



STATE OF RHODE ISLAND

Industrial Hemp Program Plan

November 4, 2020



State of Rhode Island
DEPARTMENT OF BUSINESS REGULATION
1511 Pontiac Avenue, Bldg. 69-1
Cranston, Rhode Island 02920

Office of Cannabis Regulation

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Via E-Mail (farbill.hemp@usda.org)

Mr. William Richmond
Chief, U.S. Domestic Hemp Production Program
Agricultural Marketing Service (“AMS”)
United States Department of Agriculture
1400 Independence Avenue SW
Washington, D.C. 20250

Re: The State of Rhode Island’s Plan for Industrial Hemp Production

Dear Mr. Richmond,

The State of Rhode Island’s current industrial hemp structure takes the form of a regulatory program, the *Rhode Island Industrial Hemp Agricultural Pilot Program, 230-RICR-80-10-1* (“Current Regulation”), which was adopted on October 9, 2018 in conformity with the state’s Administrative Procedures Act, R.I. Gen. Laws § 42-35-1 *et seq.*, the Agricultural Act of 2014 (“2014 Farm Bill”) and the state’s Hemp Growth Act, R.I. Gen. Laws § 2-26-1 *et seq.* (the “Act”). Now in its second successful growing season, the current industrial hemp program has a total of seventeen (17) licensees; four (4) licensees are solely growers, while an additional thirteen (13) licensees possess a dual grower-handler license. The Department has drafted amendments to its Current Regulation (“Proposed Regulation”) that conform to the state’s 2019 amendments to the Act¹, Subtitle G-Hemp Production of the Agricultural Improvement Act of 2018 (“AIA 2018”) and the *Establishment of a Domestic Hemp Production Program, 7 CFR § 990* (“Interim Final Rule”).

Concurrent with this submission, the Proposed Regulation will begin its journey through the State’s public rule-making process, beginning with its filing at the state’s Office of Regulatory Reform (“ORR”). When the public rule-making process concludes, approximately one-hundred and twenty (120) days after ORR submission, the Proposed Regulation will become effective. Amendments contained in the Proposed Regulation consistent with the AIA 2018 include, but are not limited to, required sampling protocols, destruction parameters and reporting requirements. Consistent with the APA, there will be an opportunity to amend the Proposed Regulation after the required public comment period, if the Proposed Regulation and the within Plan are not entirely satisfactory to the AMS. Additionally, the ability of the Proposed Regulation and Plan to comply with the testing requirements of the Interim Final Rule may be affected by our Department of Health’s proposed amendments to testing laboratory regulations, which also must go through the APA rule-making process. Accordingly, we are submitting the Plan subject to the final outcome of these rule-making proceedings. In the event the State determines it cannot comply

¹ The Hemp Growth Act amendments of 2019 mainly concerned the creation of additional licenses for the distribution and retail sale of hemp-derived consumable cannabidiol products.



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with the testing or other requirements in the Interim Final Rule, the State will rescind the Plan by providing written notice thereof to the USDA.

Pursuant to R.I. Gen. Laws § 2-26-4, the Department of Business Regulation (“Department”), through its Office of Cannabis Regulation (“OCR”), together with the Department of Environmental Management through its Division of Agriculture (“DEM”), is responsible for the licensing and regulatory oversight of the Rhode Island Industrial Hemp Program. Consistent with the AIA 2018 § 297B(a)(1), OCR and DEM submit the within State of Rhode Island’s Plan for Industrial Hemp Production (“Plan”) based on the Proposed Regulation, which has been formulated in consultation with the Rhode Island Department of the Attorney General (“RIAG”) and the Rhode Island Governor’s Office (“Governor”), for AMS approval. In addition to the following explanations of how the Proposed Regulation meets the requirements of the AIA 2018 and the Interim Final Rule, the Proposed Regulation is attached in full (with visible edits) as Appendix A, and a copy of the Act is attached as Appendix B.

Please reach out to the following OCR representatives, should you have any questions or concerns regarding the within Plan:

Ms. Erica Ferrelli
Senior Program and Policy Analyst
Office of Cannabis Regulation
Erica.Ferrelli@dbr.ri.gov

Pamela Toro, Esq.
Associate Director
Office of Cannabis Regulation
Pamela.Toro@dbr.ri.gov

Sincerely,

Janet Coit
Director
State of Rhode Island, Department of Environmental Management

Elizabeth M. Tanner, Esq.
Director
State of Rhode Island, Department of Business Regulation



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A. LAND USED FOR PRODUCTION

Pursuant to 7 CFR § 990.3, the Proposed Regulation includes the specific required practice and procedures to collect, maintain and report to the USDA relevant real-time information for each licensed hemp producer, including its contact information, the legal description of its land and geospatial location, and the status and number of its license or application.

The Department will receive and collect the relevant information mandated by §990.3 by requiring every potential hemp grower and handler to complete a Department-approved application. The Proposed Regulation, § 1.6(E) specifies that an applicant must provide its name, address and other contact information, as well as that of its employees, the individual(s) who will supervising or managing the cultivation or production of hemp, any person or entity providing consulting services regarding the cultivation or production of hemp, and the entity’s officers, directors, owners, shareholders, managers and members. A potential licensee’s application will be subject to review before the Department approves or denies the application.

The Department currently maintains the required information in an internal database, the NIC Licensing Platform, and makes most of this information publicly available and easily accessible through its OCR website, under *Industrial Hemp*, where the current program’s relevant forms and notices are posted. The Department will continue both practices of maintaining the licensees’ accurate information internally and making the licensees’ non-sensitive information publicly available.

Additionally, the Department will require licensees to submit to the Department an end of the year report, due on or before the last calendar day of the year, in which a licensee must describe the variety and source of plants cultivated since the last report or since license approval, the method used to cultivate hemp plants, the purpose of the crop planted, the amounts harvested, destruction events and their amounts, end use of the crop harvested, and the existence of volunteer plants and their management. The Proposed Regulation § 1.13(A)(9) and (B) also require hemp growers to report relevant information to the Farm Service Agency (“FSA”) on a yearly basis, including but not limited to its crop acreage, its state-issued license number, any other information FSA may require, and the date the licensee reported such information to the FSA.

Proposed Regulation, § 1.6, Application Process – Grower and Handler:

- A. Each applicant for an industrial hemp grower, handler or dual license must submit to DBR:
1. A signed, complete, accurate and legible application in the form prescribed by DBR.
 - a. Applications will be accepted throughout the calendar year;
 2. A non-refundable application fee of two-hundred and fifty dollars (\$250); and
 3. Any other information as required by DBR.



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- B. Applicants applying to renew a license must submit a renewal application along with the applicable renewal licensing fee and must submit any other information as required by DBR.
- C. Applications for initial and for renewal licenses must include, on the application, the licensing numbers of any previous licenses held and year of issuance of those licenses.
- D. DBR will consider applications for industrial hemp grown outdoors or indoors.
- E. The industrial hemp grower, handler or dual license applicant must provide:
 - 1. Name, address and other contact information of:
 - a. The applicant who will supervise, manage, or direct the growing, and/or handling of hemp or hemp- products;
 - b. Any person partnering or providing consulting services regarding the growing and/or handling, of hemp or hemp products; and
 - c. The applicant's employees and, if the applicant is an entity, the applicant's officers, directors, owners, shareholders, managers and members.
 - 2. A detailed description of the land area (including street address, assessor's plat and lot number, square footage and if the land does not abut a public road, the nearest public road of access) or facility location to be used for the growth, production, distribution and/or sales of industrial hemp including, but not limited to a map or aerial photograph and Global Positioning System ("GPS") coordinates sufficient for locating production fields and showing the boundaries, dimensions and size of the growing area, total acreage of the growing area, a description of the building including approximate dimension or square feet of the growing area if cultivation occurs indoors.
 - 3. A description of how the applicant will track hemp growth from seed to sale, including the policies and procedures for handling voluntary and mandatory recalls of all hemp, hemp derivatives and hemp products.
 - a. Such procedures shall be adequate to deal with recalls due to any action initiated at the request or order of DBR, and any voluntary action by a grower, handler, or dual licensee to remove defective or potentially defective hemp, hemp derivatives or hemp products from the market, as well as any action undertaken to promote public health and safety.



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4. A signed statement that the applicant is the owner or lessee of the growing area, land area and any building to be used for cultivation, and/or handling, of industrial hemp and/or hemp products or a statement, signed by the owner of the growing area, land area and any building consenting to that use.
 5. An attestation that the licensee will procure industrial hemp, hemp seed or plants for cultivation or production from a certified source and is of a type or variety that do not exceed the maximum concentration of THC.
 - a. Upon receipt of the industrial hemp seeds the licensee shall submit a copy of the certificate of analysis to DBR showing the industrial hemp seeds for cultivation are from a certified source and is of a type or variety that do not exceed the maximum concentration of delta-9 THC as set forth in the Act, as applicable.
 - b. Upon receipt of the industrial hemp plants, flower or product, the licensee shall submit a copy of the certificate of analysis to DBR showing the plants, flower or product does not exceed the maximum concentration of THC as set forth in the Act, as applicable.
 6. A detailed description of the applicant's cultivation or production method, as applicable, specifically including a description of how the applicant will keep lots from being commingled.
 7. A detailed description of the applicant's extraction method, if applicable.
 8. A statement of intended end use for all industrial hemp to be grown or produced including parts or derivatives of any hemp plants or hemp that will be grown or produced by the applicant, if applicable.
 9. Documentation that the applicant has or will enter into sale agreements or otherwise transact with another licensee or such other persons who are in compliance with applicable laws regarding the possession, processing and sale of industrial hemp.
 10. Applicant's desired license type, whether grower, handler, or dual grower and handler; and
 11. Any other information DBR determines is necessary for enforcing the Act, the Program and these regulations.
- F. All grower applications will be submitted to DEM for its review before the issuance of any license. As a result of DEM review, the applicant may be asked to provide additional



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information as needed by DBR or DEM. Failure to provide such additional information or otherwise respond may result in the denial of the license.

- G. Incomplete grower, handler, dual license applications are deficient and will not be processed.
- H. False, inaccurate or misleading information provided on an application is grounds for license denial. Licenses may be denied to applicants who have previously had an industrial hemp license revoked, suspended or denied.

Proposed Regulation § 1.13, Licensees' Reporting Requirements:

- A. The Grower shall submit an end-of-year report, on a form prescribed by DBR, on or before the last day of the calendar year including but not limited to the following information:
 - 1. Variety and source of hemp plants or seeds used for growth;
 - a. Copies of certificates of analyses showing the industrial hemp seeds obtained for cultivation are from a certified source and is of a type or variety that do not exceed the maximum concentration of THC as set forth in the Act, as applicable; and
 - b. Copies of certificates of analyses showing the industrial hemp flower required testing results from a certified laboratory.
 - 2. Method(s) used to grow hemp;
 - 3. Variety of hemp grown;
 - 4. Purpose of crop;
 - 5. Harvested amount and description of quality;
 - 6. Destruction events and quantities;
 - 7. End destination or use of crop;
 - 8. Volunteer Plants, if any occurred, and how they were managed; and
 - 9. A grower's hemp crop acreage, his/her state issued license number and any other required information to the Farm Service Agency on a yearly basis.
- B. The Grower shall also be responsible for information sharing with the United States Department of Agriculture, the Agriculture Marketing Service, and Farm Service Agency pursuant to 7 C.F.R. § 990.3(a)(9) and § 990.7, specifically including compilation and transmittal of the following information:
 - 1. Hemp crop acreage;



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2. Total acreage of hemp planted, harvested and disposed;
3. Street address;
4. Geospatial location(s) of each lot or greenhouse where hemp will be produced; and
5. Acreage of greenhouse or indoor square footage dedicated to the production of hemp.

B. SAMPLING AND TESTING FOR DELTA-9 TETRAHYDROCANNABINDOL (“THC”)

Pursuant to 7 CFR § 990.3(a)(2), the Proposed Regulation includes the specific required practice and procedures regarding accurate and effective sampling of all hemp produced, including the collection of samples within fifteen (15) days of the anticipated date of hemp harvest by an authorized individual, a requirement that during sample collection the licensee or its representative shall be present, that “representatives from the sampling agency shall be provided complete and unrestricted access during business hours 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 producer license,” and that a producer shall not harvest the cannabis crop before samples are collected. The methodology for sampling from flower material conforms to § 990.3 (a)(2)(ii) by following the *Sampling Guidelines for Hemp Growing Facilities*, samples represent a homogeneous composition of a lot, and three to four samples will be collected per acre, all of which will be published on the Department’s website in the form of a guidance document.

The Proposed Regulation’s definition of THC at § 1.5(II) is the same as that which is used in “R.I. Gen. Laws § 2-26-3(13) and includes delta 9-tetrahydrocannabinol, the principal psychoactive constituent of cannabis, tetrahydrocannabinol acid and the natural or synthetic equivalents of the substances contained in the plant, or in the resinous extractives of, cannabis sativa L., or any synthetic substances, compounds, salts, or derivatives of the plant or chemicals and their isomers with similar chemical structure and pharmacological activity.” In conjunction with this definition, the Proposed Regulation identifies the appropriate time when sampling may take place most effectively, including fifteen (15) days before a licensee’s expected harvest date, and extends to anytime the Department has a reasonable belief that the licensee is violating the Act or the (Current or) Proposed Regulation.

Additionally, the Proposed Regulation § 1.8(D)(1) specifies that every licensee must sign a licensing agreement upon approval of its application, wherein the licensee agrees that “[it] will allow the inspection and sampling of the industrial hemp and hemp products, including crops, any derivatives and hemp-derived consumable CBD products, at any and all times that DBR deems necessary, including but not limited to sowing, growing, production, harvest, storage, distribution and retail sale.”

The Proposed Regulation § 1.9(A) requires that the licensee or its authorized representative be present at any inspection or sampling and that it must allow complete and unrestricted access to



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all hemp within a licensed area, including any of its various stages of production, and the land area, including buildings and other structures, on which such cultivation is occurring.

Pursuant to 7 CFR § 990.3(a)(3), the Proposed Regulation includes a procedure for testing samples of hemp using postdecarboxylation or a similarly validated testing methodology. Both the Current Regulation and the Proposed Regulation require testing in conformity with the Rhode Island Department of Health's ("RIDOH") *Licensing of Analytical Laboratories for Sampling and Testing of Medical Marijuana*, 216-RICR-60-05-6.21 ("RIDOH Regulation"). In accordance with the RIDOH Regulation, the current and proposed testing methodologies include gas or liquid chromatography with detection. This methodology considers the potential conversion of delta-9 tetrahydrocannabinolic acid (THC-A) in hemp into THC, and the test result measures total available THC derived from the sum of the THC and THC-A content. Inclusion of the requirement for calculation and inclusion of measurement of uncertainty pursuant to 7 CFR § 990.3(a)(3)(iii)(F) when laboratories are reporting THC test results is currently not required by the RIDOH Regulation. Future proposed amendments to the RIDOH Regulation will include a requirement that all laboratories conducting hemp testing conform to the USDA's laboratory requirements for the testing of hemp, which would incorporate a requirement for inclusion and calculation of measurement of uncertainty.

Proposed Regulation § 1.9, Inspection, Sampling and Testing:

- A. During inspection and sampling, the licensee or its authorized representative must be present and must allow complete and unrestricted access to all industrial hemp, including plants, parts, seeds, derivatives and products within a licensed area whether growing, producing, harvested or stored, and all land, buildings and other structures used for the cultivation, production, manufacturing or storage of industrial hemp derivatives and hemp products, including retail and distribution facilities, and all documents and records pertaining to the licensee's industrial hemp operations.
- B. Inspection
 - 1. Consistent with the AIA 2018 § 297B(a)(2)(A)(v) all licensees are subject to mandatory inspections conducted by DBR that include but are not limited to:
 - a. License application inspection: Prior to issuing a license, DBR may schedule a site visit to the applicant's location. The purpose of this visit will be to inspect the location, to review information that was provided during the application process and to review the proposed industrial hemp and/or consumable CBD operations.
 - b. Records inspections: DBR may conduct reasonable inspections of a licensee's books and records to ensure that the licensee is complying with applicable law including the Act and these regulations.



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- c. Periodic Inspections: Pursuant to R.I. Gen. Laws § 26-6-6 and § 2-26-7(b) all licensees are subject to periodic inspection to verify compliance with the requirements of the Act and these regulations including inspection during sowing, growing season, harvest, storage, production, distribution and/or sales.

C. Sampling

1. DBR will require testing of industrial hemp and hemp products to ensure that it does not exceed the 0.3% THC level, as required by R.I. Gen. Laws § 2-26-3(8) and is in compliance with other provisions of the Act and these regulations.
2. For all hemp growers, sampling of plants may be conducted fifteen (15) days prior to harvest by a licensed testing facility agent and with the licensee and, if applicable, a DBR representative present. Sampling will be scheduled in advance with the licensee or an authorized representative of the licensee.
3. All industrial hemp, hemp derivatives and/or hemp-derived CBD products being distributed, sold at retail, grown and/or produced within a licensed area, are subject to sampling by a licensed testing facility agent and with the licensee and, if applicable, a DBR representative present to ensure compliance with the Act and these regulations. The licensee shall be responsible for the cost and expense of all sampling.
4. DBR may require samples from hemp plants, hemp derivatives or hemp-derived CBD products from any licensee at any time if DBR has reason to believe a violation of the Act or these regulations may be occurring or has occurred.
5. In conformity with § 1.9(C)(2) of this Part, a hemp grower may be directed to abstain from harvesting its hemp crop until sampling occurs.

D. Testing

1. Upon direction from DBR, DEM or DOH as applicable, testing, including but not limited to testing for THC, CBD, and/or other material characteristics such as pesticides, heavy metals, and microbial concentration on a dry weight or per volume basis, will be performed by an approved testing facility.
 - a. All testing performed by an approved testing facility for a licensee shall conform to the requirements set forth in Licensing Analytical Laboratories for Sampling and Testing Medical Marijuana, including but not limited to 216-RICR-60-05-6.21(A), (B) and (C). The licensee shall be responsible for the cost and expense of such testing.
2. A test result greater than 0.3% THC on a dry weight or per volume basis shall be prima facie evidence that at least one cannabis plant or part of a plant or a derivative batch or



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derivative product in the licensee's location contains THC above the allowable limit and that the licensee is not in compliance with the Act and these regulations.

3. The licensee may request a retest of any retained portion of a sample. Any request for retesting must be made to DBR, in writing, within ten (10) days of the date of notification of test results. The licensee must pay all analysis costs and expenses associated with any retest.
4. Any hemp plants, materials, derivatives or hemp products as to which testing results reflect THC content above the allowable limit and the lot to which said plants, materials, derivatives or hemp products belong are prohibited from entering the hemp stream of commerce and DBR may require that any hemp plants, materials, derivatives or hemp products as to which testing results reflect THC content above the allowable limit be destroyed at the licensee's expense pursuant to § 1.11(L) of this Part.
5. Upon completion of testing, any remaining samples may be destroyed thirty (30) days after the date of notification of test results.

C. DISPOSAL OF NON-COMPLIANT PLANTS

Pursuant to 7 CFR § 990.3(a)(3)(iii)(E), the Proposed Regulation requires the destruction of hemp plants, flower, trim and/or hemp-derived products that have been determined by appropriate testing to exceed the threshold of .3% THC. The Proposed Regulation specifies requirements for destruction protocol, including that destruction take place within seventy-two (72) hours after the Department notifies the licensee that destruction is required, that hemp must be made indistinguishable from other plant material in the process of destruction, that the presence of an OCR employee is required when so notified, and that the licensee must document all destruction events and quantities and shall report them to the Department in the licensee's end of year report. The Proposed Regulation also specifies that destruction shall be performed at the licensee's location and by the licensee.

Proposed Regulation §1.11, Operational Requirements:

M. Destruction

1. Prior to disposal, the hemp must be made unusable and indistinguishable from other plant material. This may be accomplished by grinding and incorporating the offending material with other non-consumable solid waste or other ground materials, so the resulting mixture is at least fifty percent non-hemp waste by volume.
 - a. Other methods to render the hemp unusable must be approved by DBR before implementation.
 - b. Hemp that is rendered unusable following an approved method may be delivered to a licensed solid waste disposal facility in Rhode Island for final disposition or disposed of in an alternative manner approved by DBR.



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- c. All destructions must be documented by the Licensee
- d. The Department will record all disposals and report to the USDA along with applicable test results.

Proposed Regulation § 1.15, Violations and Enforcements; Penalties:

- 5. Any hemp plant or hemp derivative that is determined to be in violation of the Act, these regulations and/or the AIA 2018 shall be destroyed by or at the direction of DBR or duly authorized State or law enforcement personnel and pursuant to the following:
 - a. Prior to disposal the cannabis must be made unusable and indistinguishable from other plant material. This may be accomplished by grinding and incorporating the offending material with other non-consumable solid waste or other ground materials so the resulting mixture is at least fifty percent non-cannabis waste by volume.
 - b. Other methods to render the cannabis unusable must be approved by DBR before implementation.
 - c. Cannabis that is rendered unusable following an approved method may be delivered to a licensed solid waste disposal facility in Rhode Island for final disposition or disposed of in an alternative manner approved by DBR.

D. COMPLIANCE WITH ENFORCEMENT PROCEDURES
INCLUDING ANNUAL INSPECTION OF HEMP PRODUCERS

Pursuant to 7 CFR § 990.3(a)(6), the Proposed Regulation requires an inspection for all hemp grower applicants prior to licensure. The Proposed Regulation also requires annual inspections of a random sample of hemp growers to verify hemp is not being grown in violation of the Act or the Regulations, and also authorizes the Department, DEM and RIDOH's authorized representatives to conduct reasonable inspections of the licensee's operation, including its equipment, material, containers, documents, and inventory, at reasonable times.

Additionally, pursuant to 7 CFR §990.3(a)(5), 7 CFR 990.6 and the AIA 2018, the Proposed Regulation requires compliance with enforcement procedures, which are outlined in the Proposed Regulation § 1.15. Enforcement action, including the imposition of corrective action plans for negligent violations, will be required for those deemed in violation of the Act or the Regulation. "Negligence" is defined in the Proposed Regulation § 1.5(X) according to the parameters stated in the AIA 2018 and 7 CFR § 990.1. Pursuant to 7 CFR 990.6(c)(4), a licensee who negligently violates a state plan three times in a five-year period will be ineligible to produce hemp for a period of five years from the date of the third violation, which is enforceable under Proposed Regulation §1.15(A)(3)(c).



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Further, the Proposed Regulation § 1.10(C) (and Current Regulation) requires all officers, directors, owners, shareholders, managers, members and agents of the licensee to apply for a registry identification card. As a result, and consistent with R.I. Gen. Laws § 2-26-5(c)(7), all officers, directors, owners, shareholders, managers, members and agents must submit to a national criminal background check before a license will be issued. Such individuals may be hired, appointed, or retained prior to receiving a registry identification card, but may not begin active engagement in hemp cultivation, production, distribution, retail sales or other license activities until receipt of the card. As to the AIA 2018’s mandate for state plans to include “disqualifying felonies,” the Proposed Regulation has included it at § 1.10(C)(3), and the state’s disqualifying felonies are described at § 1.10(c)(2).

Proposed Regulation § 1.5, Definitions:

- Z. “Negligence” as used in § 1.14 and § 1.15(A) of this Part and pursuant to the AIA 2018 and 7 CFR § 990.1 means failure to exercise the level of care that a reasonably prudent person would exercise in complying with the Regulation as set forth under this Part and includes:
1. Failing to provide a legal description of land on which the producer produces hemp;
 2. Failing to obtain a license or other required authorization from DBR;
 3. Growing, producing/manufacturing, distributing or selling at retail Cannabis sativa L. with a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis or per volume basis regardless of moisture content; and/or
 4. Failing to comply with the Act or these regulations; and
 5. “Negligence” as used in this Part does not include the production of plants that exceed .3% THC concentration but are less than .5% TCH concentration on a dry weight basis if the licensee used reasonable efforts to cultivate plants with a .3% or lower TCH concentration on a dry weight basis.

Proposed Regulation § 1.9, Inspection, Sampling and Testing:

B. Inspection

1. Consistent with the AIA 2018 § 297B(a)(2)(A)(v) all licensees are subject to mandatory inspections conducted by DBR that include but are not limited to:
 - a. License application inspection: Prior to issuing a license, DBR may schedule a site visit to the applicant’s location. The purpose of this visit will be to inspect the location, to review information that was provided during the application process and to review the proposed industrial hemp and/or consumable CBD operations.
 - b. Records inspections: DBR may conduct reasonable inspections of a licensee's books and records to ensure that the licensee is complying with applicable law including the Act and these regulations.



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- c. Periodic Inspections: Pursuant to R.I. Gen. Laws § 26-6-6 and § 2-26-7(b) all licensees are subject to periodic inspection to verify compliance with the requirements of the Act and these regulations including inspection during sowing, growing season, harvest, storage, production, distribution and/or sales.

Proposed Regulation § 1.15, Violations and Enforcements; Penalties:

A. Inspections and Audits; Enforcement Actions

1. Licensees are subject to reasonable inspection by DBR, DEM and DOH. DBR, DEM and DOH and their authorized representatives have authority to enter a licensee's premises at reasonable times and to inspect in a reasonable manner, the premises and all equipment, materials, containers, and other things therein, including without limitation all records, files, financials, sales, transport, pricing and employee data, research, papers, processes, controls and to inventory any stock of marijuana, labels, containers, paraphernalia and other materials and products.
2. Nothing herein shall be interpreted to limit the real time access of DBR, DEM and DOH to information stored in the Program Tracking System or any other tracking system approved by DBR and consistent with the Act.
3. Pursuant to the Act and consistent with AIA 2018, §297(B)(e)(2)(A), any licensee who negligently violates the Act or these Regulations, including the occurrence of "negligence" (as defined in these Regulations) on the licensee's part, is subject to a DBR administered corrective action plan to correct the application including:
 - a. A reasonable date by which the licensee shall correct the negligent violation as approved by DBR;
 - b. A requirement that the licensee shall periodically report to DBR on the compliance of the licensee with these regulations for a period of not less than the next two (2) calendar years; and/or
 - c. Any other corrective terms, conditions or exclusions as required by DBR or by 7 CFR § 990.6.
4. Pursuant to the Act and consistent with AIA 2018, § 297(B)(e)(2)(A), any licensee who violates the Act or these regulations with a culpable mental state greater than "negligence" may be subject to suspension/revocation of his/her license, administrative fines in accordance with § 1.15(B) of this Part and/or a combination of penalties as provided in R.I. Gen. Laws § 2-26-10. In the event of a violation performed with a greater culpable mental state, DBR shall immediately report such licensee to the Rhode Island Office of Attorney General and the U.S. Attorney's Office (District of Rhode Island) within thirty (30) days of the receipt of such information, in accordance with AIA 2018, § 297(B)(e)(2)(A).



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5. Any hemp plant or hemp derivative that is determined to be in violation of the Act, these regulations and/or the AIA 2018 shall be destroyed by or at the direction of DBR or duly authorized State or law enforcement personnel and pursuant to the following:
 - a. Prior to disposal the cannabis must be made unusable and indistinguishable from other plant material. This may be accomplished by grinding and incorporating the offending material with other non-consumable solid waste or other ground materials so the resulting mixture is at least fifty percent non-cannabis waste by volume.
 - b. Other methods to render the cannabis unusable must be approved by DBR before implementation.
 - c. Cannabis that is rendered unusable following an approved method may be delivered to a licensed solid waste disposal facility in Rhode Island for final disposition or disposed of in an alternative manner approved by DBR.
6. Pursuant to 7 C.F.R. § 990.6(c), violations of § 1.15(A)(3) of this Part are not subject to federal, state, tribal or local government criminal action.
7. Pursuant to 7 C.F.R. § 990.6(c), DBR shall conduct inspections to determine if corrective action plans as discussed in § 1.15(A)(3) of this Part have been implemented.

Proposed Regulation §1.10, Program Registry Identification Cards:

C. Criminal Background Checks

1. Pursuant to R.I. Gen. Laws § 2-26-5(c)(7), all applicants are subject to a national criminal background check. This shall include all officers, directors, owners, shareholders, managers, members, and agents of the licensee (hereinafter also referred to in this section as "applicants").
2. Pursuant to R.I. Gen. Laws § 2-26-5(c)(7)(iv), disqualifying information is defined as a conviction for any felony offense under R.I. Gen. Laws Chapter 21-28, or murder, manslaughter, first-degree sexual assault, second-degree sexual assault, first-degree child molestation, second-degree child molestation, kidnapping, first-degree arson, second-degree arson, mayhem, robbery, burglary, breaking and entering, assault with a dangerous weapon, or any assault and battery punishable as a felony or assault with intent to commit any offense punishable as a felony.
3. Consistent with the AIA 2018 § 297(B)(e)(3)(B), disqualifying information includes the ten (10) year period following the conviction of any felony drug offense described in § 1.10(C)(2) of this Part and excludes a controlled substance felony conviction for participation in a state hemp pilot program authorized under the AIA 2014 before December 20, 2018 pursuant to 7 C.F.R. § 990.6(d).



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4. Pursuant to R.I. Gen. Laws § 2-26-5(c)(7)(i), the national criminal identification records check shall include fingerprints submitted to the Federal Bureau of Investigation. Application for said records check may be made to the Rhode Island State Police ("RISP").
5. Pursuant to R.I. Gen. Laws § 2-26-5(c)(7)(i), upon the discovery of any disqualifying information, RISP shall send written notification to the applicant disqualifying the applicant and informing the applicant of the nature of the disqualifying information.
6. Pursuant to R.I. Gen. Laws § 2-26-5(c)(7)(i), upon discovery of any disqualifying information, the RISP shall notify DBR in writing of the fact that disqualifying information has been discovered thus disqualifying the applicant.
7. Pursuant to R.I. Gen. Laws § 2-26-5(c)(7)(ii), in those situations in which no disqualifying felony as defined in R.I. Gen. Laws § 2-26-5(7)(iv)-(v) has been found, the RISP shall inform the applicant and DBR, in writing, of this fact.
8. Pursuant to R.I. Gen. Laws § 2-26-5(c)(7)(vi), the applicant shall be responsible for any expense associated with the national criminal background check with fingerprints.

E. INFORMATION SHARING

According to the Proposed Regulation, potential licensees must submit license applications to the Department for approval and such applications shall be submitted on Department-issued forms publicly available on the OCR website. The Department will collect and maintain required grower information through its completed applications, which will be maintained by the Department for at least three years from the date of receipt.

Pursuant to 7 CFR § 990.70(a), the Department will submit to the 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 licensee. The information to be provided for new licensees shall include the full name of the individual or entity, business location address, license number, the EIN number of the entity, and the name, title, and e-mail address of each employee required to submit a criminal history report. The information to be provided for licensees whose information has changed since the last report shall include the previous information and the new information, including the status of the license, the period covered by the report, and that there were no changes during the current reporting cycle, if applicable. The required information will be reported to the USDA no later than 30 days after the date it is received using the appropriate reporting requirements as determined by the USDA.

Pursuant to 7 CFR § 990.70(b), the Department will submit to the USDA, 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, including the name, address, location information and license number for each licensee subject to disposal during the reporting period, date disposal was completed, information on agent handling the disposal, and total acreage.



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Pursuant to 7 CFR § 990.70(c), the Department will submit the USDA, by December 15th of each year, an annual report containing the total acreage planted, total harvested acreage, and the total acreage disposed.

Proposed Regulation § 1.6, Application Process – Grower and Handler:

- E. The industrial hemp grower, handler or dual license applicant must provide:
1. Name, address, email and phone number of:
 - a. The applicant who will supervise, manage, or direct the growing, and/or handling of hemp or hemp- products;
 - b. Any person partnering or providing consulting services regarding the growing and/or handling, of hemp or hemp products;
 - c. The applicant's employees and, if the applicant is an entity, the applicant's officers,
 - d. EIN of the business entity; and
 - e. The status of each license.
 2. A detailed description of the land area (including street address, assessor's plat and lot number, square footage and if the land does not abut a public road, the nearest public road of access) or facility location to be used for the growth, production, distribution and/or sales of industrial hemp including, but not limited to a map or aerial photograph and Global Positioning System ("GPS") coordinates sufficient for locating production fields and showing the boundaries, dimensions and size of the growing area, total acreage of the growing area, a description of the building including approximate dimension or square feet of the growing area if cultivation occurs indoors.
 3. A description of how the applicant will track hemp growth from seed to sale, including the policies and procedures for handling voluntary and mandatory recalls of all hemp, hemp derivatives and hemp products.
 - a. Such procedures shall be adequate to deal with recalls due to any action initiated at the request or order of DBR, and any voluntary action by a grower, handler, or dual licensee to remove defective or potentially defective hemp, hemp derivatives or hemp products from the market, as well as any action undertaken to promote public health and safety.
 4. A signed statement that the applicant is the owner of the growing area, land area and any building to be used for cultivation, and/or handling, of industrial hemp and/or hemp products or a statement, signed by the owner of the growing area, land area and any building consenting to that use.



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5. An attestation that the licensee will procure industrial hemp, hemp seed or plants for cultivation or production from a certified source and is of a type or variety that do not exceed the maximum concentration of THC.
 - a. Upon receipt of the industrial hemp seeds the licensee shall submit a copy of the certificate of analysis to DBR showing the industrial hemp seeds for cultivation are from a certified source and is of a type or variety that do not exceed the maximum concentration of delta-9 THC as set forth in the Act, as applicable.
 - b. Upon receipt of the industrial hemp plants, flower or product, the licensee shall submit a copy of the certificate of analysis to DBR showing the plants, flower or product does not exceed the maximum concentration of THC as set forth in the Act, as applicable.
 6. A detailed description of the applicant's cultivation or production method, as applicable.
 7. A detailed description of the applicant's extraction method, if applicable.
 8. A statement of intended end use for all industrial hemp to be grown or produced including parts or derivatives of any hemp plants or hemp that will be grown or produced by the applicant, if applicable.
 9. Documentation that the applicant has or will enter into sale agreements or otherwise transact with another licensee or such other persons who are in compliance with applicable laws regarding the possession, processing and sale of industrial hemp.
 10. Applicant's desired license type, whether grower, handler, or dual grower and handler; and
 11. Any other information DBR determines is necessary for enforcing the Act, the Program and these regulations.
- F. All grower applications will be submitted to DEM for its review before the issuance of any license. As a result of DEM review, the applicant may be asked to provide additional information as needed by DBR or DEM. Failure to provide such additional information or otherwise respond may result in the denial of the license.



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F. CERTIFICATION OF RESOURCES

The signature below certifies that the Department, with the assistance of the Rhode Island Department of Environmental Management and Rhode Island Department of Health as described herein, has the resources and the personnel to carry out the practices and procedures described in the State of Rhode Island's Industrial Hemp Plan submitted on November 4, 2020 and December 23, 2020 by the Department in collaboration with the Rhode Island Department of Environmental Management, pursuant to Section 297B(a)(2)(A)(i-vii) of the Agriculture Improvement Act of 2018, and more formally outlined in the Hemp Interim Final Rule (7 CFR Part 990: Establishment of a Domestic Hemp Production Program), and the Proposed Regulations in accordance with R.I. Gen. Laws § 2-26-1, et seq., The Hemp Growth Act (the "Act").

Elizabeth M. Tanner, Esq.
Director of the Rhode Island Department of Business Regulation