

New Jersey Hemp Program

N.J.A.C. 2:25-1 et seq.

Summary

The New Jersey Department of Agriculture (“Department”) has adopted new rules governing the New Jersey Hemp Farming Act (“Act”) to license and promote the cultivation of industrial hemp at N.J.A.C. 2:25-1 et seq. This Act allows these rules to be effective upon filing for a period of eighteen months. The Department, through the Division of Plant Industry, administers the New Jersey Hemp Farming Act, authorized by P.L. 2019 c.238, as amended and supplemented.

Hemp, also known as industrial hemp, comes from the plant *Cannabis sativa L.* which is a versatile plant. Hemp is a dioecious plant, producing blooms that have only male or female reproductive parts that often appear on separate plants. This plant is generally known for the production of marijuana, but when grown for hemp, it can produce fiber, seed, or oil. Unlike marijuana, hemp is not used to produce psychoactive effects in users. The New Jersey farming community is eager to grow hemp as a new commodity and enter this burgeoning national marketplace. Additionally, consumers will enjoy increased access to many new products grown and produced locally.

Historically, hemp fibers have been used to manufacture hundreds of products that include twine, paper, construction materials, carpeting, clothing and animal bedding. Seeds have been used in making industrial oils, cosmetics and other personal care products. Hemp seed or oil can be found in cooking oil, salad dressings, pasta, snack products, high-quality lubricating oils, and biodegradable plastics. Hemp also has potential as a biofuel.

The cultivation of industrial hemp for research purposes was initially authorized in the

Agriculture Act of 2014, 7 U.S.C. § 5940, “Legitimacy of Industrial Hemp Research.” The law distinguished hemp from marijuana by defining it as “the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of no more than 0.3 percent on a dry weight basis.” Such hemp could only be cultivated by state departments of agriculture or institutions of higher education for research purposes. Despite recognition of the plant’s significantly different applications from marijuana, hemp was still classified as a Schedule 1 Controlled Substance under federal law under the “Controlled Substances Act,” 21 U.S.C. § 801.

To help promote these new hemp programs, Congress passed appropriations bills in 2015, 2016, 2017, and 2018 that included provisions to prevent the DEA from interfering with or obstructing duly authorized industrial hemp programs. In 2016, the DEA, USDA, and the FDA responded by issuing a joint “Statement of Principles” regarding industrial hemp. Specifically, they warned that industrial hemp should not be grown “for the purpose of general commercial activity,” and that “hemp plants and seeds may not be transported across state lines.” These conflicting authorities caused uncertainty regarding the legality of commercial sales and the transport of hemp and hemp products. Nevertheless, many states have established and administered their own industrial hemp programs since 2014, with many engaging in commercial sales of hemp products.

In November 2018, the “New Jersey Industrial Hemp Pilot Program” was signed into law. The statute authorized the NJDA to promulgate rules regulating the cultivation of industrial hemp in New Jersey for research purposes. Within weeks, Congress passed the Agriculture Improvement Act of 2018, also known as the 2018 Farm Bill (“2018 Farm Bill”), which made sweeping changes to hemp growth and production. Pub.L. 115-334. The most significant change

in the 2018 Farm Bill is that hemp is no longer classified as a Controlled Substance under federal law. Now, hemp grown within either a state or federal program can be produced commercially as opposed to being grown for research purposes. State programs must be approved by the USDA.

It is in New Jersey's best interests to administer a program within the State to ensure the needs of local farmers and businesses are being met. The Governor and the Legislature have made the determination that New Jersey should act promptly with the goal of having New Jersey "move the State and its citizens to the forefront of the hemp industry." P.L. 2019, c.238. The new statute, known as the "New Jersey Hemp Farming Act" was enacted in August 2019. The New Jersey Hemp Farming Act repealed and replaced the New Jersey Industrial Hemp Pilot Program. This new legislation complies with the 2018 Farm Bill, which authorized hemp producers to grow and sell hemp for commercial purposes. On October 31, 2019, the USDA published its interim final rules for domestic hemp production in the Federal Register at 7 CFR 990 et seq. The new rules became effective immediately upon publication. Any state seeking to have primary regulatory authority over hemp production must receive USDA approval of its program. The USDA's regulations implement the 2018 Farm Bill and specify provisions that are required in state hemp production plans, including procedures for sampling and testing, disposal of noncompliant hemp, enforcement, and various reports and information sharing with authorities. Accordingly, the Department has established a USDA approved hemp licensing program in order to promote the cultivation and processing of hemp, develop new commercial markets for farmers and businesses through the sale of hemp products; and promote the expansion of the State's hemp industry to the maximum extent permitted under federal law.

These rules establish the New Jersey Hemp Program (“Program”), which will be administered by the Plants Division within the Department. The objective of the Program is to provide licenses for growing, processing, and handling hemp pursuant to the New Jersey Hemp Farming Act, and the 2018 Farm Bill and its implementing regulations at 7 CFR 990 et seq.

The Program establishes a schedule of fees to be paid based upon whether the hemp producer will be growing, processing, or handling hemp. Growers will pay an annual \$300 plus \$15 per acre fee, handlers will pay a \$450 annual fee, and processors will pay an annual fee for each type of hemp component they process. For example, a hemp producer who processes grain (\$450) and CBD extract (\$1,000) will pay a \$1,450 annual fee. Growers are permitted to process and handle their own hemp without paying additional fees. However, once a grower processes or handles hemp from at least one (1) separate hemp producer, the grower must pay applicable processor and handler fees.

The primary federal requirement is to ensure that all hemp grown and processed maintains the appropriate delta-9 THC concentration limit of 0.3 percent on a dry weight basis. Additional requirements include, but are not limited to, reporting certain information to the USDA and ensuring compliance with the enforcement provisions of the 2018 Farm Bill. For example, hemp farmers cannot be subjected to adverse criminal law enforcement actions for mere negligent violations but will instead be subject to a Corrective Action Plan tailored to prevent future violations. However, three (3) negligent violations committed within a period of five (5) years will render a hemp producer ineligible to work in the Program for a period of five (5) years beginning on the date of the third violation. All hemp with a delta-9 THC concentration of more than 0.3% must be destroyed, but it will only be considered a

negligent violation pursuant to these rules if the hemp has a delta-9 THC concentration of more than 0.5% on a dry weight basis. A hemp producer who violates these rules with a culpable mental state greater than negligence may be subject to criminal law enforcement actions.

The Federal interim rule states that hemp with a THC concentration in excess of 0.3% on a dry weight basis will be considered marijuana, and subject to the Controlled Substances Act and DEA regulations. Noncompliant hemp must be destroyed in accordance with reverse distributor regulations at 21 CFR 1317.15. The Department is currently seeking to obtain a reverse distributor license from the DEA in order to provide this service when necessary.

The Program establishes reporting requirements throughout the growing season, including pre-planting reports, planting reports, pre-harvest reports, and one annual production report. Hemp producers are required to report hemp crop acreage and other relevant information to the USDA Farm Service Agency. The Department is required to provide two reports to the USDA each month. One report will update the status of any hemp producer's license, and the other will provide information to the USDA regarding noncompliant hemp violations. The Department will also submit an annual report to USDA regarding total hemp acreage grown and disposed. The reports will ensure that accurate legal descriptions of land and quantities of hemp are maintained, that the Department's inspectors can work efficiently when they go to licensed areas, and that all hemp is produced with a THC concentration of less than 0.3 percent on a dry weight basis. Production reports will provide useful information regarding whether certain varieties tend to violate the federally defined THC level for hemp or produce low yields.

The Program also establishes procedures for sampling and testing hemp. Fifteen (15) days prior to the anticipated harvest date, an inspector from the Department or a DEA-registered third-party lab will collect samples to test for compliance with the federally defined THC level for hemp. All results are subject to review by the Department, which is authorized to re-test and collect samples as necessary to ensure compliance. THC testing procedures must use postdecarboxylation or other similarly reliable methods and must measure total THC. Test results must show the measurement of uncertainty being utilized and state if a given sample meets the 0.3 percent threshold based on the distribution range established by the measurement of uncertainty. Furthermore, hemp producers must agree to grant entry to the Department onto premises where hemp is grown, processed, or handled for inspection purposes. In addition to individual sampling and testing requirements, the Department will also conduct an annual inspection of, at a minimum, a random sample of hemp producers.

Any person with a criminal conviction relating to controlled substances may not participate in the hemp program for a period of ten years following the date of the conviction, unless they were already participating in an industrial hemp pilot program and the conviction occurred prior to the passage of the 2018 Farm Bill. To comply with this federal requirement, all key participants involved in a hemp production operation, including owners, CEO's, and CFO's, must undergo and pass a criminal background check by the New Jersey State Police.

SPECIAL ADOPTION

AGRICULTURE

(a)

DIVISION OF PLANT INDUSTRY

New Jersey Hemp Program

Special Adopted New Rules: N.J.A.C. 2:25

Adopted: December 18, 2019, by the State Board of Agriculture and Douglas H. Fisher, Secretary, Department of Agriculture.
Filed: December 30, 2019 as R.2020 d.013.

Authority: P.L. 2019, c. 238.

Effective Date: December 30, 2019.

Expiration Date: June 30, 2020.

Take notice that, in accordance with P.L. 2019 c. 238, the New Jersey Department of Agriculture has adopted the following new rules to establish a licensing program for individuals, business entities, and institutions of higher education to cultivate, process, and handle hemp in the State of New Jersey. Per the New Jersey Hemp Farming Act, N.J.S.A. 4:28-6 et seq., the specially adopted new rules shall be effective immediately upon filing with the OAL for a period not to exceed 18 months, and shall, thereafter, be amended or readopted in accordance with the provisions of N.J.S.A. 52:14B-1 et seq., the Administrative Procedure Act.

Federal Standards Statement

The specially adopted new rules are authorized by the New Jersey Hemp Farming Act and have been drafted to comply with the Agriculture Improvement Act of 2018 (2018 Farm Bill), Pub.L. 115-334, and its implementing regulations at 7 CFR Part 990. The 2018 Farm Bill now makes hemp legal to grow anywhere in the United States, as long as it is grown under the auspices of a state-run program or under the USDA's program. The 2018 Farm Bill anticipates and allows state-run programs to be more restrictive than the Federal standards.

The U.S. Department of Agriculture (USDA) published its interim final rules for domestic hemp production on October 31, 2019. New Jersey has since received approval from the USDA prior to implementing the hemp program.

Some provisions of the Department's new rules exceed the Federal standards. N.J.A.C. 2:25-2.2 requires a site modification fee any time a growing site is altered or added to an existing license. This is necessary, so that the Department can submit accurate records to the USDA, which must be kept apprised of the status of all hemp producers and have accurate legal descriptions of all land being used to produce hemp.

N.J.A.C. 2:25-2.2 prohibits public access to hemp, such as hemp mazes or any other recreational activity. The Department deems these measures necessary to prevent members of the public from having unauthorized access to plants and seeds that could be used to cultivate hemp in violation of this chapter.

N.J.A.C. 2:25-3.2 allows the Department to prohibit any hemp, seeds, plantlets, or propagules for any reason. If the Department determines that any particular strain or source for hemp is unreliable, it may be prohibited in order to protect the integrity of the program. Hemp farmers will suffer financial losses for every non-compliant field they must destroy, so it is more efficient to prevent non-compliant hemp from being planted to begin with. If non-compliant hemp is processed into foodstuffs, it could result in State or nationwide recalls.

While the rules, regarding violations, generally match the Federal standards, the Department includes additional negligent violations, such as the failure to submit timely reports and unresponsiveness to Departmental requests. The 2018 Farm Bill required three enumerated "negligent violations" to be subject to a Corrective Action Plan, while giving states more discretion concerning other minor infractions. Negligent violations and corrective action plans are described in detail below at N.J.A.C. 2:25-6. Negligent violations include producing

Cannabis sativa L with a delta-9 THC concentration of more than 0.5 percent on a dry weight basis, failing to provide a legal description of the land on which hemp is produced, and failing to obtain necessary authorizations pursuant to the program. Hemp producers who have committed a negligent violation are required to adhere to a Corrective Action Plan, which includes requirements to set a reasonable date by which the hemp producer shall correct the negligent violation, and to submit reports detailing compliance measures for a period of two years. If the Department finds that other infractions are serious enough, a hemp producer may still be placed on a Corrective Action Plan. If three separate negligent violations occur within a five-year period, a license shall be revoked, and the hemp producer will be ineligible to work in the program for a period of five years from the date of the third violation. However, the Department may also issue warnings that do not count toward the Federally mandated limit of three violations. Any person who materially falsifies any information in an application will be ineligible to participate in the program.

The majority of the specially adopted rules match Federal standards, including the maintenance of information, providing requisite information to USDA, a procedure for testing for THC, disposal procedures, violations provisions, and annual inspections.

Full text of the specially adopted new rules follows:

CHAPTER 25

NEW JERSEY HEMP PROGRAM RULES

SUBCHAPTER 1. GENERAL PROVISIONS

2:25-1.1 Authority and general provisions

(a) This chapter establishes the rules for participation in the New Jersey Hemp Farming Act pursuant to P.L. 2019 c. 238, N.J.S.A. 4:28-1 et seq., and the Federal Agriculture and Nutrition Act of 2018, Pub.L. 115-334 (2018 Farm Bill).

(b) This chapter applies to growers, processors, and handlers of hemp in this State, but shall not apply to transporters of hemp engaged in interstate commerce.

(c) No person shall grow, process, or handle hemp in this State, unless authorized by an annual license issued by the Department pursuant to this chapter.

(d) All moneys collected by the Department pursuant to the Program shall be deposited into the New Jersey Hemp Farming Fund. Moneys in the fund shall be used for the administration and enforcement of the Program.

2:25-1.2 Definitions

As used in this chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

"Agent" means an employee or contractor of a hemp producer.

"Applicant" means a person, or for a business entity or IHE, any person authorized to act on behalf of the business entity or IHE, who applies to the Department to be a hemp producer in this State.

"Approved seed" means hemp seed that is approved by New Jersey or other states' departments of agriculture and labeled for cultivating hemp under the Federally defined THC level for hemp.

"Cannabis" means a genus of flowering plants in the family Cannabaceae of which *Cannabis sativa* is a species, and *Cannabis indica* and *Cannabis ruderalis* are subspecies thereof. Cannabis refers to any form of the plant in which the delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.

"CBD" or "cannabidiol" is a phytocannabinoid found in cannabis, which does not produce psychoactive effects in users.

"Commercial sale" means the sale of a product in the stream of commerce at retail, at wholesale, or on the Internet.

"Controlled Substances Act" or "CSA" means 21 U.S.C. §§ 801 et seq.

"Conviction" means any plea of guilty or nolo contendere, or any finding of guilt, except when the finding of guilt is subsequently

overturned on appeal, pardoned, or expunged. For purposes of this chapter, a conviction is expunged when the conviction is removed from the individual's criminal history record and there are no legal disabilities or restrictions associated with the expunged conviction, other than the fact that the conviction may be used for sentencing purposes for subsequent convictions. In addition, where an individual is allowed to withdraw an original plea of guilty or nolo contendere and enter a plea of not guilty and the case is subsequently dismissed, the individual is no longer considered to have a conviction for purposes of this chapter.

"Corrective action plan" means a plan established by the Department for a hemp producer to correct a negligent violation or non-compliance with the Program.

"Culpable mental state greater than negligence" means to act intentionally, knowingly, willfully, or recklessly.

"Cultivate" means to plant, water, grow, or harvest a plant or crop.

"Decarboxylated" means the completion of the chemical reaction that converts THC-acid (THC-A) into delta-9THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9THC and 87 and seven-tenths (87.7) percent of THC-acid.

"Decarboxylation" means the removal or elimination of carboxyl group from a molecule or organic compound.

"Department" means the New Jersey Department of Agriculture.

"Drug Enforcement Administration" or "DEA" means the United States Drug Enforcement Administration.

"Dry weight basis" mean the ratio of the amount of moisture in a sample to the amount of dry solid in a sample. A basis for expressing the percentage of a chemical in a substance after removing the moisture from the substance. Percentage of THC on a dry weight basis means the percentage of THC, by weight, in a cannabis item (plant, extract, or other derivative), after excluding moisture from the item.

"Entity" means a corporation, joint stock company, association, limited partnership, limited liability partnership, limited liability company, irrevocable trust, estate, charitable organization, or other similar organization, including any such organization participating in the hemp production as a partner in a general partnership, a participant in a joint venture, or a participant in a similar organization.

"Farm Service Agency" or "FSA" is an agency of the United States Department of Agriculture.

"Federally defined THC level for hemp" or "acceptable hemp THC level" means a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis for hemp or in a hemp product. Hemp will satisfy the standard of "Federally defined THC level for hemp" or "acceptable hemp THC level" if laboratory testing confirms a result within a measurement of uncertainty that includes the THC concentration level of 0.3 percent. For example, if the reported delta-9 THC content concentration in a sample is 0.35 percent, and the measurement of uncertainty is +/- 0.099 percent, the hemp would be compliant, because 0.3 percent falls within the distribution range between .251 percent and .449 percent.

"Gas chromatography" or "GC" means a type of chromatography in analytical chemistry used to separate, identify, and quantify each component in a mixture. GC relies on heat for separating and analyzing compounds that can be vaporized without decomposition.

"Geospatial location" means a location designated through a global system of navigational satellites used to determine ground position of a place or object.

"Grower" means any person who cultivates hemp.

"Growing area" means either an outdoor or enclosed indoor area where hemp is cultivated.

"Handle" means to possess or store a hemp plant on premises owned, operated, or controlled by a hemp producer for any period of time or in a vehicle for any period of time other than during the actual transport of the plant between premises owned, operated, or controlled by hemp producers or persons or entities authorized to produce hemp pursuant to 7 U.S.C. §§ 1639o et seq., and any State law or rule adopted pursuant thereto. Examples of "handlers" include, but are not limited to, seed cleaners, analytical labs, traders, harvesting entities, brokers, and other service providers. "Handle" does not mean possession or storage of finished hemp products.

"Harvest" means the termination of the cultivation process, including taking cuttings, or the movement of hemp from a licensed growing area to another location or movement within a licensed growing area between indoor and outdoor planting areas.

"Hemp" means the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. Hemp and hemp-derived cannabinoids, including cannabidiol, shall be considered an agricultural commodity and not a controlled substance due to the presence of hemp or hemp-derived cannabinoids.

"Hemp extract" means the oil chemically extracted from hemp's aerial plant part, such as seeds, stalks, or flowers, using chemical processes, containing a natural blend of phytocannabinoids, and includes cannabidiol, or "CBD" oil.

"Hemp oil" means oil obtained by physically pressing hemp seeds with a 3:1 ratio of omega-6 to omega-3 essential fatty acids and does not include cannabidiol or CBD.

"Hemp producer" means a person or business entity authorized by the Department to cultivate, process, or handle hemp in the State.

"Hemp product" means a finished product with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent that is derived from or made by processing a hemp plant or plant part and prepared in a form available for commercial sale. The term includes cosmetics, personal care products, food intended for human or animal consumption, cloth, cordage, fiber, fuel, paint, paper, particleboard, plastics, and any product containing one or more hemp-derived cannabinoids, such as cannabidiol. Hemp products shall not be considered controlled substances due to the presence of hemp or hemp-derived cannabinoids.

"High-performance liquid chromatography" or "HPLC" means a type of chromatography technique in analytical chemistry used to separate, identify, and quantify each component in a mixture. HPLC relies on pumps to pass a pressurized liquid solvent containing the sample mixture through a column filled with a solid adsorbent material to separate and analyze compounds.

"Information sharing system" means the database that allows the USDA to share information collected under state, tribal, and USDA plans with Federal, state, tribal and local law enforcement.

"Institution of higher education" or "IHE" means the same as that term is defined at 20 U.S.C. § 1001.

"Key participant" means a sole proprietor, a partner in partnership, or a person with executive managerial control in a corporation. A person with executive managerial control includes persons, such as a chief executive officer, chief operating officer, and chief financial officer. This definition does not include non-executive managers, such as farm, field, or shift managers.

"Law enforcement" means any Federal, State, or local agencies responsible for maintaining public order and enforcing the law.

"License" means written authorization by the Department for any person to grow, process, or handle hemp in the State.

"Licensed area" means a land area licensed by the Department on which a hemp producer plans to cultivate, process, or handle hemp. A licensed area may include, but is not limited to, growing areas or land and buildings that are not used for cultivation.

"Lot" means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis that was planted at the same time throughout the area.

"Marijuana" means all parts of the plant *Cannabis sativa L.*, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin. The term "marihuana" does not include hemp, as defined in section 297A of the Agricultural Marketing Act of 1946, and does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant that is incapable of germination (7 U.S.C. § 1639o). "Marihuana" means all cannabis that

tests as having a concentration level of THC on a dry weight basis of higher than 0.3 percent.

“Measurement of uncertainty” or “MU” means the parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.

“Negligence” means failure to exercise the level of care that a reasonably prudent person would exercise in complying with this chapter.

“Person” means an individual, firm, corporation, company, limited liability company, society, association, business, or other entity.

“Phytocannabinoid” means the cannabinoid chemical compounds found in the cannabis plant, two of which are Delta-9 tetrahydrocannabinol (delta-9 THC) and cannabidiol (CBD).

“Plantlets” means young or small hemp plants or propagules.

“Postdecarboxylation” in the context of testing methodologies for THC concentration levels in hemp, means a value determined after the process of decarboxylation that determines the total potential delta-9 tetrahydrocannabinol content derived from the sum of the THC and THC-A content and reported on a dry weight basis. The postdecarboxylation value of THC can be calculated by using a chromatograph technique using heat, gas chromatography, through which THC-A is converted from its acid form to its neutral form, THC. Thus, this test calculates the total potential THC in a given sample. The postdecarboxylation value of THC can also be calculated by using a high-performance liquid chromatograph technique, which keeps the THC-A intact, and requires a conversion calculation of that THC-A to calculate total potential THC in a given sample.

“Principal investigator” means the research scientist or other individual in charge of the research program for an IHE.

“Process” means to convert hemp into a hemp product.

“Processors” include, but are not limited to, entities acquiring raw hemp materials and processing them into products.

“Program” means the New Jersey Hemp Program, which is the regulatory authority within the Department responsible for administering hemp production pursuant to the New Jersey Hemp Farming Act, P.L. 2019, c. 238, as amended and supplemented, and the Federal Agriculture and Nutrition Act of 2018, P.L. 115-334.

“Propagules” means any vegetative structure, typically a stem cutting, that can be detached from a hemp plant and used to propagate a new plant.

“Research” means cultivation of hemp by an IHE under the Program and administered by the Department for purposes of agricultural or academic research in the development of growing hemp.

“Reverse distributor” means a person who is registered with the DEA in accordance with 21 CFR 1317.15 to dispose of marijuana under the Controlled Substances Act.

“THC” means delta-9 tetrahydrocannabinol, which is a psychoactive component in cannabis plants.

“Transport” means the movement or shipment of hemp by a hemp producer, a person or entity authorized to produce hemp pursuant to 7 U.S.C. §§ 1639o et seq., and any State law or rule adopted pursuant thereto, or a hemp producer’s or authorized entity’s third-party carrier or agent. “Transport” shall not mean the movement or shipment of hemp products.

“USDA” means the United States Department of Agriculture.

“Variety” means a group of plants or an individual plant that exhibits distinctive observable physical characteristic(s) or has a distinct genetic composition.

“Volunteer plants” means hemp plants that grow on their own by natural regeneration rather than being deliberately planted.

2:25-1.3 Records designated as confidential

In addition to records designated as confidential pursuant to the provisions of the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq., and any other law, rule, or Executive Order; the license application, supporting documentation, filed hemp producer reports, or any testing results shall not be considered government records subject to public access pursuant to OPRA. The only information that shall be considered public shall be the hemp producer’s name and mailing address.

2:25-1.4 Information submitted to U.S. Secretary of Agriculture

(a) The Department shall collect, maintain, and report to the U.S. Secretary of Agriculture relevant, real time information for the following:

1. The contact information for each hemp producer operating under the Program;

2. A legal description of the land on which hemp is grown by each licensed hemp producer; and

3. The status and number of each hemp producer’s license or other required authorizations and any changes to that status.

(b) The Department shall maintain the records described in (a) above for a period of not less than three calendar years, and in compliance with records retention policies.

(c) Hemp producer report. The Department shall 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 hemp producer. If the first of the month falls on a weekend or holiday, the report is due by the first business day following the due date. The report shall be submitted using a digital format compatible with the USDA’s information sharing systems, whenever possible. The report shall contain the information set forth below:

1. As applicable, the information in either (c)1i, ii, or iii below.

i. For each new hemp producer who is an individual, the report shall include the full name of the individual, license or authorization identifier, business address, telephone number, and email address (if available).

ii. For each new hemp producer that is an entity, the report shall include the full name of the entity, the principal business location address, license or authorization identifier, employer identification number, and the full name, title, and email address (if available) of each key participant for whom the entity is required to submit a New Jersey State Police criminal background check.

iii. For each producer that was included in a previous report and whose reported information has changed, the report shall include the previously reported information and the new information;

2. The status of each hemp producer’s license or authorization;

3. The period covered by the report; and

4. An indication that there were no changes during the current reporting cycle, if applicable.

(d) Hemp Disposal Report. The Department shall submit to 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. This report will include information regarding name and contact information for each hemp producer subject to a disposal during the reporting period, and the date when disposal was completed. If the first of the month falls on a weekend or holiday, reports are due by the first business day following the due date. The report shall contain the information set forth below:

1. The name and address of the hemp producer;

2. The producer license or authorization identifier;

3. The location information, such as lot number, location type, and geospatial location or other location descriptor for the production area subject to disposal;

4. The information on the agent handling the disposal;

5. The disposal completion date; and

6. The total acreage.

(e) Noncompliant hemp disposal notification. In addition to the Hemp Disposal Report required under (d) above, the Department shall promptly notify the USDA Agricultural Marketing Service (AMS) Administrator by certified mail, or electronically, of any occurrence of cannabis plants or plant material that do not meet the definition of hemp and attach the records demonstrating the appropriate disposal of all of those plants and materials in the lot from which the representative samples were taken.

(f) Annual report. The Department shall submit an annual report to the USDA. The report form shall be submitted by December 15 of each year and contain the information described in this subsection.

1. The total planted acreage;

2. The total harvested acreage; and

3. The total acreage disposed.

SUBCHAPTER 2. ANNUAL APPLICATION FOR LICENSE

2:25-2.1 Information required for annual license applications

(a) Each person applying for a license under the Program shall annually submit a signed, complete, accurate, and legible application form.

(b) Processors and handlers shall apply to the Department at least 30 days prior to the anticipated date of handling or processing hemp.

(c) Growers shall apply to the Department at least 30 days prior to the anticipated date of planting.

(d) All applications shall include the following:

- 1. The name and address of the applicant;
- 2. If applicable, the business name(s) and type of business entity, including the employer identification number;
- 3. The legal description of the property on which the growing, processing, or handling area is proposed. This includes, but is not limited to, the county, municipality, and block and lot number(s);
- 4. The geospatial location, including the global positioning system location coordinates taken at the approximate center of the proposed licensed area;

5. A map of the licensed area on which the applicant plans to grow or process hemp showing the boundaries and dimensions of the growing area(s) in acres or square feet; and

6. A criminal background check from the New Jersey State Police for the applicant and other key participants. The applicants are responsible for obtaining and paying for such background checks. The background checks are to be included with the application at the time of submission.

(e) All applications must include a nonrefundable \$50.00 annual application fee and an annual licensing fee pursuant to (f) below. The Department shall refund the licensing fee for denied applicants but shall not refund the application fee.

(f) Annual licensing fees are as follows:

- 1. Growers \$300.00 fee, plus \$15.00 per each acre
- 2. Processors \$450.00
- 3. Grain and Fiber Processors \$1,000
- 4. Floral, hemp oil, and CBD extracts handlers \$450.00

(g) Hemp growers who process or handle their own hemp are not required to pay additional processor or handler licensing fees. If a grower processes or handles hemp grown from at least one separate hemp producer, that grower shall pay processing or handling licensing fees, as applicable.

(h) Hemp processors who produce multiple types of hemp products shall determine their annual fee based on the sum from the schedule above. For example, a hemp producer who processes: grain (\$450.00), hemp oil (\$1,000), and CBD extracts (\$1,000), will pay a total licensing fee for the year of \$2,450.

2:25-2.2 Terms and conditions of licensure

(a) All licenses shall be valid for one year from the date of issuance.

(b) Any applicant who materially falsifies any information contained in an application shall be ineligible to participate in the Program as a hemp producer.

(c) Any changes to hemp producer contact information must be provided to the Department within 10 days of the change.

(d) Hemp producers shall comply with all applicable reporting and inspection requirements and any other provisions in this chapter.

(e) Any person convicted of a felony relating to a controlled substance under State or Federal law before, on, or after the date of enactment of the Federal Agriculture and Nutrition Act of 2018, Pub.L. 115-334 (2018 Farm Bill), shall be ineligible to participate in the Program during the 10-year period following the date of the conviction.

(f) Applicants and other key participants must undergo a criminal background check by the New Jersey State Police, the results of which must be mailed directly to the Department. The felony conviction restriction under (e) above shall not apply to any person growing hemp lawfully with a license, registration, or authorization under a program authorized pursuant to 7 U.S.C. § 5940 before the date of enactment of the 2018 Farm Bill and the conviction occurred before December 20, 2018.

(g) Any information provided to the Department by the hemp producer under the Program may be provided to law enforcement agencies without further notice to the hemp producer.

(h) The hemp producer and its employees shall fully cooperate and assist the Department with all aspects of the administration and enforcement of the Program, including, but not limited to, the application, license, reporting, inspection, and sampling processes.

(i) The hemp producer shall pay for any laboratory analysis costs that the Department deems necessary within 30 days of the date of the invoice.

(j) The hemp producer shall submit all required reports by the applicable due dates specified by the Department.

(k) A hemp producer must provide documentation to show that he or she has the legal right to cultivate hemp on the licensed area and the legal authority to grant the Department access for inspection and sampling. Applicants shall provide proof of authorization to engage in hemp production along with their application, including deeds, leasing agreements, written agreements by a landowner, or other appropriate documentation.

(l) Licenses shall not be assigned or transferred under any circumstances.

(m) No hemp plant shall be moved to, or grown, in an area other than the licensed growing area, without prior Departmental approval, and subject to a site modification fee pursuant to (r) below.

(n) Alterations to a licensed area that has already been approved and recorded by the Department shall require a site modification plan pursuant to (r) below.

(o) No licensed area may contain cannabis plants or parts thereof that the hemp producer knows, or has reason to know, are of a variety that will produce a plant that, when tested, will produce hemp with a delta-9 THC concentration greater than the Federally defined THC level for hemp. No hemp producer shall use any such variety for any purpose associated with the cultivation of hemp.

(p) All hemp plant material must be planted, grown, and harvested under a valid license. Any volunteer plants that emerge during a subsequent license year must either be destroyed or included on the subsequent year's license application.

(q) Disposal and/or destruction shall be ordered by the Department of any materials or products licensed under the Program found to have a delta-9 THC content of more than 0.3 percent on a dry weight basis, as measured from samples collected pursuant to the Program. The cost of disposal and/or destruction shall be the sole responsibility and cost of the hemp producer.

(r) A hemp producer may alter the approved growing area if, at least 14 days prior to the proposed modification, the hemp producer shall submit a site modification plan, including:

- 1. An updated legal description of the land;
- 2. Geospatial location, including GPS coordinates;
- 3. Acreage or square feet of each variety planted;
- 4. A map detailing the boundaries of the growing area(s); and
- 5. Pay a site modification fee of \$300.00 plus \$15.00 per acre. The fee shall not apply to storage-only sites, but the Department must approve such sites prior to use. In the event the site modification is not approved, this fee will be refunded.

(s) Hemp may not be grown in an area other than the licensed area. This includes, but is not limited to, planting hemp in a field for which the geospatial location has not been approved by the Department or moving indoor-grown hemp to an outside location.

(t) Transporting live hemp plants and hemp materials to unlicensed areas, including trade shows, county fairs, or educational or other events is prohibited.

(u) Members of the public shall not have direct unsupervised access to hemp at any time.

(v) Any person transporting hemp or hemp materials shall maintain, and provide upon request by law enforcement, proof of authorization to engage in the commercial sale of hemp, either under a state plan pursuant to 7 U.S.C. § 1639p or the United States Department of Agriculture plan pursuant to 7 U.S.C. § 1639q in a state where a state plan has not been approved from the producer of hemp, as well as a travel manifest that lists the origin, destination, product description, and date of transport. Third-

party carriers are not required to be authorized hemp producers in order to transport hemp.

(w) It is the responsibility of the hemp producer to understand and comply with all rules and regulations pertaining to their products and to obtain approval(s) from any other applicable local, State, or Federal authorities.

2:25-2.3 Institutions of higher education requirements

(a) A New Jersey IHE that plans to cultivate and study industrial hemp in the State is required to obtain a license from the Department. The following information must be submitted to the Department:

1. A criminal background check from the New Jersey State Police is necessary for the applicants and other key participants. The applicant is responsible for obtaining and paying for such background checks. The background checks are to be included with the application at the time of submission.

2. Principal investigator's (PI) contact information and each additional person with authority to report hemp project activity to the Department;

3. Full names of each employee who will be primarily responsible for the growing, processing, or handling the hemp producer's hemp;

4. A detailed research plan;

5. Address of each location and geospatial location, including GPS coordinates of each licensed area, building, or site where hemp will be stored, processed, or handled;

6. Map(s) depicting each site where hemp will be grown, handled, processed, or stored, and designating entrances and specific points where GPS coordinates were taken;

7. The Department may request a letter of support from the department chair or any other authorized official from the IHE;

8. IHE hemp producers shall comply with all applicable reporting, inspection, and compliance conditions in this chapter;

9. IHE hemp producers shall report to the Department any changes to information provided in the license or any previously submitted reports, including any changes to the purchase agreement or statement of intended disposition, within 10 days of such change;

10. There is no application fee for an IHE; and

11. The Department may charge collection and testing fees in the amount of \$150.00 for each plot and/or variety sampled.

SUBCHAPTER 3. ACQUISITION OF HEMP SEEDS, PROPAGULES, OR PLANTLETS

2:25-3.1 Acquisition of hemp seeds, propagules, or plantlets

(a) Hemp, including plants, seeds, propagules, or plantlets, may only be obtained by a hemp producer after written Departmental approval of the hemp variety.

(b) The Department shall not approve a hemp seed, propagule, or plantlet request, unless the person affirms, in writing, that the requested seed acquisition plan shall not infringe on any intellectual property right.

(c) Submission of a hemp seed, propagule, or plantlet acquisition plan to the Department shall include documentation showing that mature plants grown from that seed variety or strain have a floral material delta-9THC content of not more than 0.3 percent on a dry weight basis in compliance with the provisions of N.J.A.C. 2:25-5.2.

(d) For seeds, propagules, or plantlets acquired from within the United States, tribal lands, or territories, documentation must be provided to verify that the hemp seed, propagule, or plantlet source is either an approved seed or has originated from a USDA-approved hemp program.

(e) If hemp seeds, propagules, or plantlets are sourced from outside a USDA-approved hemp program, such as from a foreign nation, the hemp producer is responsible for any additional import requirements.

(f) The Department may maintain a list of approved seed varieties or strains on its website.

(g) All hemp shipments must be accompanied by:

1. Proof of authorization to engage in the commercial sale of hemp; and

2. A travel manifest that lists the origin, destination, product description, and date of transport.

(h) Third-party carriers may transport hemp without obtaining a hemp producer license.

2:25-3.2 Prohibition of noncompliant hemp

The Department may prohibit from the Program any hemp plants, seeds, propagules, or plantlets in order to comply with Federal or State law and administer the Program efficiently.

SUBCHAPTER 4. REPORTING REQUIREMENTS FOR HEMP PRODUCERS

2:25-4.1 Pre-Planting Report

(a) All growers and IHE hemp producers shall file a Pre-Planting Report on a form provided by the Department at least five days prior to planting that includes:

1. A statement of verification that the hemp producer has reasonable grounds to believe that the crop the hemp producer will plant is of a type and variety of cannabis that will produce a delta-9 THC concentration of no more than 0.3 percent on a dry weight basis;

2. A description of the cannabis varieties, including hemp, to be planted on the licensed area, which shall include all plant material to be used for cultivation of cannabis within a licensed area;

3. In order to avoid cross-pollination effects, hemp may not be grown outdoors in close proximity to non-hemp varieties of cannabis, nor may hemp be grown within the same greenhouse structure as non-hemp varieties of cannabis;

4. A statement of intended end use for all parts of any cannabis plants, including hemp, grown within a licensed area; and

5. The name and location of any hemp processing plant to be utilized.

(b) The hemp producer shall not plant hemp in any form until the Pre-Planting Report has been approved by the Department.

2:25-4.2 Planting Report

(a) Within 10 days after planting any hemp, and/or 10 days after emergence of any volunteer hemp plants in a licensed area, each grower or IHE hemp producer shall submit a Planting Report on a form provided by the Department that includes:

1. A list or description of all varieties of hemp planted, or of volunteer hemp plants that have emerged and are not destroyed, within a licensed area; and

2. The geospatial location, including global positioning system coordinates and a map showing the location and actual acreage or square feet of each variety of hemp planted, or of volunteer hemp plants that have emerged and are not destroyed, within a licensed area.

(b) A Planting Report must be submitted any time hemp is planted in, moved within, or moved into a licensed area, except for replanting into a larger container within the same indoor location.

2:25-4.3 Harvest/Disposal Report

(a) At least 30 days prior to harvest, each grower or IHE hemp producer shall file a Harvest/Disposal Report on a form provided by the Department that includes:

1. Documentation that the hemp producer has entered into a purchase agreement with a licensed hemp processor either in this State or under a USDA-approved hemp program. If the hemp producer has not entered into such an agreement, the hemp producer shall include a statement of intended disposition of the hemp crop; and

2. The harvest date(s) and location of each variety of hemp cultivated within a licensed area.

(b) A hemp producer must notify the Department immediately of any changes in the reported harvest date(s) in excess of five days. If any such changes are made, the Department may require additional testing prior to harvest.

(c) A hemp producer is not required to document the removal of male hemp plants on a Harvest/Disposal Report provided that the male plants are destroyed, cultivated, or used for pollination purposes on the licensed area prior to filing a Harvest Report for the remaining hemp plants.

2:25-4.4 Production Report

(a) All hemp producers shall submit a completed Production Report form about the prior year's production on or before December 1 annually. The Production Report shall include:

1. The number of acres or square feet planted;

2. Varieties planted;

- 3. Production methods;
- 4. Production inputs/yields; and
- 5. Any other information requested by the Department.

(b) For IHE hemp producers, a research summary shall be submitted to the Department annually on or before December 1.

2:25-4.5 Hemp Crop Acreage Report to Farm Service Agency (FSA)

(a) Hemp producers shall report hemp crop acreage to the FSA, and shall include with the report, at a minimum:

- 1. Street address and, to the extent practicable, geospatial location for each lot or greenhouse where hemp will be produced. If an applicant operates in more than one location, that information shall be provided for all production sites;
- 2. Acreage dedicated to the production of hemp, or greenhouse or indoor square footage dedicated to the productions of hemp; and
- 3. License or authorization identifier.

SUBCHAPTER 5. INSPECTION, SAMPLING, AND TESTING

2:25-5.1 Right to enter and inspect

As a condition of licensure, hemp producers and/or their agents shall permit the Department, the Department of Law and Public Safety, and any other State or local law enforcement to enter onto all premises where hemp is cultivated, handled, or processed to conduct a physical inspection or otherwise ensure compliance with the Hemp Program. The Department may give notice to a hemp producer of an upcoming inspection during business hours and may require a hemp producer and/or agent to be present during any inspection.

2:25-5.2 Inspection, sampling, and testing procedures

(a) Inspections and sampling shall be as follows:

1. All hemp producers are subject to annual Departmental inspection and sampling to verify that the delta-9 THC concentration of the cannabis planted within a licensed area does not exceed 0.3 percent on dry weight basis;

2. The Department may sample and/or test any hemp or hemp products to verify compliance with this chapter;

3. The Department’s inspectors or an authorized agent shall collect a minimum of two samples from each variety planted during the growing season and before harvest to ensure compliance with the Federally defined THC level for hemp in the Program;

4. In addition to the annual inspection and sampling referenced in (a)1 above, the Department may inspect, and take samples from, any licensed area during normal business hours without advance notice. The Department may also conduct such additional inspections and sampling if there is reason to believe a violation of the Program may be occurring and to verify compliance with the reporting requirements of the Program;

5. If a hemp producer voluntarily surrenders any license, the Department may exercise its discretion to inspect and sample any licensed area prior to accepting the surrender;

6. The Department may require the hemp producer or the hemp producer’s agent to be present during an inspection to provide the Department’s inspector with complete and unrestricted access to all hemp and/or cannabis plants, parts, and seeds within a licensed area whether growing or harvested, and all land, buildings, and other structures used for the cultivation and storage of hemp. During a scheduled sample collection, the hemp producer or the hemp producer’s agent shall be present at the growing site;

7. The Department may require access and/or copies of all documents and records pertaining to the hemp producer’s business at any time. Such records shall be promptly produced, ample time for review shall be provided, and copies may be required;

8. Individual or composite samples of each variety of hemp may be sampled from the licensed area at the Department’s discretion;

9. The method used for sampling from the flower material of the cannabis plant must be sufficient at a confidence level of 95 percent that no more than one percent of the plants in the lot would exceed the Federally defined THC level for hemp. The method used for sampling must ensure that a representative sample is collected that represents a homogeneous composition of the lot;

10. The Department or an authorized agent shall collect samples from the flower material within 15 days prior to the anticipated harvest of cannabis plants;

11. A hemp producer shall not harvest the cannabis crop prior to samples being taken; and

12. Samples of hemp plant material from one lot shall not be commingled with hemp plant material from other lots.

(b) Testing procedures shall be as follows:

1. A quantitative laboratory determination of the delta-9 THC concentration on a dry weight basis shall be performed by the Department or a third-party lab pursuant to this chapter;

2. The Department is not responsible for ensuring product quality or product compliance with other State or Federal regulatory authorities;

3. Test results must confirm that the final product batch contains no more than 0.3 percent delta-9 THC on a dry weight basis using a measurement of uncertainty; and all such testing results must be retained by the participant and made available to the Department upon demand for a minimum of three years. Any material having more than the Federally defined THC level for hemp is prohibited. Possession or distribution of such products may be subject to Federal, State, and local law enforcement action;

4. The THC testing procedure must include a valid testing methodology that uses postdecarboxylation or other similarly reliable methods, including, but not limited to, gas or liquid chromatography with detection. The testing methodology must consider the potential conversion of delta-9 tetrahydrocannabinolic acid (THC-A) in hemp into THC and the test result must measure total available THC derived from the sum of the THC and THC-A content. Testing methodologies meeting these requirements include, but are not limited to, gas or liquid chromatography with detection. The total THC concentration level shall be determined and reported on a dry weight basis.

5. If any hemp product contains whole grains (seeds), the hemp producer may conduct a third-party seed germination test on each final product batch produced. Test results must confirm that the denatured seeds after exposure to high heat, often referred to as the “roasting or toasting method,” renders the result of a zero percent germination level, and all such testing results must be retained by the hemp producer and made available to the Department upon demand for a minimum of three years. Any material having a greater than zero percent germination level is prohibited. Possession or distribution of such products may be in violation of State or Federal law;

6. A sample test result with a delta-9 THC concentration on a dry weight basis greater than the Federally defined THC level for hemp shall be conclusive evidence that the lot represented by the sample contains a delta-9 THC concentration on a dry weight basis of more than 0.3 percent and that the hemp producer is therefore not in compliance with this chapter. Upon receipt of a failing test result, the Department may request resampling and retesting of the varieties in question. Upon subsequent retesting failure, the Department shall determine whether the failure constitutes a negligent violation or a violation with a culpable mental state greater than negligence and take appropriate action pursuant to N.J.A.C. 2:25-6;

7. Hemp from lots determined to be non-compliant with the Federally defined THC level for hemp may not be further handled, processed, or enter the stream of commerce. The hemp producer shall ensure the lot is disposed of in accordance with the CSA and the Drug Enforcement Agency (DEA) regulations found at 21 CFR 1317.15 as enforced by Federal, State, and local law enforcement. Hemp producers must notify the Department and USDA of their intent to dispose of non-conforming plants and verify disposal by submitting required documentation;

8. A \$150.00 fee shall be assessed for all Departmental testing, including, but not limited to, retests and pesticide residue quantification tests. The Department may waive all inspection and/or sampling costs if no inconsistencies or violations are identified pursuant to this subsection;

9. Measurement of uncertainty (MU) must be estimated and reported with test results; and

10. Test results report. Each hemp producer must ensure that the DEA-registered laboratory that conducts the test of the sample(s) from its lots reports the test results for all samples tested to the Department and USDA.

The test results report shall contain the information below for each sample tested:

- i. Hemp producer's license or authorization identifier;
- ii. Name of hemp producer;
- iii. Business address of hemp producer;
- iv. Lot identification number for the sample;
- v. Name and DEA registration number of laboratory;
- vi. Date of test and report;
- vii. Identification of a retest; and
- viii. Test result.

2:25-5.3 Labeling of hemp products by New Jersey processors

(a) New Jersey processors shall label hemp products to distinguish between hemp extract, CBD, or hemp oil.

(b) New Jersey processors shall label hemp products to include: the amount of oils or extract, the percentage of THC, and the percentage of CBD extract contained.

2:25-5.4 Third-party laboratory compliance

(a) Hemp producers may utilize either the Department's laboratory or third-party laboratories to demonstrate compliance with the Federally defined THC level for hemp.

(b) Third party laboratories shall apply to the Program annually as handlers.

(c) Third-party laboratories shall:

1. Be registered and accredited in accordance with State and Federal law, rules, and regulations;
2. Be registered with the Program as a handler;
3. Comply with the Department's testing procedures pursuant to this chapter;
4. Transmit laboratory results directly to the Department; and
5. Submit to random quality assurance testing by the Department to validate the accuracy of testing results.

(d) A hemp producer may test its own hemp for the purpose of providing information to the Department regarding THC levels and to certify labels for hemp or hemp products, provided the hemp producer's laboratory complies with the provisions in this subsection.

SUBCHAPTER 6. VIOLATIONS, PENALTIES, AND APPEALS

2:25-6.1 Negligent violations

(a) The Department shall require a hemp producer to comply with a Corrective Action Plan for any negligent violation of this chapter. A Corrective Action Plan established by the Department to correct the negligent violation may include, but is not limited to:

1. A date by which the hemp producer shall correct the negligent violation;
2. The steps necessary to come into compliance; and
3. A requirement that the hemp producer shall periodically report its compliance measures to the Department for a period of not less than the next two calendar years from the date of the negligent violation. The Department shall perform inspections as necessary.

(b) Negligent violations may include, but are not limited to:

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 the Department;
3. Producing *Cannabis sativa L.* with a delta-9 THC concentration of more than 0.5 percent on a dry weight basis, or failing to make reasonable efforts to grow compliant hemp; and/or
4. Failing to comply with any reporting requirements set forth in this chapter.

(c) Hemp that is determined to have a delta-9 THC concentration of greater than 0.3 percent on a dry weight basis, but equal to or less than 0.5 percent on a dry weight basis, must be destroyed in accordance with the CSA and Drug Enforcement Agency (DEA) regulations at 21 CFR 1317.15 as enforced by Federal, State, and local law enforcement, even though it does not constitute a negligent violation pursuant to (b) above.

(d) A hemp producer that is found to have negligently violated the Program shall not be subject to any criminal enforcement action by this State.

(e) A hemp producer that has been found to have negligently violated the Program three times in a five-year period shall be ineligible to produce hemp in this State for a period of five years beginning on the date of the third violation.

(f) The Department may issue civil administrative penalties for violations of this chapter pursuant to N.J.A.C. 2:25-6.3.

(g) A hemp producer may appeal any adverse determination rendered by the Department in accordance with N.J.A.C. 2:25-6.4.

2:25-6.2 Violations with a culpable mental state greater than negligence

(a) If the Department determines that a person has violated the Program with a culpable mental state greater than negligence, the Department shall order the person to suspend all hemp growing, processing, and/or handling operations immediately.

(b) A notice of violation with a culpable mental state greater than negligence shall be immediately referred to the United States Attorney General, New Jersey Department of Law and Public Safety, and any other applicable Federal, State, and/or local law enforcement.

(c) A hemp producer may appeal any adverse determination rendered by the Department in accordance with N.J.A.C. 2:25-6.4.

2:25-6.3 Civil and civil administrative penalties

(a) Every day upon which a violation occurs at the same location or by the same person shall be considered a separate violation for the purpose of calculating civil administrative penalties. Nothing in this section shall limit the applicability of any other penalties prescribed in this chapter, including the implementation of a Corrective Action Plan or of license suspension or revocation.

(b) The Department may issue civil administrative penalties based upon the seriousness of the misconduct.

1. Any unlicensed person growing, processing, or handling hemp shall be subject to a civil administrative penalty of up to \$5,000 per day.

2. A person guilty of interfering, or refusing to cooperate, with any inspection or sampling procedures to be conducted by the Department shall pay a penalty of \$500.00 for the first offense, \$1,000 for the second offense, and \$2,000 for each subsequent offense.

3. A person who fails to submit timely reports or does not respond to the Department's communications within a reasonable amount of time shall pay a penalty of \$100.00 for the first offense, \$200.00 for the second offense, and \$300.00 for each subsequent offense.

4. No assessment shall be levied under this subsection until after the party has been notified by certified mail or personal service and has been provided an opportunity for a hearing in accordance with N.J.A.C. 2:25-6.4.

(c) For a violation of this chapter, the Department may adjust or waive the civil administrative penalty after weighing the following non-exclusive factors:

1. The violator's compliance history;
2. The nature, timing, and effectiveness of measures the violator takes to mitigate the effects of the violation;
3. The nature, timing, and effectiveness of measures the violator takes to prevent future similar violations;
4. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation;
5. Whether the violator is growing, processing, or handling hemp while deliberately neglecting to obtain a license from the Department; and
6. Any other relevant circumstances.

2:25-6.4 Notice and appeals

(a) The Department shall provide a reasonable opportunity to amend an application that is insufficient or to resolve any minor violations of this chapter.

(b) The Department shall provide written notice via regular mail, certified mail, or personal service, to a hemp producer upon a finding of a violation. Such notice shall include:

1. The facts pertaining to the violation;
2. A reference to the rule(s) and/or statute(s) that have been violated;
3. A finding that the conduct constitutes a negligent violation or a violation with a culpable mental state greater than negligence;

4. A statement explaining whether the Department has informed law enforcement of the violation;

5. The basis for the civil administrative penalty issued, if any; and

6. A statement explaining the person’s right to a hearing, and that he or she must file an appeal within 20 days of receiving notice.

(c) Any appeal to the Department for a violation of this chapter must be made no later than 20 calendar days after receipt of the notice of violation and be in writing. Appeals shall be sent to:

Director, Division of Plant Industry
New Jersey Department of Agriculture

PO Box 330

Trenton, NJ 08625-0330

(d) If no hearing is requested after 20 days have elapsed, the notice shall become a final order on the 21st day.

(e) Contested cases shall be treated in accordance with N.J.A.C. 2:1-3.10, the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Such disputes will be referred to the Office of Administrative Law for a hearing.
