

Title 15

MARYLAND DEPARTMENT OF AGRICULTURE

Subtitle 01 OFFICE OF THE SECRETARY

15.01.17 Hemp Farming Program

Authority: Agriculture Article, §14-307, Annotated Code of Maryland

Notice of Proposed Action

[23-073-P]

The Maryland Department of Agriculture proposes to amend Regulations .02, .04, .08, and .10, adopt new Regulations .11 and .21, amend and recodify existing Regulations .11—.15 to be Regulations .12—.16, and recodify existing Regulations .16—.19 to be Regulations .17—.20 under COMAR 15.01.07 Hemp Farming Program.

Statement of Purpose

The purpose of this action is to add certain definitions, remove the requirement to submit certain reports to the Department, increase certain timelines pertaining to the harvesting of a hemp crop, impose certain requirements pertaining to hemp greens, hemp microgreens, and hemp transplants, and offer a licensed hemp grower whose crop is deemed nonmarketable a remediation option that is consistent with remediation guidelines approved by the U.S. Domestic Hemp Production Program. These changes have been approved by the United States Department of Agriculture.

Estimate of Economic Impact

I. Summary of Economic Impact. The proposed action will have a positive economic impact on licensed hemp growers (and, for many licensed hemp growers, the impact will be meaningful). The proposed action provides growers a larger harvest window, increasing their time to complete the harvest from 15 days to 30 days before the Department or an authorized agent is required to collect a new sample of a lot for testing. This change means less testing and less downtime for the grower at harvest-time. While growers still must submit planting reports and annual production reports, the proposed action, consistent with the Final Rule USDA adopted for the Domestic Production of Hemp, eliminates the requirement to submit a pre-harvest report and a post-harvest report. This change, like other proposed changes puts licensed hemp growers in this State on an even playing field with growers in surrounding states.

The proposed action also imposes certain requirements pertaining to hemp greens, hemp microgreens, and hemp transplants that, if followed by a licensed grower, will allow for performance-based sampling protocol (which includes seed certification processes and other processes that identify varieties that have consistently resulted in compliant hemp plants) to determine THC compliance.

Finally, the proposed action offers a licensed hemp grower whose crop is deemed nonmarketable a remediation option that is consistent with remediation guidelines approved by the U.S. Domestic Hemp Production Program.

II. Types of Economic Impact.

Impacted Entity	Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
A. On Issuing agency:	NONE	
B. On other state agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:		
Licensed hemp growers	(+)	Meaningful
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

D. Increasing a grower's time to complete a harvest from 15 days to 30 days before the Department or an authorized agent is required to collect a new sample of a lot for testing means less testing and less downtime for the grower at harvest-time. Growers will also benefit from the following actions: (1) Eliminating the requirement to submit a pre-harvest report and a post-harvest report; (2) Establishing a performance-based sampling protocol to determine THC compliance for hemp greens, hemp microgreens, and hemp transplants (i.e., plants not intended to be produced to a mature, flowering state); and (3) If a grower's crop is initially deemed nonmarketable, providing a remediation option (that is consistent with remediation guidelines approved by the U.S. Domestic Hemp Production Program).

Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small businesses. An analysis of this economic impact follows:

Increasing a grower's time to complete the harvest from 15 days to 30 days before the Department or an authorized agent is required to collect a new sample of a lot for testing means less testing and less downtime for the grower at harvest-time. Growers will also benefit from the following actions: (1) Eliminating the requirement to submit a pre-harvest report and a post-harvest report; (2) Establishing a performance-based sampling protocol to determine THC compliance for hemp greens, hemp microgreens, and hemp transplants (i.e., plants not intended to be produced to a mature, flowering state); and (3) If a grower's crop is initially deemed nonmarketable, providing a remediation option (that is consistent with remediation guidelines approved by the U.S. Domestic Hemp Production Program).

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Jim Drews, Program Manager, Maryland Department of Agriculture, 50 Harry S. Truman Parkway, Annapolis, MD 21401, or call 410-841-5960, or email to jim.drews@maryland.gov. Comments will be accepted through June 3, 2023. A public hearing has not been scheduled.

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

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

(2) (text unchanged)

(3) "Authorized agent" means a [USDA-approved] sampling agent *who has received a certificate of completion of training from USDA or the Department and has been approved by the Department to sample hemp under the Program.*

(4)—(18) (text unchanged)

(19) "Hemp" means the plant *Cannabis sativa L.* and any part of that plant, including all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a *total* delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry weight basis.

(20) "*Hemp greens*" means *hemp leaves from immature plants that are no more than 10 inches tall and are not flowering.*

(21) "*Hemp microgreens*" means *immature hemp seedlings for human consumption that are:*

(a) *Cut off above the soil or substrate line and harvested before flowering and not more than 14 days after germination;*
and

(b) *Typically, between 2 and 3 inches in height, but not taller than 5 inches.*

(22) "*Hemp transplants*" means *nonflowering hemp seedlings, rooted cuttings, immature plants produced from tissue culture, or other means of reproduction, which are not harvested but transplanted into a large container or field to mature for harvest.*

[(20)] (23)—[(37)] (40)

.04 Contents of Application and Licensing Terms.

A.—C. (text unchanged)

D. Licensing Terms. By signing and submitting the application, the applicant agrees to abide by the following licensing terms:

(1)—(2) (text unchanged)

(3) If hemp plants test greater than [0.3 percent] *the acceptable hemp THC level* or otherwise do not comply with this chapter, the licensed grower shall inspect the property post-harvest and, for the following growing season, pre-harvest, and destroy, as directed by the Department, any volunteer plants;

(4)—(9) (text unchanged)

E.—F. (text unchanged)

.08 Grower Reporting Requirements.

A.—B. (text unchanged)

[C. Pre-Harvest Report.

(1) At least 5 days before the expected harvest date of a hemp crop, a licensed grower shall submit to the Department a signed, complete, accurate, and legible Departmental Pre-Harvest Report that includes:

(a) The licensed grower's full name and contact information;

(b) The license number; and

(c) The anticipated date range for initiating and completing harvest, shown by lot, and, if the crop is being grown outdoors, a map designating the location of the lot or lots being harvested.

(2) If more than one harvest date is being reported for lots within a growing area, the map shall designate the locations of the lots, and the intended harvest dates that are to be harvested under the Pre-Harvest Report.

(3) If a licensed grower fails to submit a Pre-Harvest Report and proceeds to harvest a crop before a sample is collected by the Department, the Department may suspend or revoke the person's license.

D. Postharvest Report. Within 15 days after a harvest of a lot is complete, the licensed grower shall submit to the Department a signed, complete, accurate, and legible Departmental Postharvest Report that includes:

- (1) The licensed grower's full name and contact information;
- (2) The license number; and
- (3) The independent harvest date of each lot.]

[E.] C.—[F.] D. (text unchanged)

[G.] E. Hemp Crop Acreage Report to Farm Service Agency. A licensed grower shall report information pertaining to the grower's hemp operation with USDA, Farm Service Agency, as required under federal law. This information may include:

- (1)—(3) (text unchanged)
- (4) If hemp is grown outdoors, the hemp crop acreage, including the total acreage planted and harvested, and, if any portion of the crop is disposed of, the amount; [and]
- (5) If hemp is grown indoors, the indoor square footage or acreage dedicated to the production of hemp[.]; *and*
- (6) *If the licensed area is altered in accordance with Regulation .04, updated information pertaining to the site modification.*

[H.] F.—[I.] G.

.10 Sampling and Testing for THC.

A. (text unchanged)

B. Official Sampling Methodology. To ensure a confidence level of 95 percent that no more than 1 percent of the plants in a lot exceeds the acceptable hemp THC level, official samples collected by the Department, or an authorized agent shall be done in accordance with the Department's sampling methodology, which requires that:

- (1)—(2) (text unchanged)
- (3) Samples shall be from the [flower material of the hemp plant;] *flowering tops of plants which shall be approximately 5 to 8 inches in length from:*

- (a) *The main stem (that includes the leaves and flowers);*
- (b) *The terminal bud (that occurs at the end of a stem); or*
- (c) *The central cola (cut stem that could develop into a bud);*

(4)—(9) (text unchanged)

(10) If the licensed grower fails to complete the harvest within [15] 30 days, a new sample of the lot shall be collected for testing purposes following the procedures set forth in this regulation;

(11)—(12) (text unchanged)

C. (text unchanged)

D. Testing Requirements. The Department or an authorized laboratory shall test hemp for prohibited THC levels by performing a quantitative laboratory determination of the *total* delta-9 THC concentration on a dry weight basis. In conducting this work, the following standards shall be met:

(1)—(6) (text unchanged)

E. Test Results Report. If an authorized laboratory conducts the testing, the hemp grower shall [ensure that] *direct* the laboratory [reports] *to report* the test results for all samples tested to the Department *and* USDA. The test results report shall contain the information below for each sample tested:

(1)—(8) (text unchanged)

.11 Hemp Greens, Hemp Microgreens, and Hemp Transplants.

A. *Performance-Based Sampling Protocol. For hemp plants that are not intended to be produced to a mature, flowering state (for example, hemp greens, hemp microgreens, and hemp transplants), the Department may utilize a performance-based sampling protocol to determine THC crop compliance. This protocol, which has been approved by USDA, includes seed certification processes and other processes that identify varieties that have consistently resulted in compliant hemp plants.*

B. *Notice to the Department. At planting, the licensed grower shall notify the Department of the grower's intent and plans for producing hemp greens, hemp microgreens, or hemp transplants, including the grower's intent to harvest these plants.*

C. *If the licensed grower is intending to produce hemp greens, hemp microgreens, or hemp transplants, the grower may only use hemp seeds or propagules that originate from THC compliant hemp plants. To ensure this, the licensed grower may only use:*

(1) *Seeds originating from THC compliant hemp plants that have been certified by a member agency of the Association of Official Seed Certifying Agencies;*

(2) *Seeds derived from hemp plants that were tested during the preceding 2-year period and, for each of these 2 years, deemed THC compliant by the Department, an authorized laboratory, or other USDA-approved hemp program; and*

(3) *Propagules from hemp plants that were tested by the Department, an authorized agency, or other USDA-approved program and deemed THC compliant.*

D. *If the licensed grower is using certified seeds, the grower shall provide the Department copies of the seed tags. If the licensed grower is using propagules, the grower shall provide the Department the test results of the hemp plants.*

E. *The Department may conduct random testing of hemp greens, hemp microgreens, and hemp transplants produced by licensed growers. The Department may collect samples for determining the total THC concentration. The licensed grower shall*

have an authorized representative on-site during the site inspection conducted by the Department. If the crop does not meet the protocol for determining crop compliance under this regulation, the licensed grower shall hold the harvest lot until notified by the Department of the grower's options.

F. *Hemp Microgreens Verification.* The Department shall verify that the producer:

- (1) Obtained and used only authorized hemp seed or propagules;
- (2) Harvested the crop no more than 14 days after planting;
- (3) Only grew hemp plants that were no more than 5 inches in height; and
- (4) Did not grow hemp plants to a flowering state.

G. *Hemp Greens Verification.* The Department shall verify that the producer:

- (1) Obtained and used only authorized hemp seed or propagules;
- (2) Harvested the crop prior to the plants being 10 inches in height; and
- (3) Did not produce a flowering crop.

H. *Hemp Transplants Verification.* The Department shall verify that the producer:

- (1) Obtained and used only authorized hemp seed or propagules;
- (2) Only grew plants that were no more than 12 inches in height; and
- (3) Did not grow plants to a flowering state.

I. If the licensed grower produces a crop that does not meet the protocol for determining THC crop compliance under this regulation, the grower shall:

- (1) Follow the compliance, sampling, and testing requirements set forth in Regulation .10 of this chapter; or
- (2) Dispose of the crop.

J. *Records.*

(1) *Proof of THC Compliance.* A licensed grower producing hemp greens, hemp microgreens, or hemp transplants shall maintain for 3 years records showing proof of THC compliance of seeds or propagules used to produce these crops.

(2) *Sales Records.* A licensed grower producing hemp transplants shall maintain for 3 years records showing the name and address of persons to whom the transplants were sold or transferred.

[.11] .12 Prerequisites for Placing Hemp in Commerce.

A. (text unchanged)

B. To place hemp in the stream of commerce, test results shall confirm that the final product batch *hemp* contains no more than a total 0.3 percent delta-9 THC on a dry weight basis using the method's determined measurement uncertainty[;], and all such testing results shall be retained by the grower and made available to the Department upon demand for a minimum of 3 years.

C. Hemp samples with a post-decarboxylated THC level equal to or below [0.3 percent] *the acceptable hemp THC level* [requires] *require* no further action by the Department. The area or harvested plant material from which the sample was obtained that was harvested within [15] 30 days of the date of sampling may be marketed or further processed.

[.12] .13 Nonmarketable Hemp.

A. Upon receipt of a failing test result, a licensed grower may request resampling and retesting of the varieties in question. If no retest is requested, or the retested sample is greater than 0.3 percent THC, the area represented by the sample, or any harvested hemp from the area represented by the sample, shall be disposed of as provided in Regulation [.13] .14 of this chapter. The grower shall retain all such testing results and make them available to the Department upon demand for a minimum of 3 years.

B.—C. (text unchanged)

[.13] .14 Grower's Duty to Dispose of Nonmarketable Hemp.

A.—B. (text unchanged)

C. If hemp is deemed nonmarketable (that is, the plants exceed the acceptable hemp THC level), the Department shall:

- (1)—(2) (text unchanged)
- (3) Offer options for retesting *and remediation consistent with remediation guidelines approved by U.S. Domestic Hemp Production Program*; and
- (4) (text unchanged)

D. (text unchanged)

E. The grower shall notify the Department [and USDA] of the grower's intent to dispose of nonconforming plants.

F. (text unchanged)

G. The grower shall verify disposal by submitting required documentation to the Department [and USDA] and retain a copy of the disposal record for 3 years.

[.14] .15 Sanctions for Violating the Department's Hemp Farming Program.

A. Except as provided in [§B] §C of this regulation, the Department, upon notice and an opportunity to be heard, may deny a license application or suspend or revoke a license to produce hemp under the Program, if the person:

(1)—(5) (text unchanged)

[(6) Provides false or misleading information in the application for a licensee to grow hemp as provided in this chapter:]

[(7)] (6)—[(16)] (15)

B. The Department shall deny a license application or suspend or revoke a license to produce hemp under the Program if the person provides false or misleading information in the application for a licensee to grow hemp as provided in this chapter.

[B.] C. Negligent Violations.

(1) If it determines that a violation is a negligent violation, the Department, in lieu of sanctioning the person as provided in §A of this regulation, may issue a corrective action plan, affording the person an opportunity to correct that violation and come into compliance. A person may not have more than one negligent violation per growing season. A negligent action includes, but is not limited to, the following:

(a) The failure to provide a legal description of the land;

(b) The failure to obtain a license;

(c) The production of cannabis with the total THC concentration exceeding the acceptable hemp THC level (0.3 percent with MU) unless the person has made reasonable efforts to grow hemp and the cannabis does not have a total delta-9-THC concentration of more than 1 percent on a dry weight basis.

(2)—(4) text unchanged)

C. (text unchanged)

[.15]. 16 Notice, Hearings, and Appeals.

A. Notice. If it determines that sanctions are warranted against a person under Regulation [.14].15 of this chapter, the Department shall provide the person written notice of the violation via regular mail, certified mail, or personal service that includes:

(1)—(6) (text unchanged)

B.—D. (text unchanged)

.21 Sampling Guidelines.

A. For purposes of determining the number of individual plants to select for sampling, the size of the growing area set forth in the chart below shall be followed. For sampling purposes, samples from separate lots shall be kept separate and may not be comingled.

Size of Lot	Minimum Quantity	Size of Lot	Minimum Quantity
<1000 sq.ft	10	10 — 14.99 acres	35
<0.99 acre	11	15 — 19.99 acres	40
1 — 1.99 acres	15	20 — 24.99 acres	45
2 — 2.99 acres	17	25 — 29.99 acres	50
3 — 3.99 acres	19	30 — 39.99 acres	55
4 — 4.99 acres	20	40 — 49.99 acres	60
5 — 5.99 acres	21	50 — 59.99 acres	65
6 — 6.99 acres	24	60 — 69.99 acres	70
7 — 7.99 acres	27	70 — 74.99 acres	75
8 — 8.99 acres	30	75 + acres	1 per acre
9 — 9.99 acres	33		

B. The authorized agent shall walk at right angles to the rows of plants, if possible, beginning at one point of the lot and walking towards another point on the opposite side of the lot. If the lot is too dense for this to be possible, the authorized agent shall take all reasonable steps to ensure that a sample is collected that represents a homogeneous composition of the lot by avoiding edges and thoroughfares.

C. While walking through the growing area, the authorized agent shall cut the number of inflorescences (the flower or bud of a plant) based on the acreage of the growing area at random but convenient distances, and avoid collecting sample specimens from the borders of the field/greenhouse.

D. The cut shall be obtained from the flowering tops of plants when flowering tops are present and shall be approximately 5 to 8 inches in length from the “main stem” (that includes the leaves and flowers), “terminal bud” (that occurs at the end of a stem), or “central cola” (cut stem that develops into a bud) of the flowering top of the plant.

STEVE CONNELLY
Assistant Secretary