

June 1, 2021

The Honorable Tom Vilsack  
Secretary of Agriculture  
U.S. Department of Agriculture  
1400 Independence Avenue SW  
Washington, DC 20250

**RE: Revised Colorado State Hemp Management Plan**

Dear Secretary Vilsack:

Thank you for your recent visit to Colorado. I deeply appreciated you joining me and our Agriculture Commissioner Kate Greenberg at several locations across our state. As you know, Colorado has been at the forefront of efforts to develop a robust hemp industry since the Colorado Department of Agriculture (CDA) launched a hemp pilot program in 2014. Since then, Colorado has been a national leader in hemp, rapidly scaling up production, launching an innovative certified seed program, diversifying supply chains, and most recently rolling out an initiative to establish a statewide Hemp Center of Excellence.

CDA has strongly advocated for a workable federal regulatory scheme for hemp. After USDA published an Interim Final Rule (IFR) for hemp in January 2020, CDA submitted detailed and comprehensive comments, met with senior USDA officials, and marshalled stakeholder and legislative responses with the goal of improving the outcome of the Final Rule to make it more flexible for hemp producers. In January 2021, USDA responded to these efforts by publishing a vastly improved and revised Final Rule. While CDA will continue to advocate for additional rule revisions to create even more flexibility for producers, we are proud to submit the enclosed Colorado State Hemp Management Plan to USDA for approval.

Although we are submitting a state plan today that we hope USDA will expeditiously approve, we request that USDA continue to review the Final Hemp Rule with an eye toward making it more flexible and practicable for hemp producers in Colorado and across the country.

Thank you for your consideration of our submitted State Plan.

Sincerely

## Colorado's Hemp Program

Colorado's citizens voted to pass Amendment 64 to the Colorado Constitution in 2012, which, in part, directed the General Assembly to enact legislation governing the cultivation, processing, and sale of hemp.<sup>1</sup> Legislation adopted in 2013 delegated the responsibility for establishing registration and inspection regulations pertaining to hemp cultivation to CDA.<sup>2,3</sup> For reference, statutory authority for Colorado's Industrial Hemp Program is set forth in Title 35 Article 61 of the Colorado Revised Statutes (the "Act", Appendix A). CDA has promulgated a comprehensive set of rules to administer and enforce the Colorado Industrial Hemp Regulatory Program Act, which is codified at 8 CCR 1203-23 and is included in Appendix B (the "Rules").<sup>4</sup>

Paired with these measures, the passage of the 2014 Farm Bill, which allowed states that had legalized hemp to implement hemp cultivation pilot programs for research purposes, marked the inception of the hemp industry in Colorado. Since then, Colorado's hemp program has successfully implemented robust requirements for registration, testing, inspection, and enforcement, and has been in place for over five years.

In addition to the other regulatory and statutory measures that aided the success of Colorado's hemp industry, the Colorado General Assembly created the Hemp Advisory Committee (HAC) in 2013. Colo. Session Laws 2013, ch. 342 (enacting SB 14-184). The HAC has helped further establish the country's first regulated hemp industry. The eleven-member committee includes representatives from CDA, the hemp industry, commercial agriculture, higher education, and citizen advocates. Since 2013, the HAC has provided vital input to the Industrial Hemp Regulatory Program. With input from the HAC,

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<sup>1</sup> As defined in the Colorado Revised Statutes, and in the 2018 Farm Bill, the term "industrial hemp" means the plant species *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.

<sup>2</sup> The CDA Industrial Hemp Program's regulatory role is limited to industrial hemp cultivation (growing). The program does not regulate the sale or distribution of industrial hemp. The Colorado Department of Public Health & Environment ("CDPHE"), pursuant to CRS 35-61-108, permits registered persons in the state of Colorado to carry out the processing, sale, and distribution of industrial hemp-based products

<sup>3</sup> Hemp FAQ: <https://drive.google.com/file/d/1UTKi0RSQUYANd0Q9TAePkBk07jhXWdda/view>

<sup>4</sup> CDA's current rules, effective March 30, 2019, are undergoing rule-making, consistent with Colorado's Administrative Procedures Act, section 24-4-103, C.R.S. On May 25, 2021, CDA conducted a rule-making hearing, and the proposed rules will be reviewed by the Agricultural Commission on June 9, 2021, for recommendation to the Commissioner to adopt, effective July 30, 2021. The Notice of Public Rulemaking Hearing, along with the proposed changes to the rules, are attached to this document as Appendix B. References to the Rules in this State Plan are to the Rules that will be effective on July 30, 2021, even though they have not been formally adopted as of the date of this submission.

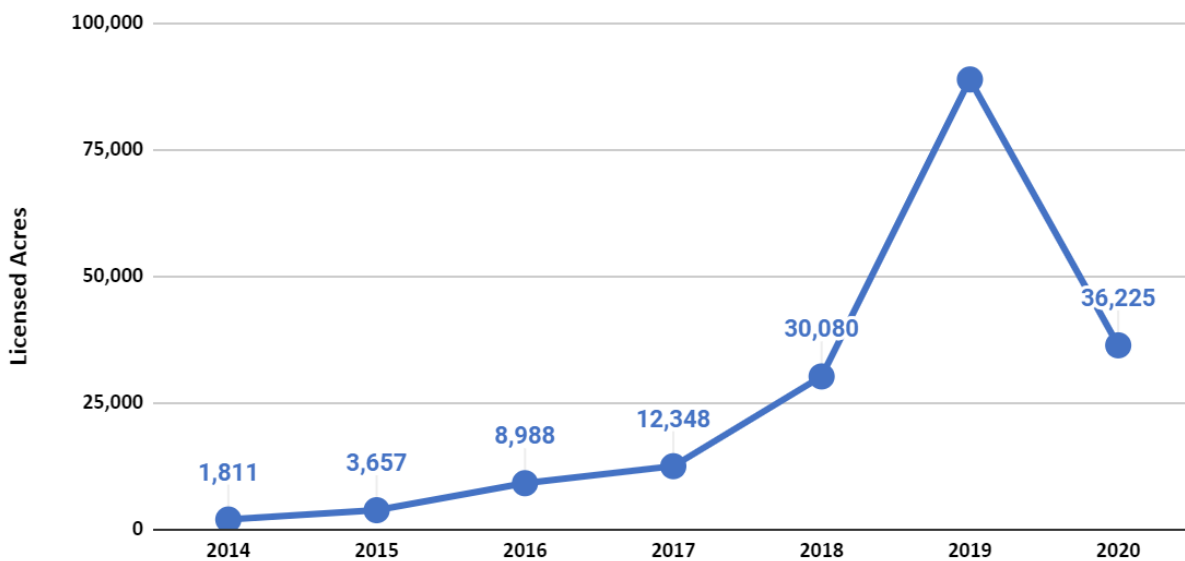
CDA developed the elements of its regulatory scheme, including systems for registration, compliance testing, reporting, enforcement, and inspection.

Between 2014 and 2019, CDA continuously revised the Rules to improve registration, data tracking, definitions, and reporting. The Act and Rules are designed with purposeful flexibility to anticipate technology changes, federal regulations, including USDA’s Final Rule, “Establishment of a Domestic Hemp Program,” 7 CFR Part 990 (the “Final Rule” or “FR”), and future revisions to the FR.

Since late 2019, CDA has operated a custom-developed, secure, online-registration system that stores all registrant information, cultivation location, planting/harvest/testing reports, and enforcement action records.

Importantly, the success of Colorado’s hemp program is the result not only of the robust state regulatory environment, but also of the community of hemp cultivators, product manufacturers, and ancillary business operators and stakeholders who have helped drive the growth of the program. In 2014, the first operational year of Colorado’s hemp program, 1,811 acres were registered with CDA for hemp cultivation. In the following years, the number of acres registered with CDA for hemp cultivation grew exponentially, as illustrated in Figure 1. However, in 2020 the amount of registered outdoor acreage and indoor square feet significantly declined as a result of over supply and market correction across the industry.

**Figure 1.**



**Colorado Acres Registered for Hemp Cultivation**

As the first state to establish a hemp industry regulatory structure, Colorado rapidly developed into the state with the largest number of acres under hemp cultivation in the nation. Colorado continues to be a national leader in innovative hemp policy and industry performance by combining its first-mover advantage with its extensive experience regulating, through distinct channels.

The table below, Figure 2, provides information on CDA’s Hemp Program registration, registered land area, staff, and budget. By all measures, the program has grown exponentially and CDA’s regulatory footprint has expanded along with registrations and acreage. During the 2020 Colorado legislative session, CDA received approval from Colorado’s Joint Budget Committee to increase CDA’s spending authority in fiscal year 2021 (FY 2020-2021). CDA will continue to grow the regulatory program to scale with the industry.

**Figure 2.**  
**CDA Hemp Program Key Indicators, 2014 – 2019**

Year	Active Registrants	Registered Acres	Active Registrations	Registered Indoor Sq. Ft.	Dedicated Staff (FTE)*	Annual Expenditure
2014	131	1,811	259	0.3m	N/A	N/A
2015	166	3,657	333	0.6m	N/A	\$322,863
2016	312	8,988	424	1.4m	4.2	\$402,766
2017	404	12,348	539	2.6m	4.4	\$485,425
2018	872	30,080	982	4.6m	4.7	\$492,407
2019	1,947	88,743	2,634	15.4m	7.0	\$573,547
2020	981	36,225	1,254	11m	7.0	\$476,792

Note: \* The hemp program shared staff/budget with the Plant Industry Division in 2014-2015.  
 Source: Colorado Department of Agriculture.

### **Colorado Hemp Advancement and Management Plan (CHAMP)**

During the 2019 legislative session, Colorado’s General Assembly amended the Hemp Regulatory Act to authorize the Commissioner of Agriculture to consult with any stakeholders and to mandate that the Commissioner of Agriculture consult with the industry in drafting any hemp management plan submitted to USDA. C.R.S §35-61-104(6). Colo. Session Laws 2019, ch. 349 (enacting HB 19-1214). In response to this legislative authorization and mandate, the passage of the 2018 Farm Bill, the anticipated publication of the IFR, and Governor Jared Polis’s stated priority for Colorado to remain a driving force in hemp production, CDA developed a statewide partnership known as CHAMP in June 2019.

CHAMP represented a broad stakeholder effort. CHAMP included representatives from CDA, the Governor's Office, Department of Public Health and Environment, Department of Revenue, Department of Regulatory Agencies, Office of Economic Development and International Trade, Department of Public Safety, Colorado Commission of Indian Affairs, Department of Higher Education, local governments, state institutions of higher learning, and industry and ancillary experts. Together this group of stakeholders developed the gold standard in policy for cultivation, testing, research, processing, manufacturing, banking, and marketing for Colorado's hemp industry. The goal of the CHAMP process was to develop a robust and functional hemp supply chain and to establish a strong market for Colorado farming communities.

CDA created CHAMP to ensure that a wide range of stakeholders, including members of the public, would have multiple opportunities to comment on and participate in a variety of hemp topics. Ultimately, the resulting policy recommendations presented in this Plan and in the [CHAMP](#) Report outline the state's ambitions for the hemp industry, representing a consensus of the largest gathering of hemp industry and government stakeholders held in any state to date.

## **Colorado State Hemp Plan for USDA**

The 2018 Farm Bill and FR require each state or tribe that desires to have primary regulatory authority over the production of hemp within its boundaries to submit a management plan to USDA that outlines how the state or tribe will regulate various aspects of hemp cultivation. After enactment of the 2018 Farm Bill, USDA published nine requirements for states and tribes that intend to develop a hemp regulatory program.<sup>5</sup> In January 2021, USDA issued the FR to further clarify the requirements necessary for USDA to approve such plans.

This section describes how the state of Colorado intends to implement the FR requirements through existing and updated statutory authorities, rules, and procedures. All authorities described in this Plan are either currently in effect or are intended to take effect after USDA approval and before January 1, 2022, and are intended to govern Colorado's hemp industry beginning with the 2022 growing season. Bold text in the sections below represents language taken directly from the FR.

### **1. Land Registration – 7 CFR 990.3(a)(1)**

The FR requires State and Tribal Plans to have practices and procedure to collect, maintain and report Land Used for Production, relates to states' and tribes' registration and record-keeping processes. To maintain a robust, compliant, and transparent hemp industry, a timely record of all land used for hemp cultivation must be maintained:

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<sup>5</sup> <https://www.ams.usda.gov/sites/default/files/media/2018FarmBill.pdf>

**A State or Tribal plan must include a practice to collect, maintain and report to the Secretary relevant, real-time information for each producer licensed or authorized to produce hemp under the State or Tribal plan regarding:**

**(i) Contact information as described in § 990.70(a)(1);**

**(ii) A legal description of the land on which the producer will produce hemp in the State or territory of the Indian Tribe including, to the extent practicable, its geospatial location; and**

**(iii) The status and number of the producer's license or authorization in a format prescribed by USDA.**

**7 CFR § 990.3(a)(1) (86 Fed. Reg. 11 p. 5683).**

Colorado's Hemp Regulatory Program, C.R.S. § 35-61-101, *et seq.*, (2020), (the "Act") requires that any person "wishing to engage in industrial hemp cultivation ... shall apply to the department for a registration in a form and manner determined by the commissioner prior to planting the industrial hemp." C.R.S. § 35-61-104(1)(a). The Act further requires that such persons must provide to the commissioner "the name and address of the applicant and all key participants and the legal description, global positioning system location, and map of the land area on which the applicant plans to engage in industrial hemp cultivation." *Id.*

The Act further authorizes the Commissioner of Agriculture ("Commissioner") to promulgate rules "necessary to implement and administer [the Act]." C.R.S. § 35-61-104(5). This rule-making authority permits the Commissioner to enact rules to specify any additional requirements necessary for the applicant to include in a registration. The Commissioner has promulgated such rules, codified at 8 Colo. Code Regs. 1203-23, "Rules Pertaining to the Administration and Enforcement of the Industrial Hemp Regulatory Program Act." Appendix B.

As set forth in the following paragraphs, the Rules regarding registration require registrants to provide all information required in the FR. Further, should any need arise to adjust or amend the information requested from producers, CDA has current rule-making authority that would permit the agency to amend its rules and update its registration requirements. C.R.S. § 35-61-104(5). If CDA promulgates and adopts any amendment to its rules that would modify Colorado's plan, CDA will submit those amended rules to USDA for its approval. Rules 2.1 and 2.2 (Appendix B) establish the information the Commissioner requires from an applicant at the time of application, including those items required in § 990.70(a)(1). Further, Rule 2.14 requires any registrant who makes a change to any of their contact information to update the Commissioner within 10 days of the change.

CDA has always encouraged the development of improved genetics by administering a Certified Seed Program and providing separate requirements for those producing hemp for

research purposes. For this reason, CDA plans to continue to offer a separate registration for those hemp producers cultivating hemp for the purposes of research and development. In addition to institutions of higher learning, CDA will register other public and private producers engaged in doing research and development as long as hemp produced does not enter the stream of commerce. CDA will develop requirements to include providing CDA with the scope of research, a standard operating procedure to include verification of disposal, and disclosing all testing data for periodic auditing by CDA.

Pursuant to the Rules, CDA requires applicants to complete an annual Registration Application, attached in Appendix C. Historically, a person who desired to register land to cultivate hemp would complete and submit a paper application to CDA for approval. However, as of November 15, 2019, CDA has made the application process available online.<sup>6</sup> This new, online registration process offers CDA the ability to provide real-time updates to USDA as required by 990.70(a)(1) and expedites the data collection process for compliance, enforcement, and reporting.

At the time of application, and pursuant to Rules 2.1 and 2.2, an applicant must describe the type of ownership of any entity, including listing all owners; provide a legal description (Township/Range/Section), including GPS coordinates and a map of the land; describe the size of the operation; provide the intended nature of the cultivation (*e.g.*, indoor or outdoor); and provide the intended seed variety and end use (*e.g.*, fiber, seed, CBD, etc.). The application form further requires full contact information for each hemp producer, as required in 7 CFR § 990.70(a)(1). CDA, therefore, currently collects annual information for each registered grow site; thus, CDA's current procedures exceed the requirements of the FR.

CDA maintains a database that contains current and historical registration data, including the status of any given registration, as well as any changes made since the registration's creation. This database can also link individual registrations to a common registrant. Each registration contains all pre-planting, planting, testing, harvest, and disposal reports. CDA's system is updated in real-time as each registration is processed or amended. CDA has the capability to provide real-time information to USDA upon request and in regular monthly reporting, as required by 990.70(a)(1).

The CDA hemp registration program has been active since 2013, and as all historical records have been retained to date since inception of the program, the program thus exceeds the FR's three-year record retention requirement. CDA will adopt an official procedure noting that "all records must be maintained for not less than three years," which will be effective on or before December 30, 2021. In addition, CDA will require, via Rule, each registrant to maintain a parallel set of all hemp program registration, planting, testing, disposal, land, and employee records for at least three years. This information will be required to be made available to CDA when requested.

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<sup>6</sup> <https://www.colorado.gov/pacific/agplants/commercial-registration-application>

## **2. Sampling and Testing – 7 CFR § 990.3(a)(2)**

The FR's sampling and testing rules are set forth at 7 CFR § 990.3(a)(2) and discussed in the FR's summary in Sections II.C and D: State and Tribal Plans; Sampling for Total THC and Testing Laboratories.

**A State or Tribal plan must include a procedure for accurate and effective sampling of hemp that includes the requirements in this paragraph (a)(2).**

### **7 CFR § 990.3(a)(2) (86 Fed. Reg. 11 p. 5683).**

Given Colorado's long-standing history of regulating hemp, the state has established well-defined, efficient, and effective processes for sampling and THC-testing techniques for cultivated hemp.

In 2020, CDA sampled 35 percent of all hemp registrants for both general regulatory compliance and THC analysis. Currently, CDA's process for selecting registrants for sampling is performed with a computerized randomization process. Further, any producers that CDA identifies as high-risk, based on predetermined criteria, are subject to enhanced sampling and testing. The risk factors taken into consideration include:

- Prior testing results above 0.3 percent THC content;
- Prior violations including:
  - Failure to submit planting/harvest reports within the required time frame;
  - Failure to respond in a timely manner to notice of inspection;
  - Failure to provide required information or to cooperate with CDA; and
- Complaints made by law enforcement, regulatory agencies, local governments, and/or the public.

While CDA has historically conducted random sampling across all registered lots each year to test for THC compliance, the Commissioner has authority pursuant to the Rules to test all hemp produced within the state—8 CCR 1203-23, (Rules 4.1 and 4.2) (Appendix B). CDA will enhance its well-developed inspection and sampling procedures to comply with the requirements of the FR including performance based sampling (see Appendix D).

CDA will conduct sampling by use of its own sampling staff and by use of authorized sampling agents, consistent with its current practices and procedures, as described more fully in CDA's Sampling Guidelines (Appendix D) to ensure continuity of CDA's practice of accurate, efficient, and effective sampling. CDA will strive to increase its current direct sampling rate towards 100 percent of registrations during the 2021 growing season as well



as its direct compliance inspections through its random selection process, as outlined above, to monitor additional regulatory compliance, including record-keeping and reporting.

CDA will achieve taking a representative sampling of all hemp lots, starting with the effective date of the plan in January 2022. In the 2020 legislative session, Colorado's General Assembly amended the Act to require the Commissioner to create a registration and certification program for authorized samplers. C.R.S. § 35-61-105.5(1). The Commissioner's general rule-making authority to adopt rules "necessary to implement and administer [the Act]" (C.R.S. § 35-61-104(5)) provides the authority to adopt rules necessary to establish this certification program. The Commissioner's proposed rules to establish this program are in 8 CCR 1203-2 (Part 4.8), in the attached Appendix B, and will be effective July 30, 2021.

To acquire certification as an authorized sampler, an applicant must register with CDA and complete a certification training in accordance with CDA's Hemp Sampling Guidelines (Appendix D). The certification training will permit CDA to ensure that every certified sampler follows CDA's strict sampling guidelines when collecting hemp samples, including procedures related to sample collection, transportation, and documentation. All third-party samplers will also receive training and be required to comply with special chain-of-custody procedures for collection and transfer of hemp samples to eligible laboratories.

Anyone interested in becoming a certified hemp sampling agent will have to meet the following criteria:

1. A candidate will be required to participate in an online training program, zoom training or in person training. They will need to review all associated documents including forms, rules and protocols associated with the certified hemp sampling program.
2. A candidate will need to receive a score of 80% or higher on a state administered hemp sampler certification exam that will be written by the Hemp Certification Sampling Coordinator.
3. A candidate will complete an application, pay an application fee, and sign a conflict of interest document. The conflict of interest statement will state: "As a certified hemp sampling agent, I aver that I do not have an active hemp registration or active economic interest in a hemp registration within the state of Colorado."

Certification will last one year. Appropriate recordkeeping and reporting, adherence to CDA sampling protocol, and other standards provided during the training are required to maintain certification. A certified hemp sampling agent is not authorized to access any fields, buildings or facilities without the presence of the registered producer or the registered producer's appointed representative. A certified hemp sampling agent may not collect or retain any plant material that exceeds the required quantity for sample purposes.

CDA's Hemp Certification Sampling Coordinator will oversee the recruitment, training, testing and certification of all certified hemp sampling agents. He or she will make any necessary modifications to sample collection guidelines to satisfy state and federal requirements. The Hemp Certification Sampling Coordinator will continuously conduct quality control to ensure sampling is completed in a consistent and uniform manner.

A list of certified hemp sampling agents will be provided on a platform for the hemp producers to choose, or the Colorado Department of Agriculture will choose for them. The Colorado Department of Agriculture will be working in conjunction with the Colorado Department of Public Health and Environment to use only actively licensed, certified labs for THC testing and assist the Colorado Department of Public Health and Environment to conduct quality control measures in laboratory services and ensure testing is consistent and uniform.

Once this program is operational, third-party authorized samplers will collect hemp samples on behalf of CDA and deliver them to certified laboratories for THC testing. CDA will offer sampler certification to qualified agricultural service providers or to other qualified entities and individuals.

All sampler certification information will be maintained in a secure CDA database that will be accessible to USDA upon request, including contact information and documentation of all samples taken and delivered. Initial applicants must pay an application fee to CDA, and CDA will review all certifications annually. Any certified sampler who desires to renew a certification must pay an annual renewal fee to CDA.

As of the writing of this document, there are two DEA-certified labs in Colorado identified on the USDA website.<sup>7</sup> The CDA laboratory is currently ISO 17025 accredited (Appendix F) and has begun the process to obtain DEA certification. Once certified, the CDA lab will become the third DEA-certified testing facility in Colorado. To ensure that the state can sample and test hemp lots for THC, CDA partnered with the Colorado Department of Public Health and Environment (CDPHE) in efforts to create and implement a state-certified laboratory THC testing program.

To acquire hemp-THC-testing certification, an applicant laboratory must be inspected by CDPHE prior to initial certification and annually thereafter. Certification is contingent upon successful on-site inspection, successful participation in proficiency testing, and evidence of ongoing compliance with the applicable requirements.

A certified laboratory must meet all standards of performance, including personnel qualifications, having a standard operating procedure manual, analytical processes, proficiency testing, quality control, quality assurance, security, chain of custody, sample retention, space, records, and results reporting.

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<sup>7</sup> [https://www.ams.usda.gov/rules-regulations/hemp/dea-laboratories?field\\_state\\_tid=168](https://www.ams.usda.gov/rules-regulations/hemp/dea-laboratories?field_state_tid=168) (last checked March 4, 2021).

CDPHE implemented its rule “Hemp Testing Laboratory Certification,” 5 CCR 1005-5, on April 14, 2021. This rule establishes “criteria for the certification of laboratories to test Hemp and hemp-derived products” (*Id.* at Rule 1.2) and complies with the USDA’s Laboratory Approval Program described in the FR. The state program ensures that only qualified laboratories that use good laboratory practices, have rigorous quality assurance and control protocols, and use only established methods performed on accepted equipment acquire certification to participate in the program. CDPHE performs regular on-site audits of labs in the program and administers a fee for participation.

CDA will rely upon CDPHE to inspect applicant facilities prior to issuing certifications or renewals to ensure that they meet all USDA and CDA requirements. The program will offer two tiers of approval for hemp THC testing laboratories in Colorado:

- **Certified laboratories**--certification will be granted when laboratories have met all certification requirements of the FR, including ISO/IEC 17025 accreditation and DEA registration; and
- **Conditionally Certified laboratories** will be laboratories that are already CDPHE-certified or have met all CDA and CDPHE certification requirements, but have not received DEA certification prior to January 2023. (5CCR 1005-5 Hemp Testing Lab Certification Rules in Appendix G.)

It is CDA’s intention to process all samples for testing through the CDA laboratory or certified laboratories, as described above, where practicable. Therefore, CDA plans to use conditionally approved laboratories, described above, to ensure sufficient testing coverage within the USDA-required timeline.

This approach will permit the state to leverage the considerable investment it has made in certified cannabis and cannabinoid testing capacity and enhance the state’s ability to test samples collected from registered hemp lots through the 2021 and 2022 growing seasons.

All participating laboratories will report test results to CDA and USDA electronically in real time starting in the 2022 growing season.

Further, FR section 7 CFR § 990.3(a)(2)(i) states:

- (i) Samples from cannabis plants must be collected within 30 days prior to the anticipated harvest, for total delta-9 tetrahydrocannabinol concentration level testing. Samples must be collected by a sampling agent. Producers may not collect samples from their own growing facilities.**

**7 CFR § 990.3(a)(2)(i) (86 Fed. Reg. 11 p. 5683).**

CDA’s Rule provides that “[a]t least 30 days prior to harvest, each Commercial Hemp Registrant shall file a Harvest Report, on a form provided by the Commissioner . . .” Appendix B, p. B-4; 8 CCR 1203-23, Rule 3.3. Failure to comply with the Rule is grounds for

disciplinary action. Appendix A p. A-5, C.R.S. § 35-61-107(1)(a). This 30-day requirement permits CDA to dispatch field inspectors effectively and efficiently to rural and often remote areas of the state to collect samples to comply with CDA's testing requirements.

To achieve the most accurate testing results, CDA or a state-certified sampler, must schedule the testing date based on a producer's submitted Harvest Report. CDA or a state-certified sampler will schedule and conduct sampling within 30 days prior to the anticipated harvest date, consistent with the FR's requirement that samples be collected within "30 days prior to the anticipated harvest." 7 CFR § 990.3(a)(2)(i). For purposes of THC-testing to determine compliance with state and federal law, CDA restricts all sampling either to CDA or to state-certified samplers. Producers may not collect samples from their own growing facilities. Appendix B, 8 CCR 1203-23, Part 8.

CDA will use its Hemp Sampling Guidelines, Appendix D, both for training and in the field by CDA inspection staff and authorized samplers. The training and operating manual has been updated specifically to provide that:

- Sampling is to be completed within 30 days from harvest;
- Registrants must have all files, including harvest reports with maps, available (authorized agent must be present), at time of inspection. This may be necessary if the registrant fails to provide harvest or updated harvest report; and
- All Cannabis lots not subject to performance based sampling methods within a Registered Land Area must be sampled to ensure compliance with the Hemp Program.

Additionally, if a Registrant needs to amend a reported harvest date, 8 CCR 1203-23, Rule 3.3) (Appendix B) requires that "[a] Registrant must notify the Commissioner immediately of any changes in the reported harvest date(s) in excess of 5 days by submitting an Amended Harvest Report to the Commissioner. If any such changes are made the Commissioner may require additional testing prior to harvest...." This provision in CDA's Rule will aid in compliance with the FR testing requirements.

7 CFR § 990.3(a)(2)(iii) requires that each state establish a proper sampling procedure that ensures that the testing results from each sample are representative of the entire lot.

**(iii) The method used for sampling must be sufficient 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. Alternatively, States and Tribes may adopt a performance-based method that meets the requirements in paragraphs (a)(2)(iii)(A) and (B) of this section.**

**7 CFR § 990.3(a)(2)(iii) (84 Fed. Reg. 221 p. 5683).**

The CDA Hemp Sampling Guidelines in Appendix D instruct authorized samplers to collect a representative sample of each lot and to adjust their sampling density according to each field. Similar to the FR, CDA currently requires at least one plant per acre, although that can vary by physical characteristics of each field. This method provides sampling sufficient enough to achieve the confidence level of 95 percent that no more than one percent of the plants in each lot would exceed the acceptable hemp THC level.

The following sections 7 CFR § 990.3(a)(2)(iv) and (v) provide:

**(iv) During a scheduled sample collection, the producer or an authorized representative of the producer shall be present at the growing site if possible.**

**(v) Sampling agents shall be provided with complete and unrestricted access during business hours to all hemp and other cannabis plants (whether growing or harvested), to areas where hemp is grown and stored, and to all land, buildings, and other structures used for the cultivation, handling, and storage of all hemp and other cannabis plants, and all locations listed in the producer license.**

**7 CFR § 990.3(a)(2)(iv), (v), and (vi) (84 Fed. Reg. 221 p. 5683).**

CDA's Rule 4.5 mandates that the Registrant or an authorized representative be "present at the growing operation" during CDA's inspection. *See* 8 CCR 1203-23, Rule 4.4; Appendix B, p. B-6. Rule 4.5 requires that said Registrant or authorized representative, at the time of inspection, must "provide the Department's Inspector with complete and unrestricted access to all Cannabis plants, parts and seeds within a Registered Land Area whether growing or harvested, and all land, buildings and other structures used for the cultivation and storage of Hemp." *Id.*

The final sampling requirement in this section of the FR provides: "**A producer shall not harvest the cannabis crop prior to samples being taken.**" 7 CFR § 990.3(a)(2)(vi) (84 Fed. Reg. 221 p. 5683) (emphasis added).

In the 2020 legislative session, Colorado's General Assembly amended the Act to prohibit producers from harvesting hemp crops prior to sampling. *See*, C.R.S. § 35-61-105.5(2)(c). Further, CDA's Rules prohibit pre-testing harvest. 8 CCR 1203-23, Rule 4.6.5; Appendix B, p. B-4. As such, any pre-testing harvest or movement of a hemp crop is a violation of state law and subjects the registrant to discipline.

### **3. Testing Methodology and Non-compliant Hemp – 7 CFR § 990.3(a)(3)**

To ensure that all hemp produced is in compliance with federal laws regarding THC content, 7 CFR § 990.3(a)(3) and FR Summary Section II.C and D: Sampling for Total THC and Testing Laboratories require a robust testing procedure.

**A State or Tribal plan must include a procedure for testing that is able to accurately identify whether the sample contains a total delta-9 tetrahydrocannabinol content concentration level that exceeds the acceptable hemp THC level. The procedure must include a validated testing methodology that uses post decarboxylation or other similarly reliable methods.**

**The testing methodology must consider the potential conversion of THCA in hemp into THC and the test result must report the total available THC derived from the sum of the THC and THCA content. Testing methodologies meeting the requirements of this paragraph (a)(3) 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.**

#### **7 CFR § 990.3(a)(3) (86 Fed. Reg. 11 p. 5683-5684).**

This Plan presents a robust set of protocols for meeting the testing requirements of the FR. CDA's Division of Laboratory Services has developed its Biochemistry Laboratory SOP No.: PT-LBOP-014, titled, "Hemp Sample Preparation," to establish laboratory standard operating procedures (SOP) for hemp sample preparation for THC analysis (Appendix H). This SOP outlines the specific methods to be applied when collecting, drying, sorting, and grinding individual hemp samples.

The CDA Division of Laboratory Services, which houses the CDA Biochemistry Laboratory, has developed its SOP No. PT-METH-031, titled, "Determination of Delta-9-THC in Hemp by Gas Chromatography with Flame Ionization Detection ("GC/FID")." Appendix I. This operating procedure requires that industrial hemp THC testing be conducted with the use of an Agilent 6890N Gas Chromatograph with a Flame Ionization Detector, or equivalent equipment and similarly reliable method, and describes procedures for the THC testing process for hemp plant material. In this document, sample preparation is described in detail, along with the equipment and chemical parameters of the testing process, and reporting requirements and formatting.

All hemp THC testing at the CDA Biochemistry Laboratory is performed using a post-decarboxylation technique (GC/FID), as required by USDA. CDA chose the GC/FID technique because of its efficiency, relative ease of use, accuracy, reliability, and the replicability of results. Approved and conditionally approved laboratories will use GC/FID or other similarly reliable methods. All laboratories will report results to CDA and USDA with THCA, delta-9 THC, total THC and the laboratory-specific margin of uncertainty (MU)

on a dry weight basis as required in the FR. The state-certified lab program also outlines approved testing methodologies (Appendix G, p. G-11 – G-14), and provides chain of custody and reporting requirements for THC content (Appendix G, p. G-17 – G-18).

As the Colorado hemp program has matured, both CDA and Colorado hemp producers have made significant strides towards improving THC compliance results. Over the past five years the non-compliant rate has been cut by about half, from 31 percent of tested lots in 2014 to 16 percent in 2020, even as the testing rate doubled, and total acreage increased 50-fold.

7 CFR § 990.3(a)(3)(i) requires the following:

**Any test of a representative sample resulting in higher than the acceptable hemp THC level shall be conclusive evidence that the lot represented by the sample is not in compliance with this part and shall be disposed of or remediated in accordance with § 990.27.**

**7 CFR § 990.3(a)(3)(i) (86 Fed. Reg. 11 p. 5684).**

Under 7 CFR § 990.27, however, a producer may choose either to conduct on-site destruction of hemp that tests above the allowable limit or to remediate the product.

**(a) Cannabis plants exceeding the acceptable hemp THC level constitute marijuana, a schedule I controlled substance under the Controlled Substances Act (CSA), 21 U.S.C. 801 et seq., and producers must either use a DEA-registered reverse distributor or law enforcement to dispose of non-compliant plants or ensure the disposal of such cannabis plant on site at the farm or hemp production facility.**

**(b) Producers must notify USDA of their intent to dispose of or remediate non-conforming plants and verify disposal or remediation by submitting required documentation.**

**(c) If a producer elects to perform remediation activities, an additional sampling and testing of the post-remediated crop must occur to determine THC concentration levels.**

**7 CFR 990.27(a), (b), and (c) (86 Fed. Reg. 11. p. 5688).**

The Hemp Sampling Guidelines (Appendix D) describe detailed sample collection procedures for remediation. These guidelines describe remediation as the process of rendering non-compliant cannabis compliant. A producer may remediate by removing and destroying flower material, while retaining stalk, stems, leaf material, and seeds. A producer may also remediate by shredding the entire plant into a biomass-like material and request re-testing by an authorized sampler of the shredded biomass material for

compliance. Producers will be responsible for all remediated sampling and testing costs. By allowing for remediation sampling and testing, CDA reduces the likelihood that usable crops are destroyed when the plant material intended for the stream of commerce tests as compliant.

In the event that a hemp crop conclusively tests higher than the acceptable hemp THC level, a producer must notify the CDA that the crop will be disposed of or remediated accordingly. If the remediated test result remains above the acceptable hemp THC level, CDA will send written correspondence to the producer to describe that the crop has exceeded the acceptable THC level, inform the producer that CDA will notify the USDA of non-compliant hemp, and provide guidance on how to dispose of the hemp crop.

The correspondence explicitly provides that under CDA Rules, a crop that has higher than acceptable THC level is prohibited from:

- Leaving the registered land area;
- Entering the stream of commerce; and
- Being used for human or animal consumption.

A producer must, prior to destruction or disposal, submit to the Commissioner for review a proposed disposal plan to ensure that destruction of non-compliant hemp is in accordance with USDA and CDA requirements.

CDA's Rules provide that all crops with higher than acceptable THC level must be destroyed. Appendix B; 8 CCR 1203-23, Rule 4.6.7. Approved disposal methods include disking the crop into the ground, mulching, composting, burning, and burying.

CDA will continue to permit producers to submit video or verifiable photographic evidence to substantiate appropriate disposal of crops whose THC levels exceed the allowable amount with a THC concentration up to 1.0 percent.

CDA requires producers to report, document, and produce evidence of any hemp crop destruction. CDA will also maintain a record of any such destruction and disposal in the hemp registration database and provide monthly reports to USDA during the growing and harvest season describing any lots destroyed for producing non-compliant hemp.

7 CFR § 990.3(a)(3)(ii) provides that “[s]amples of hemp plant material from one lot shall not be commingled with hemp plant material from other lots.” 7 CFR 990.3(a)(3)(ii) (86 Fed. Reg. 11 p. 5684) (emphasis added).

The CDA Hemp Sampling Guidelines, Appendix D, provide instructions to field agents on sampling procedures, timing, labeling, sealing, and transporting. To ensure that hemp plant



material samples from one lot are not commingled with samples from other lots, the sealing and transporting section (Appendix D) of this operating procedure states that field agents take the following steps:

- Samples should be placed in provided heavy duty paper bags, stapled, and sealed with evidence tape on the top of the bag.
- Attach initialed and dated map of the field with chain-of-custody or sketch field with sample location on back of chain-of-custody.
- Keep chain-of-custody and map with samples during transfer to the laboratory.

For hemp-testing procedures and measurements, the FR further requires:

**Laboratories conducting analytical testing for purposes of detecting the concentration levels of THC shall meet the following requirements:**

- (A) Laboratory quality assurance must ensure the validity and reliability of test results;**
- (B) Analytical method selection, validation, and verification must ensure that the testing method used is appropriate (fit for purpose), and that the laboratory can successfully perform the testing;**
- (C) The demonstration of testing validity must ensure consistent, accurate analytical performance;**
- (D) Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this part; and**
- (E) Effective disposal procedures for non-compliant samples that do not meet the requirements of this part.**
- (F) Measurement of uncertainty (MU) must be estimated and reported with test results. Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty.**

**7 CFR 990.3(a)(3)(iii) (86 Fed. Reg. 11 p. 5684).**

The certification requirements in Appendix G and standard operating procedures in Appendix I will apply for all approved state-certified laboratories used for hemp testing, including ISO 17025 accredited certification, reporting, and GC/FID or other similarly reliable testing methods. Certified labs will meet the DEA registration criteria by December 31, 2022.

The certification and testing procedures in Appendix G ensure that all THC tests are valid, reliable, consistent, accurate, sufficiently sensitive, and replicable, regardless of the laboratory performing the analysis.

The CDA Biochemistry Laboratory (Appendix I) and all state certified laboratories (Appendix G) must have compliant disposal procedures in place.

The CDA testing guidelines (Appendix H) as well as CDPHE Rule (Appendix G, Rule 10) provide a reporting framework for all hemp THC test results that includes a measurement of uncertainty (MU). The test result report also includes accuracy (%A), precision (%CV), level of detection (LoD %), and level of quantitation (LoQ %), which ensure that the analyses and reporting are transparent, accurate, reliable, and replicable. All approved and conditionally approved state-certified laboratories will follow these reporting requirements.

#### **4. Enforcement – 7 CFR § 990.3(a)(5)**

7 CFR § 990.3(a)(5), described in FR summary Section II.F: Compliance with Enforcement Procedures Including Determination of Negligence and Annual Inspection of Hemp Producers, requires: **“A State or Tribal plan must include a procedure to comply with the enforcement procedures in § 990.6.”**

Section 990.6, Violations of State and Tribal plans, includes procedures for identifying and correcting producer violations of USDA-approved state hemp production plans, including:

- **Defining a negligent violation as:**
  - **Failure to obtain a license**
  - **Failure to provide legal description of land**
  - **Failure to obtain a license or other required authorization from state department of agriculture, or**
  - **Production of cannabis with THC concentration above acceptable level**
- **Establishing corrective action plans for negligent violations**
- **Identifying what constitutes a culpable violation**
  - **Provisions for plan violations by producers with mental state greater than negligence (i.e., culpable)**
- **Establishing provisions related to any applicant’s felony convictions**
  - **10-year ineligibility for state or federal felony convictions (Key participants)**
- **Restricting eligibility of any person who materially falsifies any information contained in an application to produce hemp**
- **A producer that acquires more than three violations in a 5-year period shall be ineligible to produce hemp for a period of 5 years beginning on the date of the third violation.**

### **7 CFR § 990.6(b) (86 Fed. Reg. 11 p.5685).**

Under the Act, the Commissioner may deny, revoke, or suspend a hemp registration if a producer “[v]iolates any provision of [the Act] or rules adopted pursuant to [the Act].” C.R.S. § 35-61-107(1)(a). And the Act provides a specific set of unlawful activities that are prohibited, including:

- Cultivating hemp without having a valid registration;
- Harvesting the industrial hemp crop in excess of the time allowed by the commissioner after sampling by an authorized sampler;
- Making false, misleading, deceptive, or fraudulent representations; and
- Refusing to comply with any rules adopted by the commissioner pursuant to the Act or to any lawful order issued by the commissioner.

### ***See* § 35-61-111(1), C.R.S.**

The Rules adopted pursuant to the Act establish additional activities or failures that constitute a violation and that may result in discipline against a producer, including:

- Failure to fully cooperate and assist CDA in the inspection process;
- Failure to provide any information required or requested by CDA for the purposes of administering the hemp program;
- Providing any false, misleading or incorrect information in application, registration, reporting and/or inspection;
- Failure to report any required information in 8 CCR 1203-23(3), which includes planting report, seed/variety information, harvest report, and harvest date(s);
- Growing hemp with non-compliant THC level (>0.3 percent by dry weight); and
- Failure to pay fees assessed by CDA for inspection and laboratory analysis.

### **8 CCR 1203-23, Part 6 (Appendix B).**

The Act and the Rules provide the Commissioner with authority to comply with the enforcement procedures of § 990.6. CDA has defined negligent violations and culpable violations in the Rule (8 CCR 1203-23, Rule 6.1.7) and adopted regulations providing for the correction of negligent violations as required by the FR. *See* 8 CCR 1203-23, Rule 6.1.8 (appendix B). By rule, CDA has established that failure to provide a legal description of the land on which the producer intends to produce hemp, failure to obtain a registration for the production of hemp, and production of cannabis above the allowable limit constitute a

negligent violation of the Act. 8 CCR 1203-23, Rule 6.1.7; Appendix B. The Rule provides that such offenders must comply with corrective actions required in 8 CCR 1203-23, Part 6.1.7; Appendix B.

Currently, any proven violation that would constitute a negligent violation of the Act under the new CDA rules is noted in the producer's CDA file and taken into consideration when considering future, risk-based compliance inspections. Under the revised rules, a producer commits a negligent violation when conclusive and final test results indicate that a producer has grown cannabis with a THC content over 1.0 percent. The Commissioner may deny, revoke, or suspend any registration if the applicant or registrant commits any violation of the Act or the Rules. C.R.S. § 35-61-107(1)(a).

The Commissioner may also impose a civil penalty, up to \$2,500, for any violation of the Act or the Rules. C.R.S. § 35-61-107(2). For up to three years after the effective date of any suspension, revocation, or relinquishment of a registration, the Commissioner may deny a registration to any person who was previously listed as participating in an entity against which the Commissioner took such disciplinary action. Anyone who commits three or more negligent violations in any five-year period, as well as applicants who intentionally falsify information, may be charged with committing a culpable violation of the Act or the Rules and may be subject to registration suspension and fines of up to \$2,500 per violation and will be reported to state law enforcement officials.

CDA's Rules set forth specific corrective action for negligent violations that comply with 7 CFR § 990.6(c). Each corrective action issued to a producer will include the following:

1. A reasonable date by which the producer shall correct the negligent violation.
2. A requirement that the producer periodically report to CDA on the producer's compliance for a period of 2 years following the negligent violation.
3. A producer that commits subsequent negligent violations three times in a 5-year period shall be ineligible to produce hemp for a period of 5 years beginning on the date of the third violation.
4. CDA will conduct periodic inspections to ensure compliance with the corrective action plan.

***See Appendix B, 8 CCR 1203-23, Rule 6.1.8***

CDA Rules set forth specific provisions addressing the corrective action taken against a producer who has committed violations of the Act with a culpable mental state greater than negligence to comply with section 990.6(d). If the state determines that the producer has violated the plan with a culpable mental state greater than negligence, CDA will report the producer to the U.S. and Colorado Attorneys General.

To determine whether a person is subject to the felony conviction restrictions, as required by 7 CFR § 990.6(e)(2), the Act requires:

With the submission of an application for registration, each key participant shall submit a complete set of fingerprints to the Colorado bureau of investigation . . . for the purpose of conducting fingerprint-based criminal history record checks. [. . .] The commissioner shall use the information resulting from the fingerprint-based criminal history record check to investigate and determine whether a key participant is qualified to be registered.

C.R.S. § 35-61-104(1)(c) . .

The Act includes the procedure for circulating the fingerprints through the Colorado and Federal Bureaus of Investigation. *Id.*

Under the FR, registration in the hemp program will not be permitted for any key participant who has been convicted of a felony in the past 10 years related to a controlled substance under state or Federal law before, on, or after the enactment of the 2018 Farm Bill. An exception applies to a key participant who was lawfully growing hemp in a state-regulated program under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before that date.

#### **5. Disposal or Remediation Notification – 7 CFR § 990.3(a)(6)**

7 CFR § 990.(a)(6)3(a)(4), described in the FR, Section II.E: Disposal and Remediation of Non-Compliant Plants, requires:

**A State or Tribal plan must include a procedure for the disposal or remediation of cannabis plants if the sample representing that plant tests above the acceptable hemp THC level.**

- (i) The disposal method must be conducted either by using a DEA-registered reverse distributor or law enforcement; or on site at the farm or hemp production facility.**
- (ii) The State or Tribal plan must include procedures to verify the disposal or remediation of the cannabis plant. This may come in the form of in-person verification by State or Tribal representatives, or alternative requirements that direct growers to provide pictures, videos, or other proof that disposal or remediation occurred successfully. Disposal and remediation means are described at AMS’s website.**
- (iii) If a producer elects to perform remediation activities, an additional sampling and testing of the post-remediate crop must occur to determine THC concentration levels.**

**7 CFR § 990.3(a)(6) (86 Fed. Reg. 11 p. 5684).**

Under Colorado’s hemp program, when a hemp lot conclusively tests higher than the acceptable Hemp THC limit, official communication in the form of a letter, generated by CDA, describes the failure and provides disposal requirement options to the producer. Appendix J. Producers growing hemp conclusively testing above acceptable THC limits, as described above, will be notified of a negligent violation, if applicable, in addition to receiving a letter.

All hemp with non-compliant THC levels is required to be disposed of according to the methods described in the letter. If crop destruction is required, CDA will promptly notify USDA of any occurrence of cannabis plants or plant material that do not meet the definition of hemp and attach records to demonstrate crop destruction is performed pursuant to the requirements set forth for DEA registrants under the Controlled Substances Act (CSA) and Drug Enforcement Administration (DEA) rules. *See also* pp. 15-16 for additional information relevant to implementing the provisions set forth in this part of the FR.

Each month, CDA will submit a hemp disposal report following the format of OMB No. 0581-NEW, AMS-24 (10/2019) that provides verification of compliant disposal. Additionally, the CDA laboratory and all approved and conditionally approved state-certified laboratories will provide the USDA with instant notification of non-compliant lots.

## **6. Inspections – 7 CFR § 990.3(a)(7)**

7 CFR § 990.3(a)(7), described in IFR summary Section II.F: Compliance with Enforcement Procedures, Including Determination of Negligence and Annual Inspection of Hemp Producers, requires:

**A State or Tribal plan must include a procedure for conducting annual inspections of, at a minimum, a random group of producers to verify that hemp is not produced in violation of this part.**

### **7 CFR § 990.3(a)(7) (86 Fed. Reg. 11 p. 5684).**

The Rules for hemp inspections are located in Part 4 of 8 CCR 1203-23. Appendix B, p. 16. CDA applies both a random and a risk-based sampling approach to general compliance inspections annually. Each year CDA will conduct sampling and inspection as follows:

1. 100 percent of all registrants (not previously exempted from sampling based on alternative protocols) and the lots they are cultivating will be sampled by CDA or third-party samplers with samples submitted to approved testing laboratories to confirm compliance with the THC allowable limits.

2. CDA will randomly select approximately 25 percent of registrants in good standing for a general compliance inspection, which also includes THC sampling to verify any third-party sampler compliance if such sampling has already occurred at the time of the random inspection.
3. CDA will follow up on all tips from law enforcement, and for-cause inspections, including sampling and testing. As indicated on page 8, above, under CDA's current protocols, registrants assigned high-risk status are placed on an enhanced inspection schedule.

#### 8 CCR 1203-23, Part 4.

- 4.1 All Registrations are subject to routine inspection and sampling to verify that the total THC concentration of the Cannabis planted within a Registered Land Area does not exceed 0.3% on dry weight basis. ... The Commissioner must select 100% of the Registrants for sampling and must take samples not less than 30 days prior to harvest. All lots grown on a registered land area shall be sampled by the Department or Approved Sampler. The Commissioner shall send notification to each Registrant to inform the Registrant of the scope and process by which the inspection will be conducted and require the Registrant to contact the Department within 10 days to set a date and time for the inspection to occur. Failure to contact the Department as required may result in the initiation of disciplinary proceedings pursuant to Part 6 of these Rules against the Registration.
- 4.2 The Commissioner shall also conduct additional inspections and sampling to verify compliance with the reporting requirements of these Rules. A subset of applicants will be randomly selected each year for records audit, inspection of premises, and sampling to ensure compliance with these rules.

In the past, this process has mostly focused on THC sampling, but has been modified to include a general compliance check. Each registrant is notified of their selection status for an inspection shortly after CDA receives the registrant's harvest report. For each selected registrant, CDA informs the registrant of the scope and process by which the inspection will be conducted and requires the registrant to contact CDA within 10 days of notification to schedule the inspection. In addition to any routine inspection and sampling under Rule 4.1, the Commissioner may inspect and take samples from any Registered Land Area during normal business hours without advance notice if there is reason to believe a violation of the Act or these Rules may be occurring or has occurred. The Commissioner may also conduct such additional inspection and sampling to verify compliance with the reporting requirements of these Rules. (Rule 4.2)

During the inspection, the registrant or an authorized representative is required to be present at the registered premises. The registrant or authorized representative must provide the CDA Inspector or an authorized third party sampler with complete and unrestricted access to all hemp plants and seeds whether growing or harvested, all land, buildings and other structures used for the cultivation and storage of hemp, and all

documents and records pertaining to the registrant's hemp growing business. For audit purposes, CDA requires all hemp growers to maintain all documents related to their participation in the hemp program for no less than three years.

## **7. Producer Information Sharing – 7 CFR § 990.3(a)(8)**

7 CFR § 990.3(a)(8) and FR Section II.G, Information Sharing, require states to define procedures for sharing registration details with the USDA:

**A State or Tribal plan must include a procedure for submitting the report described in § 990.70<sup>8</sup> to the Secretary by the first of each month. [...] All such information must be submitted to the USDA in a format that is compatible with USDA's information sharing system.**

### **7 CFR § 990.3(a)(8) (86 Fed. Reg. 11 p. 5684).**

Under Colorado's Rules, the information described above is collected in each registration application for both individuals and business entities alike. The CDA Registration Application is attached in Appendix C, and all applicants submit the type of ownership and all owners, a legal description (Township/Range/Section), GPS coordinates, and a map of the land, size and nature of the cultivation (*i.e.*, indoor or outdoor), intended seed variety and end use (*i.e.*, fiber, seed, CBD, etc.). Full contact information for each hemp producer is also included in this form. CDA maintains this information in a continuously-updated, secure database that contains current and historical data on all registrations, changes, plantings, harvests, and violations. *See* page 7 above for additional information.

Pursuant to the requirement in 7 CFR § 990.3(a)(8), CDA will submit the information described in 7 CFR § 990.70 to the Secretary in a monthly report, following the format of USDA document OMB No. 0581-NEW, AMS-23 (10/2019). This monthly report will be automatically generated by the CDA data management and reporting system and will include all new or revised hemp producer registration information, including all new and updated contact information, registered land area and license identifier, and status for all registered hemp producers. Additional reports will be regularly filed by CDA with USDA for disposal, testing results (both filed monthly), and an annual report. CDA will incorporate this provision in the rule.

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<sup>8</sup> 7 CFR § 990.70 includes requirements for a monthly producer report for all new and existing licensee or licensed business entity contact information, including full name of the individual or business, license or authorization identifier, business address, telephone number, and email address (if available), key employees; license status; report period (*i.e.*, month). The section also requires a monthly disposal report documenting the licensees, location, acreage, disposal agent and disposal completion date. The annual report requires total acreage planted, harvested and destroyed. The test results report must include producer and lot identifying information; lab identifying and certification information; date of test, indication if retest required; and the test result.



## **8. Certification of Resources – 7 CFR § 990.3(a)(9)**

7 CFR § 990.3(a)(9), described in IFR summary Section II.H: Certification of Resources, requires:

**The State or Tribal government must certify that the State or Indian Tribe has the resources and personnel to carry out the practices and procedures described in paragraphs (a)(1) through (9) of this section.**

### **7 CFR § 990.3(a)(9) (86 Fed. Reg. 11 p. 5684).**

In accordance with this requirement, CDA provides a Letter of Certification signed by the Commissioner. Appendix K. CDA also has six years of historical operational data demonstrating the resources available to CDA, specifically for the hemp program oversight.

In fiscal year 2020-2021, CDA has 6.3 full time equivalent (FTE) staff directly working on the hemp program and 3.5 FTE laboratory staff. Twenty field inspectors are seasonally available for hemp-related operations on a full-time basis. In 2018, the program became entirely funded by registration and other administrative fees.

The Governor's Office and CDA are committed to providing all necessary resources to the hemp program to keep Colorado and its hemp producers in a leading position.

## **9. Law Enforcement Information – 7 CFR § 990.3(a)(10)**

7 CFR § 990.3(a)(10) requires:

**The State or Tribal plan must include a procedure to collect and share information with USDA to support the information sharing requirements in 7 U.S.C. 1639q(d).<sup>9</sup> The State or Tribal government is responsible for reporting**

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<sup>9</sup> **7 U.S.C. 1639q(d):**

(d) Information sharing for law enforcement

(1) In general The Secretary shall—

(A) collect the information described in paragraph (2); and

(B) make the information collected under subparagraph (A) accessible in real time to Federal, State, territorial, and local law enforcement.

(2) Content. The information collected by the Secretary under paragraph (1) shall include—

(A) contact information for each hemp producer in a state or the territory of an Indian tribe for which—

(i) a State or Tribal plan is approved under section 1639p(b) of this title; or

(ii) a plan is established by the Secretary under this section;

(B) a legal description of the land on which hemp is grown by each hemp producer described in subparagraph (A); and

(C) for each hemp producer described in subparagraph (A)—

(i) the status of—

**the information identified in paragraphs (a)(10)(i) through (iii) of this section with AMS.**

**7 CFR § 990.3(a)(10) (86 Fed. Reg. 11 p. 5684).**

The information described in 7 U.S.C. 1639q(d) is collected in each registration application for both individuals and business entities. *See* Appendix C. Each applicant must submit full contact information and a legal description of the land (Township/Range/Section) where the applicant intends to produce hemp.

As discussed on page 7, above, CDA maintains a database that contains real-time data on all current and historical registrations, including current license status and any amendments. CDA will include this information to the USDA in the regular report. In addition, CDA will require each registrant to report this information directly to FSA. CDA will amend its rules to require that producers report specific information to FSA. The amendment will have:

**8 CCR 1203-23 Part 3 (Proposed)**

**3.11 All producers licensed to produce hemp shall report to the USDA Farm Service Agency (FSA) and shall provide at minimum:**

**3.11.1 Street address and 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.**

**3.11.2 Acreage dedicated to the production of hemp, or greenhouse or indoor square footage dedicated to the production of hemp.**

**3.11.3 License or registration number.**

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(I) a license or other required authorization from the state department of agriculture or Tribal government, as applicable; or  
(II) a license from the Secretary; and  
(ii) any changes to the status.