a form prepared by the Department, shall provide all the requested information, and be submitted to the Department together with a non-refundable \$100 amendment application fee.

(ii) An incomplete amendment application shall not be processed and will be returned to the applicant, unless the Department, in its sole discretion, determines it more expedient to request the information from the applicant.

(iii) The same procedures applicable to a license application shall apply to an application for an amendment.

§159.7. License renewal.

(a) An application for the renewal of a license shall be provided by the Department to the licensee at least 90 days prior to the expiration of the licensee's current license, and must be completed and submitted to the Department by the license holder at least 30 days before the expiration of the applicant's current license, accompanied by an application and administration fee of \$500.00.

(b) An application for a renewal shall be subject to the same terms, information, collection requirements, and approval criteria under Sections 159.4 and 159.5. However, notwithstanding the above, no renewal license shall be issued to an applicant that does not hold a valid license at the time of the submission of an application.

§159.8. Granting, denying, and revoking licenses.

(a) The Commissioner may decline to grant an application for a license, may decline to renew or may revoke, suspend and/or impose conditions thereon, if he or she finds, after due notice and an opportunity to be heard, that the applicant or licensee:

(i) is not qualified to properly conduct the business of growing hemp; or

(ii) has committed any acts injurious to the public health or welfare that are related to an issued grower license; or

(iii) is found to be growing cannabis exceeding the acceptable hemp THC level with a culpable mental state greater than negligence; or

(iv) has been found to have been negligently violating the provisions of this Part three times within a five-year period; or

(v) does not have adequate facilities, equipment, or security to cultivate or handle hemp; or

(vi) has failed to prepare or keep required records, after notice and failure to cure; or

(vii) has failed to submit all reports required to be submitted by a licensee, after notice and failure to cure; or

(viii) has made a material misstatement in the application for license or in any statement or record made or furnished to the Department; or

(ix) the applicant or any of an applicant's key participants have been convicted of a felony under State or federal law relating to a controlled substance, and the denial of such license is permissible under the State law, or if the applicant or any of the applicant's key participants have been convicted under State or federal law relating to a controlled substance within the past ten years, except for those persons lawfully growing hemp under the 2014 Farm Bill research program before December 20, 2018, and whose conviction occurred before December 20, 2018; or

(x) if a corporation, limited liability company, or partnership, has a person therein, who is a key participant who was responsible, in whole or in part, for any act for which a license may be denied, not renewed, or revoked; or

(xi) is not capable of complying, or has failed to comply, with the requirements set forth in this Part or is otherwise incapable, or has failed to comply, with other legal requirements related, directly or indirectly, to the growing of hemp; or

(xii) has grown or handled hemp outside the authorization granted by its license or has engaged in processing other than processing in connection with the growth and cultivation of hemp, retail sale or other hemp related activity without a required license; or

(xiii) is seeking authorization for a person whose license has been suspended, revoked, or who is otherwise ineligible to be licensed as a grower; or

(xiv) is seeking authorization to grow hemp on land that is currently an authorized growing location for another licensee.

(b) An applicant receiving an adverse determination with respect to a licensing decision may, within 30 days of the date of the transmission of the determination, request a review of the decision by submitting a written request for reconsideration, providing the basis for the person's belief that the determination was in error. The Department shall respond to the request for a review within 15 days of its receipt of the request for a review.

§159.9. Grower Inspection.

(a) The Department shall conduct, at a minimum, annual inspections of a random group of growers to ascertain whether, among other things, the grower's hemp is produced in conformity with State law and this Part, and whether required reports, records and documentation are properly maintained for accuracy and completeness.

(b) The Department, in its discretion, may conduct inspections of a random sampling of growers, performance-based inspections, or employ a combination of some or all such inspection approaches.

(c) The Department's inspections may include site visits to the farms, fields, greenhouses, storage facilities, or other locations related to the grower's operation and the review of records and documentation and may include and cover, among other things, the grower's operational procedures, regulatory compliance, documentation, record keeping and reporting.

(d) The grower shall provide the Department with complete and unrestricted access to the premises where hemp is cultivated and stored and where the hemp cultivation business operates, as well as unrestricted access to the books and records of the grower relating to the cultivation of hemp.

§159.10 Sampling for Acceptable Hemp THC Levels.

(a) Sampling of Growers/Sampling Agents.

(i) As currently authorized under federal law as an acceptable testing methodology for commercial growers, the Department or sampling agents certified by the Department, shall collect samples from all lots of the unharvested hemp plants of all growers to test for acceptable hemp THC levels within 30 days of the proposed harvest date ("pre-harvest sampling").

(ii) Should the Department receive approval from the USDA to undertake performance-based sampling of growers which would eliminate the requirement to test all lots of all growers, the Department will seek to amend its grower sampling methodology to provide for performance-based sampling, where appropriate.

(iii) Growers of hemp for research and research institutions may, with the written approval of the Department, adopt and carry out performance-based sampling.

(iv) Sampling for regulatory testing for acceptable hemp THC levels shall be conducted either by Department inspectors or sampling agents approved by the Department.

(v) Sampling agents shall be trained and certified by the Department.

(vi) An applicant for State certification to sample hemp shall apply upon a form prepared by the Department, which application shall require a current criminal history report issued no more than 60 days prior to submission of the application to sample hemp.

(vii) The Department shall maintain and post a list of certified sampling agents on its website.

(viii) Should the Department be required to provide sampling services, the grower shall pay a sampling fee equal to the actual cost of procuring the sample, mailing, or delivering the sample to the lab, and performing the laboratory analysis for each lot sampled by the Department.

(ix) The cost of sampling by a Department-certified sampler will be determined by agreement between the sampling agent and the grower.

(b) Procedures for obtaining pre-harvest regulatory sampling.

(i) The grower, using the Department's pre-harvest report form, shall notify the Department of the anticipated date for the harvest of its hemp crop and the number of lots to be harvested. The pre-harvest report form shall be delivered to Department so that it arrives no less than 30 days before the anticipated harvest date.

(ii) The grower shall notify the Department in writing of any anticipated delay to the proposed date of harvest, which shall extend the time to complete the regulatory sampling by the number of days of the commencement of the harvest is delayed. If the harvest is delayed beyond 30 days after a sample has been taken, a new sample must be taken and tested prior to harvest.

(iii) Pre-harvest sampling shall only be conducted by the Department or a Department-certified sampling agent. Plant material sampling by the grower or the grower's agent does not satisfy pre-

harvest regulatory testing requirements and the plant material generated by the grower's sampling shall not be used for the Department's regulatory testing sampling.

(iv) The grower shall not harvest its hemp until a Department inspector, or a Department-certified sampling agent, has completed the pre-harvest sampling of the grower's hemp or until the grower has received written approval to harvest from the Department.

(v) Harvested hemp shall remain in the possession and control of the grower and not sold unless the testing required by this Part demonstrates that the lot of harvested hemp meets the acceptable hemp THC level and, accordingly, may enter the stream of commerce.

(c) Sampling of the hemp crop.

(i) The Department and the sampling agents shall be provided with complete and unrestricted access to the grower's premises during business hours, to all hemp and other hemp plants and plant parts, whether growing or harvested, and all land, buildings and other structures used for the cultivation, handling, and storage of all hemp and cannabis and all locations listed in the grower's license.

(ii) If requested by the Department, the grower shall provide an authorized representative of the grower to be present for the scheduled sampling.

(iii) The Department's inspectors or Department-certified sampling agents shall sample the parts of unharvested hemp plants using a sampling method that is sufficient, at a confidence level of 95 percent, to conclude that no more than one percent of the plants in the lot exceed the acceptable hemp THC level or such other sampling method that the Department believes appropriate to ensure that the hemp produced by the grower does not exceed the acceptable hemp THC level.

(iv) The Department or Department-certified sampling agents shall sample hemp grown using a sampling protocol published by the Department and posted on the Department website.

(v) The sampling protocol may be amended from time to time, at the Department's discretion, provided that the amended protocol is posted on the Department's website, and shall go into effect for the following year's growing season.

(vi) Samples of the cultivated hemp for the Department's regulatory testing shall be obtained from the flowering tops of plants when flowering tops are present and shall be approximately five to eight inches in length from the "main stem" (including the leaves and flowers), "terminal bud" (that occurs at the end of a stem), or "central cola" (cut stem that could develop into a bud) of the flowering top of the plant.

(vii) Samples of hemp plant material from one lot shall not be comingled with hemp plant material from other lots.

§159.11. Regulatory THC testing.

(a) Testing Laboratories.

(i) The Department, in its discretion, may conduct its regulatory testing at the Department's Food Laboratory or may authorize testing for the acceptable hemp THC level to be conducted, at the grower's expense, at a laboratory approved by the Department.

(ii) Growers shall be required to pay a fee equal to the actual cost of performing the laboratory analysis for each sample tested by the Department for THC.

(iii) After December 31, 2022, or a later date established by the USDA, testing for acceptable THC levels of pre-harvest samples shall be conducted only at laboratories registered with the United States Drug Enforcement Administration.

(iv) The Department shall provide a list of laboratories approved for testing.

(v) Private laboratories performing regulatory testing shall deliver their testing reports to the Department, the USDA, and the grower at the same time.

(b) Testing Standards.

(i) Analytical testing for detecting the concentration level of THC in the sampled material 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 and that the laboratory can successfully perform the testing; and

(3) The demonstration of testing validity must ensure consistent accurate analytical performance. Testing method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this Part.

(ii) Analytical testing of samples for THC must use post-decarboxylation or other similarly reliable methods approved by the Commissioner. The testing methodology must consider the potential conversion of THCA in hemp into THC, and the test result must measure the total available THC derived from the sum of the THC and the THCA content. Testing methodologies meeting this requirement include, but are not limited to, gas or liquid chromatography with detection.

(iii) The total THC concentration level shall be determined and reported on a dry weight basis, unless the Department determines that some other method is more appropriate or accurate for the substance tested.

(iv) With each test result, a measurement of uncertainty (MU) must be estimated and reported with the test results. Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty.

(c) Test results.

(i) Any sample test result exceeding the acceptable hemp THC level shall establish a prima facie case that the lot represented by the sample is not in compliance with this Part.

(ii) Lots meeting the acceptable hemp THC level may enter the stream of commerce.

(iii) Lots tested and determined to exceed the acceptable hemp THC level may not enter the stream of commerce unless remediated in a manner consistent with Section 159.12(b) of this Part. For lots testing above the acceptable hemp THC level and not remediated, the grower shall ensure that the lot is disposed of in a manner consistent with Section 159.12(a) of this Part.

(iv) Remediated crops must be retested to ensure compliance with the acceptable THC levels. Retested remediated samples that exceed the acceptable hemp THC level must be disposed of in a manner consistent with Section 159.12(a) of this Part.

(v) Any grower may request additional testing of the original sample, at the grower's expense, if the grower has a good faith belief that the original THC concentration level reported in the regulatory testing results is in error.

(d) The Department may provide notice of non-compliance to appropriate law enforcement agencies.

§159.12. Disposal or remediation of non-compliant hemp.

Commercial lots shall be subject to disposal or remediation when a sample tests over the acceptable hemp THC level based on regulatory sampling.

(a) Disposal.

(i) A grower shall dispose of and document the disposal of non-compliant hemp within 5 days of the delivery of notice of regulatory testing results finding that a grower's hemp is non-compliant.

(ii) All non-compliant hemp shall be disposed of by one of the following methods:

(1) Disposal off site by using a DEA-registered reverse distributor or law enforcement; or

(2) Disposal on site at the farm or hemp production facility using the following methods: plowing under non-complaint plants, composting into “green manure” for use on the same land, tilling, discing, burial or burning or other disposal methods, approved by the Department, and which make the product unusable, non-consumable, non-retrievable and unmarketable.

(iii) On site disposal requires that the crop destruction be verified through the use of one of the following methods, which shall be approved by the Department in writing, prior to such disposal: in-person verification by a Department inspector, the taking of pictures, videos, or other proof of disposal, with the prior written approval of the Department.

(iv) If the grower requests re-testing at its own expense, the grower shall dispose of and document the disposal of the non-compliant hemp within 5 days of the delivery of the notice of a final determination that the hemp is non-compliant.

(b) Remediation.

(i) A commercial grower with non-compliant hemp may remediate the non-compliant crop by either:

(1) disposing of flower materials and salvaging the remainder of the plant; or

(2) blending the entire plant into plant material biomass by chopping or shredding all flowers, buds, trichomes, leaves, stalks, seed, and all plant parts from the non-compliant sampled lot in such a way to create a homogeneous and uniform blend of all plant material of that lot.

(ii) All remediated plant material shall be sampled by the Department or a Department approved sampling agent and tested for the material’s THC levels at the grower’s expense.

(iii) Remediated biomass shall be separated from any compliant hemp stored in the area and clearly labeled and demarcated as “hemp for remediation purposes.” All lots subject to remediation shall be stored, labeled, and demarcated apart from each other and from other compliant hemp lots

stored or held nearby. Remediated biomass shall not leave the labeled and demarcated area until a test result showing compliance with the acceptable hemp THC level is received or until the biomass is destroyed.

(iv) Only successfully remediated plant material may enter the stream of commerce and any non-compliant hemp shall be destroyed as set forth above.

§159.13. Recordkeeping.

(a) A licensee shall create, maintain, and make available accurate records, in a form and at a location satisfactory to the Commissioner, and which sets forth the following information:

(i) a description of the registered premises where hemp is grown;

(ii) the name of the cultivar(s) grown, and the number of plants of each cultivar purchased, acquired, and used, for the applicable growing season;

(iii) the amount and acreage of hemp grown during each growing season;

(iv) the amount and acreage of hemp disposed of on a yearly basis, including, but not limited to the hemp disposed of pursuant to §159.12 of this Part; and

(v) the results of all required testing.

(b) The Department shall collect and maintain information for each grower licensed or authorized to produce as set forth in Section 159.4(a)(i) and (ii), as well as the status and number of each grower's license.

§159.14. Reporting requirements.

(a) Reporting to Farm Service Agency. All growers shall report hemp crop acreage to the Farm Service Agency within 10 days of planting, and shall provide, at minimum, the following information:

(i) Street address and geospatial location for each lot or greenhouse where hemp will be produced. If a producer operates in more than one location, or is producing under multiple licenses, production information shall be provided for each location;

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

(iii) State license or authorization identifier in a format prescribed by the USDA.

(b) Planting Reports. For each growing season, and within 10 days of the submission of an FSA-578 form, growers shall submit a planting report, on a form provided by the Department, identifying each site on which the grower has planted hemp. If a grower does not plant hemp during a growing season, or one of the approved locations will not be planted in a season, the grower shall also set forth any and all approved sites where hemp will not be planted during that growing season.

(c) Pre-Harvest Reports. For each growing season, a grower shall submit a pre-harvest report, on a form provided by the Department. The pre-harvest report shall be submitted to the Department in a manner that ensures that the Department is provided with at least 30-days prior notice of the date of the intended harvest. The report shall set forth the date(s) of the grower's intended harvest, the number of lots to be harvested and the acreage of the lots to be harvested. The grower shall notify the Department immediately of any changes to the anticipated harvest date.

(d) Post-Harvest Reports. A post-harvest report, on a form provided by the Department, must be filed with the Department within 15-days of the completion of each harvest.

(e) Additional Reporting Requirements. Growers shall report to the Department information it requests to facilitate regulatory oversight.

§159.15. Infractions and Violations.

Growers failing to adhere to the requirements set forth in this Part shall be subject to penalties and other enforcement action, including suspension and license termination, depending on the number and extent of the infractions or violations that have occurred. The failure to comply with the Part's requirements fall into three categories, as follows:

(a) Infractions. Infractions occur when a grower fails to follow any of the requirements of this Part, and which are not more specifically addressed in paragraphs (b) and (c) herein.

(i) The Department shall advise growers of infractions observed by its inspector by delivery of an inspection report listing the infractions observed or by delivery of a notice of infraction.

(ii) The Department shall establish a date by which the infraction shall be corrected.

(iii) A grower shall have an opportunity to be heard concerning any noticed infraction with respect to which the Department takes enforcement action.

(iv) At the Department's discretion, a grower may be required to enter into a compliance agreement to ensure future compliance.

(b) Negligent violations. Negligent violations occur when a grower fails to exercise the level of care that a reasonably prudent person would exercise in complying with the requirements set forth in this Part.

(i) The following actions fall within the category of negligent violations:

(1) Growing and handling of hemp without a valid license; or

(2) Growing and handling hemp at sites and locations not approved under the grower's license;

or

(3) Producing cannabis exceeding the acceptable hemp THC level, provided that the regulatory sample of the cannabis does not have a total THC concentration of more than 1.0 percent on a dry

weight basis, and the grower can demonstrate that it has made reasonable efforts to grow compliant hemp; or

(4) Failing to timely dispose or otherwise handle all lots of plants determined to have a more than the accepted hemp THC level in a manner consistent with this Part or the guidance adopted pursuant to this Part; or

(5) Harvesting hemp prior to the collection of a regulatory pre-harvest sample by a Department inspector or Department-certified sampling agent or prior to receiving written approval to harvest from the Department; or

(6) Harvesting hemp more than 30 days after the regulatory sampling date; or

(7) Commingling lots of harvested plant material prior to the time that the sampled lots are tested and determined not to exceed the accepted hemp THC level; or

(8) Failing to segregate and store the plant material from each lot subject to regulatory sampling at an approved site or such other location storage or changing its location from the location authorized by the Department until regulatory testing results demonstrate that the plant material does not exceed the accepted hemp THC level.

(ii) For each negligent violation, the Department shall issue a Notice of Violation, advising the grower of the negligent violation and providing a deadline by which the violation shall be corrected.

(iii) The issuance of a Notice of Violation may result in an assessment of a penalty or other enforcement action.

(iv) A grower may contest the noticed violation within 15 days of the date of the notice, and shall be provided with an opportunity to be heard with respect to the noticed violation.

(v) Corrective action for negligent violations.

(1) Unless the grower contests the violation, within 20 days of the date of the notice, the grower shall submit a corrective action plan for the Department's approval, which, at a minimum, shall include:

(A) A reasonable date by which the negligent violation shall be corrected; and

(B) The actions to be taken by the grower to correct the violation and to ensure future compliance with the requirements that were not met; and

(C) A schedule for the submission of quarterly reports for a period of two years, which reports will advise the Department of the grower's compliance with its corrective action plan.

(2) The Department shall advise the grower whether the proposed plan is approved as submitted or if any changes or additional requirements are needed for an acceptable plan.

(3) Pursuant to 7 U.S.C. 1639p(e)(2)(C), a grower with an approved plan shall not, as a result of the negligent violation, be subject to any criminal enforcement action by Federal or State government.

(4) The State may conduct inspections to determine if the corrective action plan has been implemented as submitted.

(5) 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.

(vi) A grower that negligently violates the requirements of this Part three times during a 5-year period shall be ineligible to produce hemp for a period of 5 years beginning as of the date of the third violation.

(c) Culpable Violation. A grower, with a culpable mental state greater than negligence, that: (1) grows or cultivates hemp with a total THC level in excess of 1 percent on a dry weight basis; (2) handles

such non-compliant hemp for a purpose other than ensuring its destruction pursuant to the requirements of this Part; 3) and/or introduces such non-compliant hemp into the stream of commerce, commits a culpable violation under this Part.

(i) When the Department has reason to believe that a grower has committed a culpable violation, it shall issue a Notice of Violation, and undertake such other enforcement action it deems appropriate.

(ii) A grower may contest the noticed violation within 15 days of the date of the notice and shall be provided with an opportunity to be heard with respect to the noticed violation.

(iii) If the Department determines that a grower has committed a culpable violation, the Department shall immediately report the grower to the U.S. Attorney General and the chief law enforcement officer of the State.

§159.16. License suspension.

(a) The Department may issue a notice of suspension to a grower if the Department or its agents receive credible evidence establishing that a grower has:

(i) Engaged in conduct violating a provision of this Part; or

(ii) Failed to comply with a written direction from the Commissioner related to negligent conduct set forth in this Part.

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

(c) Any grower that has been suspended shall not harvest or otherwise dispose of hemp without prior written authorization from the Department.

(d) A grower that has been issued a notice of suspension may continue to cultivate hemp it has planted pending a resolution of the issue giving rise to the suspension.

(e) A grower that has been issued a notice of suspension may seek a review of that suspension within 15 days by application to the Commissioner.

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

§159.17. Registrations for Hemp Seed and Plant Sales.

(a) Seed Sales.

(i) No person shall sell hemp seeds in the State unless registered with the Department.

(ii) Registrations are obtained by submitting a fully completed application on a form prepared by the Department, providing, among other things, the following information:

(1) If the applicant is an individual, the applicant's full name, address, telephone number and email address (if available). If the applicant is a business entity, the entity's complete name, its principal business address, the full name and title of key participants, their respective email addresses (if available) and the entity's employer identification number (EIN); and

(2) A legal description of the property at which the seed is stored and handled and the geospatial location for each site; and

(3) A current criminal history report for all key participants and information to evidence that the applicant has or will have adequate facilities, equipment, and security to undertake the storage and sale of hemp seed and to comply with applicable State law.

(iii) Upon the submission of a completed registration application, together with a registration fee of \$100.00, the Department shall register the applicant, which authorizes the registrant to engage in the

sale of hemp seeds in the State for a period of three years with the term beginning on the date of issue shown on the license.

(iv) Sale of hemp seed is permitted to only those holding State or Federal licenses authorizing the buyer to grow and cultivate hemp.

(v) Registrants shall maintain a log of all hemp seeds sold for a period of three years, which log shall include the name, address and phone number of each person purchasing the seed, their State or Federal hemp registration or license number, the quantity and variety of the seed purchased, and the date of the purchase.

(vi) The Department shall have full access to the licensed premises and the property at which the seed is stored and shall have the authority to inspect and audit sales records on a periodic basis.

(vii) Upon notice and an opportunity to be heard, the selling of hemp seed to persons not authorized to grow hemp or failure to create and maintain required records may result in the revocation of a registration.

(b) Plant Sales.

(i) No person shall sell hemp plants in the State unless such person holds both a hemp grower license under this Part and a nursery grower license pursuant to Agriculture and Markets Law Article 14, Section 163-b.

(ii) Registrations may be obtained by submitting a fully completed application on a form prepared by the Department, providing, among other things, the following information:

(1) If the applicant is an individual, the applicant's full name, address, telephone number and email address (if available). If the applicant is a business entity, the entity's complete name, its principal business address, the full name and title of key participants, their respective email addresses (if available) and the entity's employer identification number (EIN); and

(2) A legal description of the property at which the hemp plants are stored and handled and the geospatial location for each site; and

(3) A current criminal history report for all key participants and information to evidence that the applicant has or will have adequate facilities, equipment, and security to undertake the storage and sale of hemp plants and to comply with applicable State law.

(iii) Upon the submission of a completed application with required application fees, the Department shall register the applicant, which authorizes the registrant to engage in the cultivation and sale of hemp plants in the State.

(iv) The sale of hemp plants is permitted to only those holding State or federal licenses authorizing the buyer to grow and cultivate hemp.

(v) Registrants shall maintain a log of all hemp plants sold for a period of three years, which log shall include the name, address and phone number of each person purchasing the plants, their State or federal registration or license number, the quantity and variety of the seed purchased and the date of the purchase.

(vi) The Department shall have full access to the licensed premises and the locations where the plants are grown or cultivated during regular business hours and shall have the authority to inspect and audit sales records on a periodic basis.

(vii) Upon notice and an opportunity to be heard, the selling of hemp plants to persons not authorized to grow hemp or failure to create and maintain required records may result in the revocation of a registration.

§159.18. Aids to Enforcement.

(a) The Commissioner shall have full access to all premises, buildings, factories, farms, where activities regulated by Article 29 of the Agriculture and Markets (“Article 29”) law are licensed or occur, including vehicles, cars, boats, airplanes, vessels, containers, packages, barrels, boxes, tubs and/or cans for the purpose of enforcing the provisions of this article. The Commissioner may, at such locations, examine hemp and hemp products and may open any package and/or container reasonably believed to contain hemp or hemp products, to determine whether it is in violation of Article 29 or any rule or regulation of this Part.

(b) The Commissioner may seek an inspection warrant when he or she reasonably believes a violation of Article 29 or any rule or regulation of this Part has occurred or is occurring and that a licensee or an individual or entity authorized to conduct research pursuant to Article 29 has: refused to permit any hemp to be inspected or samples taken therefrom; refused to permit access to any premises or place where licensed activities are conducted; and/or refused to permit access thereto by any inspector of the Department and that such inspector has reasonable grounds to believe that such person has any hemp in his or her possession or under his or her control and/or is in violation of Article 29 or any rule or regulation of this Part. In such a case, a warrant may be issued in the name of the people, directed to the Commissioner, his or her employees, and/or police officers, commanding him, her or them to: (1) search any place of business, factory, building, premises, farm where licensed activities have occurred and any vehicle, car, boat, airplane, vessel, container, package, barrel, box, tub and/or can, containing, or believed to contain, hemp in the possession or under the control of any person who shall refuse to allow access to such hemp for inspection or sampling; (2) permit the inspection and sampling of any hemp found in the execution of the warrant, as the officer applying for the inspection warrant shall designate when the same is found, by an inspector or a Department official authorized by the Commissioner or by the agriculture and markets

law; and/or (3) permit access to any place where access is refused or prevented, and to allow and enable a Department inspector or other Department official or police officer to conduct an inspection of the place. The officer to whom the warrant is delivered shall make a return in writing of his proceedings thereunto to the court which issued the same.

(c) The Commissioner or his/her designee may quarantine hemp when he or she has reason to believe that the hemp does not meet the definition of hemp or if hemp or hemp products is/are maintained, processed, or marketed in violation of or does/do not meet a standard set forth in Article 29 or this Part. The quarantine may be put into effect by the issuance of an order directing the owner or custodian of hemp and/or hemp products not to distribute, dispose of, or move that commodity without the written permission of the Commissioner. The Commissioner may also quarantine hemp or hemp products by placing a tag or other appropriate marking on the hemp or hemp product or adjacent thereto that provides and requires that such product must not be distributed, disposed of, or moved without his or her written permission, or may quarantine a product or effect a stop sale direction by otherwise informing the owner or custodian thereof that such condition must be complied with.

(d) Whenever the Commissioner has reason to believe that any hemp is being maintained or distributed in violation of any provision, rule or regulation of Article 29 or this Part, the Commissioner may issue a stop sale order to the owner or custodian of such suspect lot and enforce the same against such person. Any such order may direct that the hemp or hemp products be removed from distribution and retained at the establishment where the hemp or hemp products is/are located. It shall be a violation of this section for the owner or custodian of any hemp served with or otherwise aware of, and affected by, a stop sale order, to sell barter, give away, use, or otherwise remove such hemp from the place of retention without prior written approval of the Commissioner.

(e) The Commissioner may seize hemp by taking physical possession of hemp when the Commissioner has substantial evidence to believe that the commodity does not meet the definition of hemp or is otherwise in violation of or does not meet a standard set forth in Article 29 or this Part.

(f) Subsequent to quarantining, issuing a stop sale order, or seizing hemp or hemp product, as authorized in subdivisions (c), (d) and (e) of this section, the Commissioner shall promptly give the owner or custodian thereof notice and an opportunity to be heard to show cause why such hemp or hemp products should not be ordered destroyed. The Commissioner shall, thereafter, consider all the relevant evidence and information presented and shall determine whether such hemp should be ordered to be destroyed. The Commissioner shall notify the owner and custodian in writing of the specific reason or reasons for the determination. Such determination may be reviewed as provided in article seventy-eight of the civil practice law and rules.