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Agriculture

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# Ohio Department of Agriculture State Hemp Production Plan

Submitted on December 13, 2019



*Serving Farmers and Protecting Consumers Since 1846*

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## State Plan Requirements

<b>Introduction</b> .....	4
<b>Producer and Land Information</b> .....	4
Collect, maintain and provide to USDA contact and real-time information for each hemp producer licensed or authorized in the state or territory of the tribal government (whichever applicable).....	4
Provide contact information for each hemp producer and business entity.....	5
A legal description collected and forwarded for land where hemp is produced in the state or tribal territory.....	5
Maintain and report to USDA status of licensed producers (and any changes) and license or authorization numbers of producers.....	6
<b>Accurate and effective sampling testing using post decarboxylation</b> .....	6
Procedures for collecting samples from the flower material of plants.....	6
Procedures to conduct sampling and testing 15 days prior to the harvest date anticipated.....	7
Procedures to ensure the method used for sampling represents a homogenous composition of the lot.....	7
Procedure/statement/allowance to require the producer or an authorized representative of the producer to be present at the growing site during sample collection.....	8
Procedures to allow for representatives of the sampling agency to have complete and unrestricted access during business hours to all hemp and other cannabis plants and all land, buildings, etc. used for cultivation and/or handling.....	8
Procedures to ensure that a producer does not harvest any cannabis prior to samples being taken.....	8
Procedures to require testing for delta-9 THC concentration.....	8
Procedures that prohibit handling, processing, or entering the stream of commerce of any hemp grown in a lot where the acceptable hemp THC level is noncompliant.....	9
Procedures to ensure the hemp plant material from one lot not be commingled with hemp plant material from other lots.....	9
Procedures to require hemp testing laboratories to adhere to standards of performance for detecting THC concentration, including Measurement of Uncertainty (MU); must use DEA registered labs.....	9
<b>Disposal procedures</b> .....	9
Procedures for plants that do not meet the requirements of this part.....	9
Procedures to notify USDA of non-compliant plants and disposal of those plants from the lot where representative samples were taken. Test results must be included.....	9
Annual inspections of random sample of licensed producers to verify that hemp is not produced in violation of this part.....	10
<b>Collection of information</b> .....	10

Procedure for submitting the information described in 990.70 to the Secretary not more than 30 days after the date on which the information is received.....	10
Procedure for producers licensed under state and tribal government plans to share information with USDA, Agricultural Marketing Service (AMS), or Farm Service Agency (FSA).....	10
<b>Enforcement procedures. ....</b>	<b>11</b>
Provides for corrective action plan for negligent violations:.....	11
Procedures to provide for the correction of negligent violations:.....	11
Procedures for producer violations made with a culpable mental state greater than negligence: .....	11
Producer shall be reported to the U.S. Attorney General and the chief law enforcement officer of the state or tribal government. ....	11
Procedures for addressing felonies: .....	11
Procedures for business entities to determine which participants are considered to be "key," or have executive managerial control.....	12
Procedures stating that any persons who materially falsify any information in their application shall be deemed ineligible to participate in the program. ....	12
<b>Certification of Resources and Personnel.....</b>	<b>12</b>

## Introduction

Pursuant to 7 C.F.R. 990.2, states which seek to have primary authority over the regulation and production of hemp in their home jurisdiction must complete a state plan for review and approval by the United States Department of Agriculture (hereinafter "USDA"). This document serves as the Ohio Department of Agriculture's (hereinafter "Department") submission of its state plan in compliance with 7 C.F.R. 990.2.

Please note that on July 30, 2019, Governor Mike DeWine signed into law Senate Bill 57 (SB 57) which decriminalized hemp on a state level. SB 57 required the Department to adopt rules which establish federally compliant standards and procedures for the program. The Department is going through the rule making process as of the date of this document. Therefore, the rules referred to in this document and attached in Exhibit B are in draft form. Any changes to these rules will be reported to USDA.

## Producer and Land Information.

Collect, maintain and provide to USDA contact and real-time information for each hemp producer licensed or authorized in the state or territory of the tribal government (whichever applicable).

The Department requires that each prospective hemp cultivator<sup>1</sup> apply for licensure utilizing the Department's online database program. This program will allow the Department to transmit information regarding licensed hemp cultivators to USDA upon request. Specifically, the Department shall provide USDA, by the first of each month, a report providing the contact information and the status of the license or other authorization issued for each licensed cultivator in the state of Ohio. The Department shall utilize form AMS-23 titled "STATE AND TRIBAL HEMP PRODUCER REPORT" to meet this requirement.

The Department shall include the following information in the report referenced in the paragraph above:

- For each new cultivator who is an individual and is licensed or authorized by the Department, the report shall include full name of the individual, license or authorization identifier, business address, telephone number, and email address (if available).
- For each new cultivator that is an entity and is licensed or authorized by the Department, the report shall include full name of the entity, the principal business location address, license or authorization identifier, and the full name, title, and email address (if available) of each employee for whom the entity is required to submit a criminal history record report.

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<sup>1</sup> USDA regulations 990.1 defines "producer" means a producer as defined in 7 CFR 718.2 that is licensed or authorized to produce hemp under this part. Ohio's legislation analogous term is "cultivator" or "licensed hemp cultivator."

- For each cultivator that was included in a previous report and whose reported information has changed, the report shall include the previously reported information and the new information.
- The status of each cultivator's license or authorization.
- The period covered by the report.
- Indication that there were no changes during the current reporting cycle, if applicable.

Provide contact information for each hemp producer and business entity.

Ohio Administrative Code 901:14-1-03 requires the following information to be submitted with the prospective cultivator's application:

If the applicant is an individual:

- (B)(1)(a) The full legal name of the applicant;
- (B)(1)(b) The physical address of the applicant;
- (B)(1)(c) The mailing address of the applicant;
- (B)(1)(d) The email address of the applicant; and
- (B)(1)(e) The phone number of the applicant.

If the applicant is a business entity:

- (B)(2)(a) The full name of the business;
- (B)(2)(b) The federal tax identification number of the business;
- (B)(2)(c) The mailing address of the business;
- (B)(2)(d) The principal business location in the state of Ohio;
- (B)(2)(e) The full name of the individual who is authorized to sign on behalf of the business entity;
- (B)(2)(f) The full name, title, and email address of the individual who will be primarily responsible for the hemp operations of the business entity;
- (B)(2)(g) The identity of every key participant in the business entity applying for licensure;
- (B)(2)(h) The information required in paragraph (B)(1) of this rule for each party identified in paragraph (B)(2)(g) of this rule;
- (B)(2)(i) Phone number for the business entity; and
- (B)(2)(j) Email address for the business entity.

A legal description collected and forwarded for land where hemp is produced in the state or tribal territory.

The Department requires each prospective cultivator to provide the following information for each growing location upon application and annually: global positioning coordinates; physical address; maps for each field, greenhouse, building, or storage facility where hemp will be cultivated or stored; and number of outdoor acres, indoor square footage, and number of plants intended to be planted.

Maintain and report to USDA status of licensed producers (and any changes) and license or authorization numbers of producers.

The Department, through its online database program, has the capability to submit the required reports to USDA on a timely basis. As stated above, the Department shall provide USDA, by the first of each month, a report providing the contact information and the status of the license or other authorization issued for each licensed cultivator in the state of Ohio. The Department shall utilize form AMS-23 titled "STATE AND TRIBAL HEMP PRODUCER REPORT" to meet this requirement.

The Department shall include the following information in the report referenced in the paragraph above:

- For each new cultivator who is an individual and is licensed or authorized by the Department, the report shall include full name of the individual, license or authorization identifier, business address, telephone number, and email address (if available).
- For each new cultivator that is an entity and is licensed or authorized by the Department, the report shall include full name of the entity, the principal business location address, license or authorization identifier, and the full name, title, and email address (if available) of each employee for whom the entity is required to submit a criminal history record report.
- For each cultivator that was included in a previous report and whose reported information has changed, the report shall include the previously reported information and the new information.
- The status of each cultivator's license or authorization.
- The period covered by the report.
- Indication that there were no changes during the current reporting cycle, if applicable.

**Accurate and effective sampling testing using post decarboxylation.**

Procedures for collecting samples from the flower material of plants.

The Ohio Department of Agriculture's sampling procedures mirror the "Sampling guidelines for hemp growing facilities" document released by USDA. For purposes of determining the number of primary plants to sample, Ohio calculated the National Failure Rate from information provided by 29 States during the November 2019, National Industrial Hemp Regulators Conference Call. The data reported by OK, SC and TN were not utilized in this calculation, as it was not consistent with the information provided by the other 29 reporting States. This resulted in a National Failure Rate of 25%, and our calculated confidence level is 95 %. All numbers were rounded up to develop the minimum number of samples to be collected as follows:



p	i	N	n0	n
Confidence Level	National Fail Rate	Acres	Initial number of primary plants	Minimum number of primary plants
95%	25%	0-8	11	5
95%	25%	8-12	11	6
95%	25%	13-17	11	7
95%	25%	17-26	11	8
95%	25%	27-45	11	9
95%	25%	46-100	11	10
95%	25%	100 +	11	11

All samples will be taken and collected by Ohio Department of Agriculture personnel. The Department's sampling protocol states that the inspectors shall take an eight-inch cutting from the top of the central stem of the selected hemp plant. If the plant selected does not have enough floral material to make up an eight-inch sample on the central stem, the protocol requires the inspector to take additional floral material from the top 1/3 of the plant that was selected until at least eight inches of floral material is obtained. The Department believes that this is a sufficient amount of sampling material to provide a homogenous sample that is representative of the entire growing location or lot.

Procedures to conduct sampling and testing 15 days prior to the harvest date anticipated.

Ohio Administrative Code 901:14-1-08 outlines the harvesting requirements for a licensed cultivator. The rule requires the cultivator to notify the Department of its intended harvest date at least fifteen days in advance. This window provides the Department's inspectors the time needed to visit the growing location to collect the sample in accordance with OAC 901:14-1-09.

Procedures to ensure the method used for sampling represents a homogenous composition of the lot.

Ohio Administrative Code 901:14-1-09(C) states:

"The department shall take samples from each field, greenhouse, building, or site where hemp is being cultivated by the licensee. The samples shall consist of cuttings from at least five hemp plants within the growing location. A set of samples must be taken for each variety. The hemp plants selected for sampling shall be determined by the department and not the licensee. The licensee shall be afforded one testing sample per growing location. All additional samples taken due to the licensed cultivator having multiple fields, greenhouses, buildings, sites, or additional varieties grown on the growing location shall be subject to the fees outlined in rule 901:14-1-04."

In addition, the Department's internal sampling procedure states that the Department will take cuttings from at least five plants in each growing location/lot. For growing locations/lots that are larger than five acres, the Department is utilizing USDA's formula to calculate the initial number of primary plants to be sampled, with a Failure Rate of 25% with a confidence level of 95%, as noted in the table above. The Department believes that this is consistent with the sampling guidelines released by USDA.

Procedure/statement/allowance to require the producer or an authorized representative of the producer to be present at the growing site during sample collection.

Ohio Administrative Code 901:14-1-09(B) states, "During the sample collection window as outlined in rule 901:14-1-08, the licensed cultivator or an authorized representative shall be present at the growing location."

Procedures to allow for representatives of the sampling agency to have complete and unrestricted access during business hours to all hemp and other cannabis plants and all land, buildings, etc. used for cultivation and/or handling.

Ohio Administrative Code 901:14-1-09(B) provides "Representatives of the department shall be provided with complete and unrestricted access to all hemp and other cannabis plants, whether growing or harvested, and all land, buildings, and other structures used for the cultivation, handling, and storage of all hemp and other cannabis plants; and all locations listed in the license application.

Procedures to ensure that a producer does not harvest any cannabis prior to samples being taken.

Ohio Administrative Code 901:14-1-08(B) states that, "No licensed cultivator shall harvest hemp prior to the department collecting a sample from the area intended to be harvested."

Procedures to require testing for delta-9 THC concentration.

The Department's Consumer Protection Laboratory (ODA-CPL) is the official regulatory laboratory for raw hemp testing in the state of Ohio. The laboratory was the first state laboratory to achieve ISO/IEC 17025 accreditation for chemical and microbiological tests pertaining to food, feed, livestock and environmental samples and intends to add all raw hemp testing to the scope of accreditation at the earliest available opportunity. The Department currently possesses a DEA license for its Animal Disease Diagnostic Laboratory and will seek to expand the license's scope to ODA-CPL at the earliest opportunity.

Ohio Revised Code defines delta-9 tetrahydrocannabinol as the sum of THC and its equivalent of THCA, termed as "Total THC" where the Total THC = THC + THCA \* 0.877. ODA-CPL is currently designing and renovating space for dedicated testing of hemp and hemp products. As this renovation will not be completed prior to the first hemp growing season in Ohio, ODA-CPL is actively preparing an interim space that will



accommodate all the testing needs of the 2020 growing season. ODA-CPL is incorporating HPLC-UV and/or HPLC-PDA methodology to actively quantitate both THC and THCA so that Total THC can be calculated without the need to decarboxylate. The interim space will be equipped for sample comminution, sieving, secure custody, moisture analysis and sample extraction. Analysts will validate methodology that exceeds AOAC SMPR 2019.003 as it pertains to THC and THCA. ODA-CPL is prepared to utilize their existing LIMS to report out Total THC results on a dry weight basis both to cultivators and the USDA.

Procedures that prohibit handling, processing, or entering the stream of commerce of any hemp grown in a lot where the acceptable hemp THC level is noncompliant.

Ohio Administrative Code 901:14-1-08(D) states that, "Harvested plant material shall not be moved beyond the cultivator's storage facility until the department releases the plant material in writing using the hemp release form." Hemp will only be released by the Department upon a finding that the lot sampled was within the acceptable hemp THC level.

Procedures to ensure the hemp plant material from one lot not be commingled with hemp plant material from other lots.

Ohio Administrative Code 901:14-1-10(E) states, "Any plant material that is co-mingled with plant material which exceeds the acceptable hemp THC level shall be destroyed pursuant to rule 901:14-1-11 of the Administrative Code."

Procedures to require hemp testing laboratories to adhere to standards of performance for detecting THC concentration, including Measurement of Uncertainty (MU); must use DEA registered labs.

The Department's testing laboratory shall be the official regulatory laboratory for compliance with Chapter 928 of the Revised Code and the rules adopted pursuant to it. The Department may contract with third-party laboratories to provide testing services on its behalf. Any lab that the Department contracts with shall meet the standards set out by USDA.

## **Disposal procedures.**

Procedures for plants that do not meet the requirements of this part.

Plant material which exceeds the acceptable hemp THC level shall be destroyed in compliance with Ohio Administrative Code 901:14-1-11. All licensed cultivators must submit a destruction report in order to destroy hemp. No destruction may occur unless department personnel are present to witness the destruction unless otherwise notified by the department.

Procedures to notify USDA of non-compliant plants and disposal of those plants from the lot where representative samples were taken. Test results must be included.

In compliance with 7 CFR 990.70, the Department's procedures indicate that by the first of each month a report notifying USDA of any occurrence of non-conforming plants or plant material and providing a disposal record of those plants and materials shall be generated.

The Department shall utilize form AMS-24 titled, "STATE AND TRIBAL HEMP DISPOSAL REPORT" in order to accomplish this task. The Department shall provide the following information within the report:

1. Name and address of the cultivator.
2. Cultivator license or authorization identifier.
3. Location information, such as lot number, location type, and geospatial location or other location descriptor for the production area subject to disposal.
4. Information on the agent handling the disposal.
5. Disposal completion date.
6. Total acreage.

Annual inspections of random sample of licensed producers to verify that hemp is not produced in violation of this part.

Ohio Administrative Code 901:14-1-09(A) states: "All growing locations shall be subject to random sampling and inspection at any time by the department for compliance with chapter 928 of the Revised Code and the rules of this chapter." Therefore, the Department is in compliance with this requirement.

### **Collection of information.**

Procedure for submitting the information described in 990.70 to the Secretary not more than 30 days after the date on which the information is received.

Ohio Administrative Code 901:14-1-15 states, "The department shall provide information about approved cultivation, handling, and storage site locations to representatives of the United States department of agriculture (USDA), and any federal, state, or local law enforcement agency whose representatives request licensed site information, including GPS coordinates." As stated previously, through the Department's electronic database, the Department has the capability and the procedures in place to meet the requirements of 990.70 not more than thirty days after the date which the information was received

Procedure for producers licensed under state and tribal government plans to share information with USDA, Agricultural Marketing Service (AMS), or Farm Service Agency (FSA).

Ohio Administrative Code 901:14-1-12 requires a licensed cultivator to report their hemp crop acreage to the UDSA FSA. Additionally, cultivators are required to submit planting reports and annual production reports to the Department.

## **Enforcement procedures.**

### Provides for corrective action plan for negligent violations:

Ohio Revised Code 928.05(A) states that the “director shall issue a corrective action plan to any person that the director determines has negligently violated 928.04 of the Ohio Revised Code. ORC 928.04 states that “no person shall . . . cultivate hemp without a hemp cultivation license . . . violate this chapter or rules adopted under it . . . fail to comply with [a corrective action plan].”

### Procedures to provide for the correction of negligent violations:

Ohio Revised Code 928.05(A) states, “The director shall include in the corrective action plan both of the following: (1) A reasonable date by which the person shall correct the violation; and (2) A requirement that the person report to the director regarding the person’s compliance with the requirements of this chapter, rules adopted under it, and the corrective action plan for two calendar years immediately following the date of the violation.” Also see Ohio Administrative Code 901:14-1-99(B).

Further, ORC 928.05(B) states, If the director determines that a person negligently violated section 928.04 of the Revised Code three or more times in any five-year period, the director shall revoke the person’s hemp cultivation license or hemp processing license, if any, and shall refuse to issue a hemp cultivation license or hemp processing license to that person for a period of five years beginning on the date that the director determines that the person committed the most recent violation.” Also see Ohio Administrative Code 901:14-1-99(A)(4).

### Procedures for producer violations made with a culpable mental state greater than negligence:

Ohio Revised Code 928.05(C) states, “The director shall report a person who the director determines has violated section 928.04 of the Revised Code with a culpable mental state greater than negligence to the attorney general, the United States attorney general, and the applicable county prosecutor.”

### Producer shall be reported to the U.S. Attorney General and the chief law enforcement officer of the state or tribal government.

See above.

### Procedures for addressing felonies:

Ohio Administrative Code 901:14-1-05(A) requires “All applicants and key participants in the business entity, if applicable, shall submit to a criminal records check completed by the bureau of criminal identification and investigation in accordance with section 928.02 of the Revised Code.”

The Department shall only issue a hemp license if the applicant has completed the required background check(s) as outlined in rule 901:14-1-05 of the Administrative Code and the applicant and no key participant of the business entity has, within the last ten years, plead guilty to or been convicted of a disqualifying offense. The Department will be conducting both a state and federal background check. See OAC 901:14-1-02(E)(3). Further, should any licensee or key participant, during the time of licensure, plead guilty to or be convicted of a disqualifying offense, the license shall be revoked or suspended by the Department if the licensee or key participant is not removed from the entity within thirty days from the date of plea or conviction. See OAC 901:14-1-02(G).

“Disqualifying offense” means any felony involving a controlled substance including, but not limited to, violations of: (1) Ohio Revised Code 2907.02(A)(1)(a); (2) Ohio Revised Code 2907.05(A)(2); (3) Ohio Revised Code 2923.16(D)(2); (4) Ohio Revised Code 2923.241; or (5) Ohio Revised Code chapters 2925, 3719, and 3796.

Procedures for business entities to determine which participants are considered to be “key,” or have executive managerial control.

See above. Please note that the Department has defined “key participant” to match the USDA definition. See OAC 901:14-1-01(L).

Procedures stating that any persons who materially falsify any information in their application shall be deemed ineligible to participate in the program.

The director shall deny, suspend, or revoke a hemp cultivation license if the licensed cultivator, applicant, or key participant has provided false or misleading information on the hemp cultivation application or renewal application. Ohio Administrative Code 901:14-1-99(A)(1).

### **Certification of Resources and Personnel.**

The Ohio Department of Agriculture hereby certifies that it has the resources and personnel to carry out the requirements, practices, and procedures as outlined in 7 CFR 990.

STATE OF OHIO,  
Ohio Department of Agriculture (“ODA”)

By:   
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Date: 12/13/19

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Date: 12/13/2019