

NOTICES

DEPARTMENT OF AGRICULTURE

Pennsylvania Certified Hemp Sampling Program

General Standards and Requirements for Pennsylvania Certified Hemp Sampling Agents

Recitals.

A. The Act relating to Controlled Plants and Noxious Weeds (“Act”)(3 Pa.C.S.A. § 1501 *et seq.*) authorizes the Department of Agriculture (Department) through the Controlled Plant and Noxious Weed Committee (Committee) to establish a controlled plant list and to add plants to or remove plants from the controlled plant list (3 Pa.C.S.A. § 1511(b)(3)(ii)(iii)).

B. The Act provides for publication of the noxious weed and the controlled plant list and additions or removals or changes thereto to be published as a notice in the *Pennsylvania Bulletin* and for such additions or removals to become effective sixty (60) days from publication (3 Pa.C.S.A. § 1511(b)(3)(iv)).

C. Pursuant to that authority, the Committee acted to add hemp to the Controlled Plant List and published such Notice in the *Pennsylvania Bulletin* on April 6, 2019 (49 Pa.B. 1667, Saturday April 6, 2019).

D. Section 1513 of the Act authorizes the Department to issue General Permits, on a Statewide or Regional basis, for the research, marketing, retail, wholesale, transport, storage, warehousing, display, distribution, cultivation or propagation of controlled plants, where the controlled plants have similar characteristics and are capable of being cultivated, propagated, processed and controlled or eradicated in a similar fashion (3 Pa.C.S.A § 1513(1)). A Notice was published, “General Permit Standards and Requirements for Hemp,” published in the May 9, 2020 *Pennsylvania Bulletin* [50 Pa.B. 2397, Saturday, May 9, 2020] with amendments also published in subsequent editions of the Pa Bulletin.

E. Section 1521 of the Act authorizes the Department, through its inspectors, employees, and agents, to inspect any land, premises, buildings, vehicles, vessels, articles, locations, machinery conveyances or other places of a person holding a permit under this chapter, and collect samples and take pictures of any controlled plants (3 Pa.C.S.A § 1521(e)).

F. Section 1521 of the Act further authorizes the Department to delegate inspection and sampling conducted under this chapter to an agent acting on behalf of the department. (3 Pa.C.S.A § 1521(f)).

G. This Notice establishes rules and requirements that constitute the Pennsylvania Certified Hemp Sampling Program and standards for Certified Hemp Sampling Agents, including the process by which a person may be approved by the Department to become a Certified Hemp Sampling Agent, procedures for hemp sampling, and associated recordkeeping requirements.

General Provisions.

The Department hereby establishes a Hemp Sampling Agent Certification Program, under the authority of the act related to controlled plants and noxious weeds (Act)(3 Pa.C.S.A. § 1501 *et seq.*), for the Controlled Plant, hemp. This program covers the entire Commonwealth. The terms of the Program are as follows:

Article I. General Provisions and Definitions.

(a) *Purpose of the Program.* The purpose of this program is as follows:

(1) To establish provisions under which persons may apply to become certified by the Department to take official hemp samples and be recognized as Certified Hemp Sampling Agents by the Department.

(2) To establish hemp sampling procedures and requirements.

(3) To establish procedures and requirements for documentation and reporting by Certified Hemp Sampling Agents to the Department.

(4) To establish procedures for Department oversight of Certified Hemp Sampling Agents and for denial, revocation, or suspension of Hemp Sampling Agent certification.

(b) *Definitions.*

Act. The act of October 30, 2017, P.L. 774, No. 46, at 3 Pa.C.S.A. §§ 1501- 1562, related to controlled plants and noxious weeds.

Applicant. A person signing and submitting a hemp sampling agent application and responsible for ensuring compliance with the terms of the application and certification.

Certified Hemp Sampling Agent – A person having met all of the certification requirements of the program set forth herein.

Controlled plant. A plant species or subspecies that has been designated by the Committee as a controlled plant and is regulated to prevent uncontained growth and to negate undesirable characteristics.

Department. The Department of Agriculture of the Commonwealth.

Hemp. The plant *Cannabis sativa* L. and any viable part of that plant, with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis.

Lot. The term “lot”, as defined in the Agricultural Marketing Service Final Rule (FR) on the Establishment of a Domestic Hemp Production Program (86 FR 5596), refers to a contiguous area in a field, greenhouse or indoor growing structure containing the same variety or strain of cannabis throughout the area. In addition, “lot” refers to the batch of contiguous, homogeneous

whole of a product being sold to a single buyer at a single time. To be defined by the producer in terms of farm location, field acreage and variety (i.e. cultivar) and to be reported as such to the Department and the FSA.

Permittee. A person who has secured a permit issued by the Department authorizing that person to perform functions and activities related to hemp research, marketing, retail, wholesale, transport, storage, warehousing, display, distribution, cultivation or propagation.

Person. An individual, corporation, association, partnership, municipality or any other entity.

THC. The chemical delta-9 tetrahydrocannabinol. For the purposes of this General Permit, THC shall include total potential delta-9 tetrahydrocannabinol in a plant or product. THC value is determined after the process of decarboxylation, or the application of a conversion factor if the testing methodology does not include decarboxylation, that expresses the potential total delta-9 tetrahydrocannabinol content derived from the sum of the THC and THCA content and reported on a dry weight basis. This post-decarboxylation value of THC can be calculated by using a chromatograph technique using heat, such as gas chromatography, through which THCA is converted from its acid form to its neutral form, THC. Thus, this test calculates the total potential THC in a given sample. The total THC can also be calculated by using a liquid chromatograph technique, which keeps the THCA intact. This technique requires the use of the following conversion: $[\text{Total THC} = (0.877 \times \text{THCA}) + \text{THC}]$ which calculates the potential total THC in a given sample.

USDA. The United States Department of Agriculture.

Article II. Procedure for Application and Certification.

(a) *Certified Hemp Sampling Agent General Requirements:* To be eligible to become a Pennsylvania Certified Hemp Sampling Agent, an applicant shall meet the following requirements:

- (1) Be at least 18 years old.
- (2) Must possess a legal and current driver's license.
- (3) Have no real, apparent or hidden conflict of interest or vested interest in the outcome of sample results, such as:
 - (i) Be a nuclear or extended family member of a hemp permittee;
 - (ii) Be employed by a hemp permittee or have a financial stake in a business with an active hemp permit;
 - (iii) Be a hemp broker, distributor or processor.
 - (iv) Be soliciting hemp for sale, processing or distribution or be an employee of an entity that is soliciting, producing, processing or distributing hemp.

(4) Have an active Spotted Lanternfly permit from the Commonwealth of Pennsylvania or other state.

(5) Successfully complete all training and testing requirements for the Pennsylvania Hemp Sampling Agent certification. Certification is based on one individual's application, exam, and performance.

(6) No entity other than the Pennsylvania Department of Agriculture may authorize an individual to take official samples for the Pennsylvania Hemp Program.

(b) *Application Process.* The following process must be followed to become a Pennsylvania Certified Hemp Sampling Agent:

(1) The applicant must take training provided by the Department on hemp sampling and responsibilities of a Certified Hemp Sampling Agent. The applicant must review the sampling protocol and associated forms, all found on the PA Hemp Program website, https://www.agriculture.pa.gov/Plants_Land_Water/industrial_hemp/Pages/default.aspx.

(2) The applicant must demonstrate understanding of the training by taking an exam administered by the Department, and must receive a score of 80% or higher.

(3) The applicant must complete an application form for the certified hemp sampling agent program.

(c) The Department will begin accepting applications effective with signing of this notice and posting of training materials on the Department website:

https://www.agriculture.pa.gov/Plants_Land_Water/industrial_hemp/Pages/default.aspx.

(d) Procedures for sampling hemp may change upon future conditions, including requirements imposed by USDA in acceptance of the Pennsylvania State Hemp Plan, legal standards imposed by another federal agency, statutory or regulatory changes or changes in other legal requirements. Such changes may be incorporated into the Pennsylvania Certified Hemp Sampling Program through written notification to all Certified Hemp Sampling Agents and publication on the PA hemp program website,

https://www.agriculture.pa.gov/Plants_Land_Water/industrial_hemp/Pages/default.aspx.

(e) Certified Hemp Sampling Agent training and application materials will be available from the Department's Hemp Program website at

https://www.agriculture.pa.gov/Plants_Land_Water/industrial_hemp/Pages/default.aspx.

Materials may also be requested by contacting The Bureau of Plant Industry Hemp Program at 223-666-2561, RA-AGPLHEMP@pa.gov, or by mail at:

Hemp Program

Pennsylvania Department of Agriculture

2301 North Cameron Street, Harrisburg, PA 17110.

(f) Any persons who materially falsify any information in their application shall be deemed ineligible to participate in the Pennsylvania Certified Hemp Sampling Program.

(g) Upon successful review of completed applications, training and all Program standards, the Department will issue a certification number and certification document to approved applicants, and will display Certified Hemp Sampling Agent, certification and contact information on the Department website.

(h) *Application Contents.* All applicants shall provide the following information on an application provided by the Department:

(1) *Contact information.* Contact information shall include name, business affiliation (if applicable), mailing address, telephone number, email address, business website address (optional), state and county where the applicant is headquartered.

(2) Evidence of successful Spotted lanternfly training completion. This may be a copy of the online training certificate, the certificate ID#, or copy of the Department Permit. If training was provided by a permitted member of the applicant's business organization, then the name and certificate or permit for that individual must be provided.

(3) *Attestations.* The applicant shall attest to all the following:

(i) To have no real, apparent or hidden conflict of interest or vested interest in the outcome of sample results, and will perform duties without bias.

(ii) That in transporting hemp samples, all biosecurity safeguards will be utilized in order to assure isolation from the domestic environment outside of permitted locations.

(iii) That the applicant is 18 years of age or older and possesses a legal and active driver's license.

(iv) That the applicant has reviewed Pennsylvania Hemp Sampling Agent Program materials and agrees to follow the procedures and meet all requirements outlined therein.

(v) That the applicant is responsible for their own actions, including setting fees and securing payment for services rendered, being properly insured and obeying all laws of the Commonwealth and Federal Government.

(i) *Hemp Sampling Agent Approval and Renewal.* Once a Certified Hemp Sampling Agent applicant has been approved by the Department, the Department will issue a certification number and document to the approved applicant. All the following rules and requirements apply.

(1) No entity other than the Pennsylvania Department of Agriculture may authorize an individual to take official samples for the Pennsylvania Hemp Program.

(2) Certification is not transferrable in any manner.

(3) An applicant will not be considered certified and shall not commence any hemp sampling activities until the applicant is issued a certification number and document by the Department for the current sampling year.

(4) Certification is in effect from the date the certification is received until March 31 of the following calendar year. Certification does not renew automatically and must be renewed each year.

(5) Applications for renewal will follow the same process as set forth herein for initial applicants.

(6) *Change in Information or Status.* A Certified Hemp Sampling Agent shall notify the Department immediately should there be any change in the contact or other information required to be provided on the application, or if the Certified Hemp Sampling Agent intends to withdraw from the Program.

(7) Extensions of a certification cycle may be announced, at the discretion of the Department, if application and renewal processes do not allow for continuity of operations.

Article III. Certified Hemp Sampling Agent Liability and Financial Responsibility.

(a) *Liability.* A Certified Hemp Sampling Agent is an independent contractor and is responsible for their own actions, including setting fees and securing payment for services rendered, being properly insured and obeying all laws of the Commonwealth and Federal Government. The Certified Hemp Sampling Agent is responsible for any insurance claims made or criminal or civil actions brought against them during the course of carrying out the duties of a Certified Hemp Sampling Agent.

(b) The Department assumes no liability for the actions of a Certified Hemp Sampling Agent and does not waive or limit its sovereign immunity.

Article IV. Sampling

The following rules and requirements apply to the sampling of hemp.

(a) All hemp planted, cultivated, propagated or growing in Pennsylvania must be sampled and tested to determine THC concentration levels. It shall be the responsibility of the hemp permittee to assure that each hemp lot described in their permit is sampled and tested.

(i) Active permittees are responsible for contacting a Certified Hemp Sampling Agent to make arrangements for sampling. The permittee or an authorized representative must be present at the growing site during the sampling.

(ii) The hemp permit holder shall hire a Certified Hemp Sampling Agent to take a representative sample of each lot of hemp planted, cultivated, propagated or grown, to submit for testing.

(b) The permit holder shall grant the Certified Hemp Sampling Agent unrestricted access, during normal business hours, to all permitted sites or sites required to be sampled under the provisions of the Pennsylvania Hemp Program, including all growing, planting, cultivation and propagation locations.

(c) *Sampling*

- (1) Official samples must be collected by a Certified Hemp Sampling Agent and in accordance with the sampling procedures and requirements established by the Department and set forth on the Department's Hemp Program webpage:
https://www.agriculture.pa.gov/Plants_Land_Water/industrial_hemp/Pages/default.aspx.
- (2) The sampling procedures shall assure a representative sample of each variety and lot is procured for testing and address the process and procedures to be followed from entering a growing area and collecting the minimum number of plant specimens necessary to accurately represent the THC content, through shipment to a laboratory for testing of the samples. At a minimum samples shall be obtained from the flowering tops of plants when flowering tops are present, and shall be approximately five to eight inches in length from the "main stem" (that includes the leaves and flowers), "terminal bud" (that occurs at the end of a stem), or "central cola" (cut stem that could develop into a bud) of the flowering top of the plant.
- (3) The method used for sampling is defined in the training module and in the document "Hemp Sampling Protocol" available on the Department's Hemp Program webpage. This protocol must be followed to assure that sampling is sufficient to demonstrate at a confidence level of 95 percent that no more than one percent of the plants in each lot would exceed the acceptable hemp THC level and ensure that a representative sample is collected that represents a homogeneous composition of the lot.
- (4) The Department may adopt a performance-based alternative sampling procedure in very specific cases, such as when a permittee is conducting research on hemp. In such cases, the permittee will be provided with alternative sampling instructions. If those instructions require or allow sampling to be done by a Certified Hemp Sampling Agent, it is the responsibility of the permittee to communicate any alternative sampling instructions to the agent.
- (5) Samples must be collected no more than thirty (30) days prior to harvest. If THC results fall within the THC compliance level, but the permittee fails to complete harvest within thirty (30) days of sample collection, a second pre-harvest sample of the remaining material in the lot shall be required to be submitted for testing. Certified Hemp Sampling Agent may take this second sample from the remaining field material of the lot, and shall clearly designate that sample as being a second official sample for the lot by submitting a *PreHarvest Resample Form* to the Department along with other required documentation.
- (6) A Chain of Custody Form developed by the Department shall be utilized by all persons authorized to take official samples.
- (7) A sample receipt shall be completed by the Certified Hemp Sampling Agent or Department employee conducting the sampling and signed by the hemp permittee or an authorized representative thereof, who must be present at the growing site during the sampling.
- (8) No sample(s) may be removed from the permitted site prior to the chain of custody form and sample receipt being completed and signed.
- (9) *Submitting hemp samples to a THC testing laboratory.*

(i) The permit holder shall designate the specific Department-approved laboratory where samples will be sent for THC testing.

(ii) The Certified Hemp Sampling Agent shall be responsible for transport of the sample directly from the farm to a carrier facility or to the laboratory. The hemp permittee must agree to the process used to transport the sample to the laboratory, but the sample shall remain in the custody of the Certified Hemp Sampling Agent throughout the process, until surrendered to the carrier or laboratory.

(iii) Before being taken from the growing site, all samples will be in labeled, sealed packages and will be accompanied with a Chain of Custody form.

(iv) All movement of hemp samples from a growing site shall be conducted in a manner to prevent any release of viable plant material to the environment and to maintain the identification of the producer, permit number and lot information.

(v) The Certified Hemp Sampling Agent is responsible for determining the system by which the permittee shall pay any fees charged and costs associated with sampling, transporting or mailing samples.

(vi) Samples that are lost in transit, or samples that arrive at the laboratory in unusable condition, are the responsibility of the permittee and Certified Hemp Sampling Agent.

(10) A permittee may request a second official pre-harvest sampling and testing if it is believed that the original results were in error.

(i) The permittee may choose to use the same or a different Certified Hemp Sampling Agent and approved laboratory for the test.

(ii) No more than two official samples per lot will be considered by the Department; only the final official sample will be considered by the Department when determining compliance.

(iii) The permitted grower shall pay the fees and costs of resampling and retesting.

(iv) The Certified Hemp Sampling Agent will clearly designate the resample as being a second official sample for the lot by submitting a *PreHarvest Resample Form* to the Department along with other required documentation.

(b) *Prohibition Against Harvest Prior to Testing.*

(1) Hemp may not be harvested prior to an official sample being taken by the Department or a Certified Hemp Sampling Agent, but may begin immediately after the official sample has been taken.

(2) Certified Hemp Sampling Agents are not authorized by the Department to take post-harvest samples. Any sample taken after harvest shall not be accepted, the crop will no longer be compliant, a notice of violation may be issued to the permittee, and the harvested material may be required to be destroyed.

Article V. Storage of Hemp Samples

(a) Storage of hemp samples is not recommended, since degradation during storage may affect test results.

(b) If a Certified Hemp Sampling Agent intends to store samples before sending to the testing laboratory, that must be communicated to and approved by the permittee.

Article VI. Reporting and Recordkeeping.

(1) *Reports.* The following reports are required to be filed by a Certified Hemp Sampling Agent:

(i) *A Receipt for Sample Form* – This form is provided by the Department. The Certified Hemp Sampling Agent shall provide a copy of this form to the permittee or designated representative at the time of sampling, and shall submit a copy to the Department within 5 days after sampling.

(ii) *A Chain of Custody – Sample Shipment Form* – This form is provided by the Department. The Certified Hemp Sampling Agent shall include a copy with the samples being sent to the laboratory for THC testing, and shall submit a second copy to the Department within 5 days after sampling.

(iii) *PreHarvest Resample Form* – If a permitted grower requests a second official sample be taken of a lot pre-harvest, this form, provided by the Department, must be completed by the Certified Hemp Sampling Agent and must accompany the other forms sent to the Department within 5 days of sampling.

(2) *Recordkeeping Requirements.* A Certified Hemp Sampling Agent shall maintain a log of all sample visits made and of samples taken, including date of visit, permit number, and samples taken. Agents shall retain copies of all records and reports necessary to demonstrate compliance with the Pennsylvania Certified Hemp Sampling Program.

(3) All records, reports and documents shall be kept and maintained for a minimum of one calendar year beyond the last sampling date, and must be made available to the Department for inspection upon request.

Article VII. Certified Hemp Sampling Agent Auditing; Certification Denial, Revocation and Suspension.

(a) *Auditing of Certified Hemp Sampling Agent procedures and records.* The Department may conduct audits of Certified Hemp Sampling Agents and take its own samples for testing.

(1) The Department may observe Certified Hemp Sampling Agent sampling activity, to confirm that established procedures are being followed.

(2) The Department may conduct random audits of hemp permit holders and take its own samples for testing. A Department employee may take official samples to audit samples taken by a Certified Hemp Sampling Agent. Such audits will be done on a random basis and may be done at the Department's discretion.

(3) The Department may review all records of a Certified Hemp Sampling Agent related to the requirements of the Pennsylvania Certified Hemp Sampling Program including, sampling, storage and shipping of hemp samples.

(b) *Denial, Suspension or Revocation of a Certified Hemp Sampling Agent Certification.* Certification of a hemp sampling agent may be suspended or revoked if the Department or its

representative receives credible information that a Certified Hemp Sampling Agent has done any of the following:

(1) Violated a provision of the Act, the General Permit or the Department's Hemp Sampling Agent Certification Program

(2) Failed to comply with a written direction of the Department.

(3) Failed to complete the required sampling, shipping, and recordkeeping required by the Department's Hemp Sampling Agent Certification Program.

(c) *Action Upon Suspension, Revocation or Denial.* Upon suspension, revocation or denial of certification, the hemp sampling agent shall cease all sampling agent activities, including any advertising of hemp sampling agent services. The Department will not accept as official any sample records or sample results that indicate a sampling date after the suspension or revocation of certification of the sampling agent.

(d) *Effective timeframe for suspension or revocation.* Any person whose certification has been suspended or revoked for cause will be barred from becoming re-certified for a period of three years from the suspension or revocation date.

Article VIII. Violations and Effective Date.

(a) The Department will carry out all administration of the Pennsylvania Hemp Sampling Agent Certification Program.

(b) Penalties for any violations of the Act, permit or order of the Department or unlawful conduct, as set forth at sections 1541 (related to unlawful conduct), 1543 (related to enforcement and 1544 (related to injunctive relief) of the Act may be imposed.

Effective date. This Hemp Sampling Agent Certification Program shall become effective upon signature and publication in the *Pennsylvania Bulletin* and shall remain in effect until rescinded by subsequent order.



RUSSELL C. REDDING,

Secretary