



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
OFFICE OF THE COMMISSIONER
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333

JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

December 20, 2021

Under Secretary Jennifer Lester Moffitt
United States Department of Agriculture
Marketing and Regulatory Programs
1400 Independence Ave., SW
Room 308-E, Whitten Building
Washington, DC 20250

Dear Under Secretary Moffitt:

The Maine Department of Agriculture, Conservation and Forestry (Department) is pleased to submit its State Plan to USDA to administer hemp production in our state. This letter and attached Plan is made in response to the feedback provided to the Department by the USDA relating to Maine's recent submittal, dated November 16, 2021.

Because Maine allows for hemp production under existing state law, the Department must act to reconcile the differences between its existing program and the USDA's Final Rule (7 CFR 990). The Department will pursue amendments to its enabling authority with the Maine Legislature. (7 MRS Chapter 406-A). If successful, the statutory changes and subsequent rulemaking will authorize hemp production and provide the Department with authority needed to regulate hemp production in a manner consistent with the 2018 Farm Bill and the Final Rule.

In conformity with the 2018 Farm Bill and the Final Rule, I request approval, or in the alternative, conditional approval, of our State Plan. The Department will update USDA on the progression of all relevant legislative and rule changes. It will resubmit the State Plan for approval when the changes are completed as required by the Final Rule. Currently, all hemp growing in Maine has ceased for the year. The Department issued 49 licenses in 2021 for outdoor cultivation and approximately 67 acres were harvested. There are no indoor growers. Maine's license numbers and hemp acreage have declined significantly over the past two years. The Department typically does not hear from growers seeking applications until February and most wait until May to apply. We communicate these facts to provide assurance to USDA that Maine is in a hiatus with regard to implementation of hemp regulations at present.

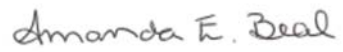
Feel free to contact the Department with any questions about our State Plan or our planned legislative activities.

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Sincerely,

A handwritten signature in cursive script that reads "Amanda E. Beal".

Amanda Beal, Commissioner

cc: Nancy McBrady, Director, Bureau of Agriculture, Food and Rural Resources
Ann Gibbs, Director, Animal and Plant Health Division
Gary Fish, State Horticulturist

Encl.



State of Maine Hemp Program Plan

**Submitted by Amanda E. Beal,
Commissioner**

2022 (Revised)



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As designated by the Commissioner of the Maine Department of Agriculture, Conservation and Forestry (Maine DACF), the State Horticulturist will be responsible for the oversight, administration, and daily operation of the Maine Hemp Program. The following information and respective timelines will be effective upon the approval of the Maine Hemp Plan by the United States Department of Agriculture (USDA). The “Department” hereafter shall refer to the Maine DACF.

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

Maine Hemp Program Application
Indoor or Outdoor Planting Report
State Hemp Producer Report
Laboratory Test Results
Disposal Report
Disposal Certificate

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A. Land Used for Production

1. The Department will collect and maintain relevant producer information by requiring each applicant to complete a Maine Hemp Grower license application, licensing agreement, and a criminal history report. Licenses will expire 365 days after issuance.
2. The Department will collect and maintain relevant information on land used for hemp production by requiring each licensed producer to furnish a completed indoor or outdoor planting report. The Department will require that forms be submitted to the Department via email, U.S. mail, or a physical collection point identified by the Department, no later than 15 days after planting. A new planting report will be required each time a licensed grower plants a new crop.
3. The Department will provide contact information for each licensed producer, including business entities, covered under the Maine Hemp Program Plan to the USDA in the State Hemp Producer Report. The Department will submit this report to the USDA on the first of each month as required. The Department will rely on information indicated in the Maine Hemp Program Application. Information will include:
 - o Name
 - o Address
 - o Telephone number
 - o Email address (if available)

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

- o Name of the business
 - o Address of the principal business location
 - o Full name and title of the key participants
 - o Email address
 - o EIN number of the business entity
4. The Department will collect from each licensed producer 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 Indoor or Outdoor Planting Report form and will identify the GPS coordinates where hemp will be produced. This description will contain the city and county, as well as the geospatial location.
 5. Licensed producers must report:
 - (a) location information (street address and geospatial coordinates) for each lot or facility where hemp will be produced,
 - (b) acreage (outdoor) or square footage (indoor) in hemp production, and
 - (c) the associated license and authorization identifier in the prescribed USDA format, to USDA Farm Service Agency (FSA). The Department will correspond monthly with FSA to

confirm this information.

6. Any persons who materially falsify any information in their application shall be deemed ineligible to participate in the program.

7. The Department will maintain and report to USDA the status of licensed producers, license numbers of producers, and any changes. The Department will report to USDA using the State Hemp Producer Report. For the purposes of reporting to the USDA, the Department will assign unique license numbers according to USDA specifications.

8. The Department will maintain all producer growing site registration records for three years.

B. Sampling and Testing for delta-9 tetrahydrocannabinol

1. Employees of the Department will be responsible for performing inspections and collecting hemp samples. Training will include successful completion of USDA's hemp sampling agent training modules and in-field practice alongside experienced Department staff. We will not be using independent contractors at this time.
2. The Sampling protocols will be sufficient to ensure at a confidence level of 95% that no more than 1% of hemp plants in each sampled lot would exceed the acceptable THC level and will ensure that representative samples are collected reflecting a homogeneous composition of the lot being sampled.
3. Performance based sampling will apply to the following hemp-growing situations in Maine:
 - Research institutions, provided that any hemp grown will (a) never enter the stream of commerce and (b) be tested by the institution for THC content prior to harvest. Research institutions must ensure the proper disposal of noncompliant plants and comply with the same licensing and reporting requirements as all other license holders. Lead researchers are subject to the Criminal History check requirement.
 - Microgreens, as these are very young plants (under 5" tall and approximately 14 days past germination). There are no flowers to test with microgreens and THC content in the plant tissue is negligible.
 - Hemp seedlings, as these are young plants, under 12" tall, without floral bud development. There are no flowers to test.
 - Groups listed are subject to Performance-based sampling requirements may be audited or randomly inspected by the Department to ensure compliance.
4. For all other hemp production, the Department will collect samples from every grower and every lot. As the hemp industry in Maine continues to evolve, the Department will collect and analyze data pertinent to sample collection and testing. The Department intends to use this program data to develop additional performance-based sampling protocols, which will be submitted as an addendum to the Maine Hemp Program Plan and submitted to USDA for approval prior to implementation.
5. The Department will use the following procedures to conduct sampling and testing within 30 days prior to the anticipated harvest date.
 - A Department employee will collect representative samples from lots to submit for testing of THC concentration levels within 30 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 telephone 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 Maine Hemp 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 except to be present while the Department samples their crop. Licensed producers have 30 days from the date it was sampled by the Department to harvest that hemp lot.

- If a licensed producer fails to complete harvest within 30 days of sample collection, the Department will collect a second pre-harvest sample of the lot to be submitted for testing. The licensee will be responsible for the costs of any additional pre-harvest samples.
- The sampling agent will not collect samples on lots where cannabis plants have not matured to the 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.

6. The Department will use the following procedures to collect samples of flower material from cannabis plants and ensure that samples represent a homogenous composition of a lot:

- Survey the growing area and verify GPS coordinates of lot(s). Note the average height, appearance, plant density, and degree of maturity of the plants. Visually assess the homogeneity of the lot to be sampled to establish that the lot is of like variety. Estimate the lot area and number of plants in the lot. When sampling indoor facilities with tiers of plants growing under artificial lights, add up the square footage of each tier. Record relevant data.
- When possible, 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. If lots are grown in a single row or narrow band of rows, walk the extent of it, taking samples at points throughout. If lots are grown under lights indoors, be able to access all tiers of plants. Avoid sampling from field edges and in areas where plants appear stressed and unhealthy.
- From each flowering cannabis plant selected for a sample, the sampling agent will cut off a 5 to 8" flowering end of a branch from the upper one-third of the plant. The sample may be the top cola of the plant. The flowering branches collected for that lot will be held in a plastic bucket while the agent moves through that lot.

- For CBD/resin hemp crops, either indoor or outdoor, the following table will be used to determine how many plants from which to take flowering stems.

Number of plants in lot	Minimum # of plants to sample
1-5	1
6-20	3
21-40	4
41-75	5
76-100	6
101-200	7
201 - 500	8
501-1000	10
1001+	Sampler can decide so long as at least 10 plants are sampled and total lot acreage does not exceed 10 acres. For lots larger than 10 acres in size, use USDA's sample size table.

- For grain and fiber crops, the following USDA generated tables will be used to determine how many plants from which to take flowering stems.

Number of acres	Sample Size	Number of acres	Sample Size	Number of acres	Sample Size	Number of acres	Sample Size
Less than 1	1	11	11	75-76	61	119-120	86
1	1	12	12	77	62	121-122	87
2	2	13	13	78-79	63	123-124	88
3	3	14	14	80-81	64	125-126	89
4	4	15	15	82	65	127-128	90
5	5	16	16	83-84	66	129-130	91
6	6	17	17	85-86	67	131-132	92
7	7	18-19	18	87	68	133-134	93
8	8	20	19	88-89	69	135-136	94
9	9	21	20	90-91	70	137-138	95
10	10	22	21	92	71	139-140	96
		23	22	93-94	72	141-143	97
		24	23	95-96	73	144-145	98
		25-26	24	97-98	74	146-147	99
		27	25	99	75	148-149	100
		28	26	100-101	76	150-152	101
		29	27	102-103	77	153-154	102
		30	28	104-105	78	155-156	103
		31-32	29	106-107	79	157-157	104
		33	30	108	80	159-161	105
		34	31	109-110	81	162-163	106
		35	32	111-112	82	164-166	107
		36	33	113-114	83	167-168	108
		37-38	34	115-116	84	169-170	109
		39	35	117-118	85	171-173	110

- When sampling for a lot is complete, the agent will divide the contents of the bucket into two new paper bags creating a pair of samples, one of which the lab will hold as a backup in the event a second THC analysis is needed for that lot. Each paper bag is sealed with security tape and labeled with a numbering system that identifies license number, lot, date of sample, and sampling agent. The agent will use rubbing alcohol and towels to clean pruning shears, hands, and collection bucket between lots. Above all, the sampling agent must make sure that flower material from one lot is not mingled with that from another lot.
- Sample bags will be held in a cool, dry, and secure place within the agent’s vehicle until they are stored in a dedicated and locked refrigerator at the Department’s headquarters. The lab will retrieve samples from this refrigerator for testing and storage.

7. The Department will require that a licensed producer or authorized representative of the licensed producer be present at the growing site during a scheduled sample collection whenever possible.

8. The Department shall 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.

9. The Department will use the following testing procedures for total delta-9-THC concentration: establish an agreement with an ISO 17025 Accredited lab to perform THC analysis and require that the laboratory share test results to the Department; share reported test results to licensed producers and report test results to the USDA using the Laboratory Test Results Report (AMS-22); require that the laboratory use gas or liquid chromatography with detection to provide quantitative determination of THC levels (delta-9-THC and THCA) on a dry weight basis. The lab will determine Total THC concentration (dry weight basis) with the following calculation: $\text{Total THC} = \text{delta-9-THC} + (\text{THCA} \times 0.877)$.

10. The Department will require that the laboratory use appropriate validated methods and procedures for all testing activities and evaluate the MU, which must be estimated and reported with test results. The Department has defined MU as follows: “Measurement of Uncertainty” or “MU”, means the parameter associated with the results of a measurement 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.

11. The Department shall prohibit any hemp grown in a lot where the acceptable THC level is non-compliant from handling, processing, or entering the stream of commerce. The Department has defined the acceptable hemp THC level as follows: “Acceptable Hemp THC Level” means the total THC concentration is equal to or less than 0.3% on a dry weight basis, as

reported by an ISO 17025 Accredited laboratory. The designated laboratory will also report the MU. The application of the MU to the reported delta-9 THC content concentration level produces a distribution or range. If 0.3% or less is within the distribution or range, then the sample will be considered hemp.

12. After December 31, 2022, the Department will only use a DEA registered laboratory for hemp compliance testing.

C. Remediation or Disposal of Non-Compliant Plants

1. The Department will ensure that licensed producers properly remediate or destroy non-compliant plants, per USDA instruction, within 30 days after receiving the test result.
2. Growers choosing to remediate non-compliant hemp may do so by removing all the floral material and disposing of it or by shredding the industrial hemp plant into a biomass-like material. Under either remediation method, growers are required to contact the Department to collect an official sample of the remediated hemp. If the results of the remediation test reveal a total THC concentration that is greater than the acceptable THC level, the grower must dispose of the industrial hemp lot using a disposal method that is included in this State Plan.
3. An authorized employee from the Department will witness the destruction of any cannabis that exceeds the acceptable hemp THC level until it is rendered non-retrievable. Destruction must be done on-site. Growers may plow the non-compliant hemp crop in such a way as to bury it below the soil; compost the shredded crop with other feedstocks; or burn it.
4. The Department will record all disposals and remediation and report them to the USDA using the Annual Report. The Department will send all post-remediation lab test results to USDA.

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

1. The Department will use the following definition for “Key Participants”:
 - “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 may 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, which 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.
 - With respect to colleges and universities conducting hemp research, the principal investigator is considered the applicant, with co-principal investigators as key participants. Criminal history reports must be included for these individuals.

2. The following are ineligible applicants for a hemp license:
 - Any person who willfully and materially falsifies any information in an application.
 - Any person or business entity with Key Participants convicted of a felony related to a controlled substance under state or federal law in the 10-year calendar year period prior to the application date. See Disqualifying Felony definition in bullet number 6 below.
 - A licensee that commits a negligent violation three times in a 5-year period shall be ineligible to produce hemp for a 5-year period beginning on the date of the third violation.

3. 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 the Hemp Program.
 - The Department will schedule inspections to occur when hemp is actively being grown and harvested. The Department will notify producers prior to inspections.
 - The Department will 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 Maine Hemp Program, the Department will institute a corrective action plan.

4. The Department will require a corrective action plan for negligent violations that result from:
 - Failure to provide legal description of land.
 - Failure to obtain a license.
 - Producing hemp crops that exceed the acceptable THC level. The Department will not consider hemp producers as committing a negligent violation if they produce plants exceeding the acceptable hemp THC level while using reasonable efforts to grow hemp, and the lot does not have a concentration of more than 1.0 percent on a dry weight basis.
 - Failure to file required reports to the Department in a timely manner.

The corrective action 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.

The Department will conduct inspections to determine if corrected actions have been implemented.

5. Producers shall not receive more than one negligent violation per growing season. A license holder who has received three negligent violations in a five-year period is ineligible to produce hemp for a period of five years from the date of the third violation. Negligent violations are not subject to criminal enforcement.

6. The Department will use the following definition for “Disqualifying Felony”: a state or federal felony related to a controlled substance for 10 years prior to the date when a Criminal History Report is completed. A person with a Disqualifying Felony is ineligible to participate in the State of Maine Hemp Program for 10 years following the date of conviction, with the following exception: This ineligibility requirement does not apply if the applicant grew industrial hemp before December 20, 2018, as a pilot program participant under the agricultural act of 2014 (Public Law 113-79) and the applicant or the key participant’s conviction occurred before December 20, 2018.

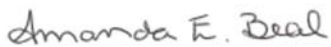
7. If the Department determines that a producer has willfully violated the Maine Hemp Program Plan, the Department, as applicable, shall immediately report the producer to the U.S. Attorney General and the chief law enforcement officer of the State.

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 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 Maine Hemp Program Application and Indoor or Outdoor Planting Report forms. Contact information for each hemp producer covered under the plan must be provided, including:
 - Name, address, telephone number, and email address
 - If the producer is a business entity, 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 Department will correspond monthly with FSA to confirm information for each licensed producer and lots.
3. Licensed hemp producers will report the information described above to USDA-FSA as determined by USDA-AMS in §990.70 of the rule.

F. Certification of Resources

The signature below certifies that the State of Maine has the resources and the personnel to carry out the practices and procedures described in the State of Maine’s Hemp Program Plan submitted on November 16, 2021, by Commissioner Amanda Beal of the Maine Department of Agriculture, Conservation and Forestry to the USDA, pursuant to Section 297B(a)2(A)(i-vii) of the Agriculture Improvement Act of 2018, and more formally outlined in the Hemp Final Rule (7 CFR Part 990: Establishment of a Hemp Program), and the rules authorized by MRS Title 7, Part 5, Chapter 406-A.



Amanda Beal, Commissioner
Maine Department of Agriculture, Conservation and Forestry

Date: December 20, 2021

G. Plan Approval, Technical Assistance and USDA Oversight

The Department will submit for approval to the USDA a Hemp Program plan to allow for the production of hemp in the State of Maine. The Department acknowledges that the production of hemp in the State of Maine 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 Hemp Program 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 Hemp Production 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 non-compliant 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 will 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.