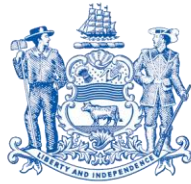




DOMESTIC HEMP PRODUCTION PROGRAM STATE OF DELAWARE PLAN



Submitted by: Michael T. Scuse, Secretary of Agriculture
DELAWARE DEPARTMENT OF AGRICULTURE



STATE OF DELAWARE
DEPARTMENT OF AGRICULTURE
 2320 SOUTH DUPONT HIGHWAY
 DOVER, DELAWARE 19901
 AGRICULTURE.DELAWARE.GOV

MICHAEL T. SCUSE
 SECRETARY
 E. AUSTIN SHORT
 DEPUTY SECRETARY
 KENNETH M. BOUNDS
 DEPUTY SECRETARY

TELEPHONE: (302) 698-4500
 TOLL FREE: (800) 282-8685
 FAX: (302) 697-6287

As designated by the Delaware Secretary of Agriculture, the Administrator of the Delaware Department of Agriculture Plant Industries Section will be responsible for the oversight, administration, and daily operation of the Delaware Domestic Hemp Production Program. The following information and respective timelines will be effective upon the approval of the Delaware Hemp Production Plan by the USDA. The “Department” hereafter shall refer to the Delaware Department of Agriculture.

Note: The following list of State of Delaware and USDA forms and reports will be used by the Department to collect, document, and report information to USDA under the Delaware Domestic Hemp Production Program:

- Annual Growing Site Registration
- Delaware Domestic Hemp Production Program Application
- State Hemp Producer Report
- Laboratory Test Results Report
- Disposal Report
- Disposal Certificate

Note: Boldface type indicates a reference to State of Delaware regulations 805 Rules and Regulations for Delaware Domestic Hemp Production Program.

Table of Contents

- A. Land Used for Production.....2
- B. Sampling and Testing for delta-9 tetrahydrocannabinol.....4
- C. Disposal of Non-Compliant Plants.....7
- D. Compliance with Enforcement Procedures Including Annual Inspections.....8
- E. Information Sharing.....11
- F. Certification of Resources.....12
- G. Plan Approval, Technical Assistance, and USDA Oversight.....13

A. Land Used for Production

1. The Delaware Department of Agriculture will collect and maintain relevant producer information by requiring each applicant to complete a Delaware Domestic Hemp Production Program Application and a Criminal History Report.
2. The Delaware Department of Agriculture will collect and maintain relevant information of land used for hemp production by requiring each licensed producer to furnish a completed Annual Growing Site Registration form. The Department will require that forms be submitted to the Department via email or physical collection point identified by the Department, no later than February 1st of the year the producer intends to begin hemp production. The Department will require that an Annual Growing Site Registration form accompany a new license application and license renewal. An Annual Growing Site Registration form is required for each site where hemp will be produced.
3. The Delaware Department of Agriculture will provide to the USDA in the State Hemp Producer Report, contact information for each licensed producer, including business entities, covered under the Delaware Domestic Production Program Plan. The Department will submit this report to the USDA at the first of each month as required. The Department will rely on information indicated in the Delaware Domestic Hemp Production Program Application. Information will include:
 - Name
 - Address
 - Telephone number
 - Email address (if available)

If the applicant is a business entity, the information must include:

- Name of the business
 - Address of the principal business location
 - Full name and title of the key participants
 - An email address
 - EIN number of the business entity
4. The Delaware Department of Agriculture will collect and forward, to FSA, a legal description for land where hemp is produced in the State. This information will be reported by the applicant or licensed producer on the Annual Growing Site Registration form and will define the boundaries of the property where hemp will be produced. The Department will correspond monthly with FSA to confirm this information. This description will contain the city and county, as well as the geospatial location.
 5. The Delaware Department of Agriculture will maintain and report to USDA status of licensed producers, license numbers of producers, and any changes. The Department will report to the USDA using the State Hemp Producer Report. For the purposes of reporting to USDA, the Department will assign license numbers using the Delaware code (10) as indicated in the American National Standards Institute (ANSI) Codes for States, the District of Columbia, Puerto Rico, and the Insular Areas of the United States. For example, 10_0001, 10_0002 etc.

The Department will determine license status using the following:

- Active – a license holder that is in good standing with the Delaware Domestic Hemp Production Program
 - Suspended – a license holder that has engaged in conduct violating the Delaware Domestic Hemp Production Program
 - a license holder whose license has been suspended shall not produce or handle hemp during the period of suspension
 - The Department may require that a license holder whose license has been suspended to complete a corrective action plan to fully restore the license
 - Revoked – a license holder that violates the Delaware Domestic Hemp Production Program 3 times within a period of 5 years shall have the license revoked and be ineligible to produce hemp for a period of 5 years beginning on the date of the third violation. The Department may immediately revoke licenses if:
 - a license holder pleads guilty to or is convicted of any felony related to a controlled substance
 - a license holder makes a materially false statement with regards to the Delaware Domestic Hemp Production Program to the Department with a culpable mental state greater than negligence
 - a license holder is found to be growing hemp exceeding the acceptable THC level with a culpable mental state greater than negligence or has negligently violated the Delaware Domestic Hemp Production Program 3 times within a period of 5 years
6. The Delaware Department of Agriculture will maintain all producer growing site registration records for three years.

B. Sampling and Testing for delta-9 tetrahydrocannabinol

1. The Delaware Department of Agriculture will use the following procedures to conduct sampling and testing within 15 days prior to the harvest date anticipated
 - A sampling agent shall collect representative samples from lots to submit for testing of THC concentration levels, within 15 days prior to the date of harvest, as indicated by the licensed producer or authorized representative of the licensed producer. The Department will not comingle lot samples.
 - The Department requires licensed producers to notify the Department via phone or email within 30-15 days prior to the anticipated harvest of cannabis plants. A licensed producer or an authorized representative of the licensed producer, as documented on the Delaware Hemp Production Program Application, has the role of notifying the Department of the anticipated date of harvest, licensed producers and or authorized representatives do not have any role in sample collection. The Department has extended the notification period to within 30 days of harvest to allow the Department time to schedule sampling with licensed producers, sample collection will only occur within 15 days of anticipated harvest.
 - If a licensed producer fails to complete harvest within 15 days of sample collection, the Department will collect a second pre-harvest sample of the lot to be submitted for testing.
 - The sampling agent will not collect samples on lots where cannabis plants have not matured to flowering stage, as the USDA requires that samples consist of flower material.
 - A licensed producer or any other individual shall not harvest cannabis plants prior to samples being collected by the Department.
2. The Delaware Department of Agriculture will use the following method to collect samples from the flower material of cannabis plants:
 - The sampling agent will make the cut of a cannabis plant just underneath the flower material.
 - Each composite sample will contain cuttings of flower material from the uppermost areas of the plant consistent with a ratio of two-fifths of n. The remainder of the composite sample will be collected from the upper one-third of the plant.
 - The sample size must be of adequate volume, as determined by the Department, to accommodate laboratory tests.
3. The Delaware Department of Agriculture will use the following procedures to ensure that samples represent a homogenous composition of a lot:
 - Always walk through the lot following a sawtooth pattern, beginning at one point of the lot and walking towards another point located on the opposite side of the lot.
 - Walk access roads, drainage ditches, or other accessible paths that allow penetration into the lot (stand), in cases where the lot (stand) is determined too dense and walking through is deemed impossible.
 - Cut at least “n” flower material at random distances in the lot, while walking a sawtooth pattern. The sampling agent will make a determination of n based on the number of acres per lot.

- Avoid collecting cuttings from the borders of the field or indoor growing site, high spots or low spots in the lot, and male plants.
 - Visually estimate the homogeneity of the lot to be sampled to establish that the lot is of like variety.
4. The Department will require that a licensed producer or authorized representative of the licensed producer to be present at the growing site during a scheduled sample collection.
 5. The following references State regulations allowing staff of the Department to have complete and unrestricted access during reasonable business hours to all hemp and other cannabis plants and all land, buildings, etc. used for cultivation and or handling:

6.3.1 The Department will conduct annual inspections of, at a minimum, a random sample of licensed producers to verify that hemp is not produced in violation of this Program. The Department shall have access, during reasonable business hours, to any premises where hemp plants may be held.

6. The following references State regulations to ensure that a licensed producer does not harvest any cannabis prior to sample being taken:

6.1.8 A licensed producer or any other individual shall not harvest cannabis plants prior to samples being collected by the Department. A licensed producer or any other individual shall not remove plants from lots that have been sampled from a growing site without written authorization from the Department.

7. The Delaware Department of Agriculture will use the following procedures to require testing for delta-9 THC concentration: establish an agreement with a DEA-registered to perform THC tests and require that the laboratory share test results to the Delaware Department of Agriculture. The Department will submit samples to lab that is on the AMS list of DEA-approved labs. The Department will share report test results to licensed producers and report test results to the USDA using the Laboratory Test Results Report (AMS-22). The Department will require that the laboratory convert delta-9THC into total THC using a decarboxylation method. The Department will require that the laboratory use gas or liquid chromatography with detection to determine the post-decarboxylation total THC concentration on a dry weight basis.
8. The following references State regulations to prohibit handling, processing, or entering the stream of commerce of any hemp grown in a lot where the acceptable hemp THC level is noncompliant. The Department has defined acceptable hemp THC level as follows: “Acceptable Hemp THC Level” means decarboxylated delta-9 tetrahydrocannabinol concentration equal to or less than 0.3% on a dry weight basis, as reported by a USDA-approved laboratory. The designated laboratory will also report the Measurement of Uncertainty (MU), 0.3% must fall within the reported MU.

8.1 Destruction. The Department requires the on-site destruction of lots located on outdoor or indoor growing sites that have been determined to have higher than acceptable hemp THC levels. The Department will instruct the licensed producer on acceptable destruction protocol and coordinate with the licensed producer to ensure that lots are destroyed in a manner that renders the lot non-retrievable and unfit to enter the stream of commerce. The Department will require that destruction take place within 72 hours after the Department notifies the licensed producer that destruction is required.

8.1.1 It is the responsibility of a licensed producer to destroy lots by using destruction methods that render the lot non-retrievable and unfit to enter the stream of commerce.

8.1.2 If the Department determines a lot as having higher than acceptable hemp THC levels, the lot must not be further handled, processed, or enter the stream of commerce.

8.1.3 The Department requires that a licensed producer notify the Department if the licensed producer destroys a lot by his or her own determination and independent of a requirement set by the Department.

8.2 Disposal. The Delaware Department of Agriculture will require the disposal of a lot that has been determined to have higher than acceptable levels of THC, where on-site destruction is not feasible. The Department will require that disposal take place within 72 hours of notification.

8.2.1 The Department will coordinate with the licensed producer to ensure that lots are disposed of in a manner that renders the lot non-retrievable and unfit to enter the stream of commerce.

8.3 Harvesting. The Department prohibits any comingling of harvested lots of cannabis plants with other harvested lots or other material without prior written permission from the Department.

9. The Delaware Department of Agriculture will use the following procedures to require testing labs to adhere to standards of performance for detecting THC concentration, including Measurement of Uncertainty (MU): The Department will require that the laboratory use appropriate validated methods and procedures for all testing activities and evaluate measurement of uncertainty, which must be estimated and reported with test results. The Department has defined measurement of uncertainty as follows: "Measurement of Uncertainty" or "MU", means the parameter associated with the results of a measurements that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement, if a sample measure of 0.3% THC falls within the MU range then the sample meets acceptable hemp THC levels.

C. Disposal of Non-Compliant Plants

1. The Delaware Department of Agriculture will comply with CSA and DEA regulations section 1317.15, 1317.90, and 1317.95.
2. For on-site disposal, two authorized employees from the Delaware Department of Agriculture will witness the destruction of any cannabis that exceeds the acceptable hemp THC level until it is rendered non-retrievable.
3. When on-site destruction is not feasible, two authorized employees from the Delaware Department of Agriculture will load and transport cannabis that exceeds the acceptable hemp THC level directly to a registered location and will unload until transfer is complete.
 - The Delaware Department of Agriculture will require licensed hemp producers to ensure that all lots associated with samples that exceed acceptable hemp THC levels are collected by the Department.
 - The Department will utilize incineration to render the cannabis that exceeds the acceptable hemp THC level non-retrievable and unfit from entering the stream of commerce.
4. The Delaware Department of Agriculture will record all disposals and report to the USDA using the Disposal Report. The Department will jointly sign a Disposal Certificate with the licensed producer. The Department will include copies of these documents as well as test results as part of the State Hemp Producer Report to USDA.

D. Compliance with Enforcement Procedures Including Annual Inspection of Hemp Producers

1. The Delaware Department of Agriculture will conduct annual inspections of, at a minimum, a random sample of licensed producers to verify that hemp is not produced in violation of the Domestic Hemp Production Program.
 - The Department will schedule inspections to occur between June and October and notify producers prior to inspections.
 - The Department will use Excel to generate a random selection from a list of licensed producer numbers.
 - A Department representative will conduct inspections to review records and documentation to include site visits to farms, fields, greenhouses, storage facilities or other locations affiliated with the producer’s hemp operation.
 - During inspections, the Department will also confirm compliance with State Nursery Law, Pesticide Law, Seed Law and Federal Seed Act.
 - The Department will assess whether required records and documentation are properly maintained for accuracy and completeness. The Department will document findings. If an inspection results in the discovery of a negligent violation of the Delaware Domestic Hemp Production Program, the Department will institute a corrective action plan.
2. The Delaware Department of Agriculture will require a corrective action plan for negligent violations that result from a 1) failure to provide legal description of land; 2) failure to obtain a license; 3) production of cannabis with THC exceeding the acceptable hemp THC level. This plan will include:
 - A reasonable date by which the licensed producer will correct the negligent violation
 - A requirement that licensed producers periodically report to the Department on compliance with this plan for a period of not less than two years following the violation.
3. The Department will use the following definition for “Disqualifying Felony” as included in Section 3.0 Definitions, of State regulations. **“Disqualifying Felony” means persons with a state or federal felony related to a controlled substance for the 10 years prior to the date of when a Criminal History Report is completed, are ineligible to participate in the State of Delaware Hemp Production Program for 10 years following the date of conviction.**
4. If the Department determines that a producer has violated the Delaware Domestic Hemp Production Program Plan with a culpable mental state greater than negligence, the Department as applicable, shall immediately report the producer to the U.S. Attorney General; and the chief law enforcement officer of the State or Indian Tribe, as applicable (990.6).
5. The following references State regulations regarding Negligent Violations:

8.4 Negligent or Culpable Violations.

8.4.1 A hemp producer shall be subject to enforcement for negligently:

8.4.1.1 Failing to provide an accurate legal description of land where hemp is produced;

8.4.1.2 Producing hemp without a license;

8.4.1.3 Producing cannabis exceeding the acceptable hemp THC level. Hemp producers do not commit a negligent violation under this paragraph if they make reasonable efforts to grow hemp and the hemp does not have a delta-9 tetrahydrocannabinol concentration of more than 0.5% on a dry weight basis.

8.4.1.4 Failing to have locked entrances on an indoor growing facility.

8.4.1.5 Failing to adequately display signage to indicate a hemp growing site.

8.4.2 Corrective action for negligent violations. For each negligent violation, the Department will issue a Notice of Violation and require a corrective action plan for the licensed producer. The Department shall conduct an inspection to determine if the corrective action plan has been implemented. The licensed producer shall comply with the corrective action plan to cure the negligent violation. Corrective action plans will be in place for a minimum of two (2) years from the date of their approval. Corrective action plans will, at a minimum, include:

8.4.2.1 A reasonable date by which the licensed producer shall correct the negligent violation.

8.4.2.2 A requirement that the licensed producer shall periodically report to the Department, as applicable, on its compliance with the corrective action plan for a period of not less than the next 2 years from the date of the negligent violation.

8.4.2.3 A description of quality control measures, staff training, and quantifiable action measures taken by the Producer. Producers should document this using the Correction Action Plan Template.

8.4.2.4 If a subsequent violation occurs while a corrective action plan is in place, a new corrective action plan must be submitted with a heightened level of quality control, staff training, and quantifiable action measures as defined by the Department.

8.4.3 Negligent violations and criminal enforcement. A licensed producer that negligently violates this part shall not, as a result of that violation be subject to any criminal enforcement action by any Federal, State, or local government.

8.4.4 Negligent violations and license revocation. A producer that negligently violates the license 3 times in a 5-year period shall have their license revoked and be ineligible to produce hemp for a period of 5 years beginning on the date of the third violation.

8.4.5 Culpable mental state greater than negligence. If the Department determines that a license holder has violated the terms of the license or of this part with a culpable mental state greater than negligence:

8.4.5.1 The Department shall immediately report the license holder to:

8.4.5.1.1 The U.S. Attorney General; and

8.4.5.1.2 The chief law enforcement officer of the State, as applicable, where the production is located; and Paragraphs 8.4.1 and 8.4.2 of this section shall not apply to culpable violations.

6. The Department will use the following definition for “Key Participants”, as included in Section 3.0 Definitions of the State regulations.

“Key Participants” means person or persons who have a direct or indirect financial interest in the entity producing hemp, such as an owner or partner in a partnership. A key participant also includes persons in a corporate entity at executive levels including CEO, COO, and CFO. This does not include other management positions like farm, field, or shift managers.

“Criminal History Report” means a report detailing an individual’s conviction status related to a controlled substance within the past 10 years at the state or federal level. Must be dated within sixty days prior to the date of application submission, to be renewed every three years. A Criminal History Report is required for all key participants and authorized representatives.

7. The following references State regulations regarding the falsification of information:

4.6.3.2 a license holder makes a materially false statement with regard to this Program to the Department with a culpable mental state greater than negligence.

4.0 Application, License and Registration

The Department intends to approve or deny application for producers, handlers, and processors within 30 days of submission. The Department will issue a license number or registration number upon approval. Licenses or registrations issued by the Department are intended to validate growing sites, processing facilities, or storage facilities within the State of Delaware. The Department will deem persons who materially falsify any information in their application ineligible to participate in the Delaware Domestic Hemp Production Program.

E. Information Sharing

1. The Department will use the State Hemp Producer Report to report the following information to the USDA, not later than 30 days after the date it is received using the reporting requirements as determined by the USDA in § 990.70 of the Rule. The Department will collect information as submitted by licensed producers on the Delaware Domestic Hemp Production Program Application and Annual Growing Site Registration forms. Contact information for each hemp producer covered under the plan, including:
 - name, address, telephone number, and email address
 - if the producer is a business entity, the information must include the full name of the business, address of the principal business location, full name and title of the key participants, an email address if available, and EIN number of the business entity
2. The following references State regulations requiring licensed producers to share information with USDA, Agricultural Marketing Service, or Farm Service Agency:

7.2.1 The Department requires that all licensed producers report their hemp crop acreage to the FSA using their state of Delaware license number. Licensed producers shall learn information about how to report using the following link: [https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/2019/crop-acreage-Start Printed Page 58524reporting-19.pdf](https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/2019/crop-acreage-Start%20Printed%20Page%2058524reporting-19.pdf)

7.2.2 The Department will require all licensed producers to submit the following information to the Department via email, no later than December 1st of each year:

7.2.2.1 total acreage planted

7.2.2.2 total acreage harvested

7.2.2.3 total acreage disposed

7.2.2.4 plant storage records

7.2.3 The Department will maintain records for a minimum of three years as required by the USDA.

7.2.4 The Department will incorporate information submitted by licensed producers in an Annual Report to be submitted to the USDA.

3. The Delaware Department of Agriculture will correspond monthly with FSA to confirm information for licensed producer and lots.

F. Certification of Resources

The signatures below certify that the state of Delaware has the resources and the personnel to carry out the practices and procedures described in the State of Delaware’s Domestic Hemp Production Plan submitted on December 12, 2019 by Secretary of Agriculture Michael T. Scuse of the Delaware Department of Agriculture to the United States Department of Agriculture, 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 regulations authorized by the 150th Delaware General Assembly in Del. Code Title 3 §101 (11).

Michael T. Scuse, Secretary
Delaware Department of Agriculture

Date:

Robert Coupe, Secretary
Delaware Department of Safety and Homeland Security

Date:

John. C. Carney, Jr., Governor
State of Delaware

Date:

G. Plan Approval, Technical Assistance and USDA Oversight

The Department will submit for approval to the USDA, a Domestic Hemp Production Program plan to allow for the production of hemp in the state of Delaware. The Department acknowledges that the production of hemp in the State of Delaware may not commence until this plan has been approved by the USDA.

Once the plan has received approval from USDA, it will remain in effect, unless revoked by USDA pursuant to the revocation procedures identified in the Domestic Hemp Production Program Interim Final Rule, or unless the Department makes substantive revisions to the State plan or laws that alter the way the plan meets the requirements of the Domestic Hemp Production Interim Final Rule.

USDA has the authority to audit States and Tribes to determine if they are in compliance with the terms and conditions of their approved plans. If a State or Tribe is noncompliant with their plan, USDA will work with that State or Tribe to develop a corrective action plan following the first case of noncompliance.

The USDA will post an approved State and Tribal plan, including their respective rules, regulations and procedures, on USDA's hemp program website. Additionally, changes to the provisions or procedures under this rule or to the language in the 2018 Farm Bill may require plan revision and resubmission to USDA for approval. Should States or Tribes have questions regarding the need to resubmit their plans, they should contact USDA for guidance. Statutory amendments could result in revocation of some or all plans.

If USDA decides to revoke a state plan, such revocation would begin after the end of the current calendar year, so producers have the opportunity to adjust and apply for a license under the USDA plan.