

June 16, 2020

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

RE: Colorado State Hemp Management Plan

Dear Secretary Perdue:

The attached document serves as Colorado's State Hemp Management Plan (Plan) submission to the United States Department of Agriculture (USDA) as required by the 2018 Agricultural Improvement Act (2018 Farm Bill)¹ and the USDA Interim Final Rule (IFR).² This Plan addresses how specific aspects of hemp cultivation and processing outlined in the 2018 Farm Bill and IFR will be managed in Colorado.

The 2018 Farm Bill provided Colorado with a unique opportunity to establish a comprehensive blueprint for the statewide management and advancement of the emerging hemp industry by examining the entire supply chain from cultivation to market. Many details of this Plan were derived or adapted from the existing Colorado industrial hemp³ industry regulatory framework, which was established after adoption of Senate Bill 13-241 in 2013.

To address additional requirements in the 2018 Farm Bill and IFR, the Colorado Department of Agriculture (CDA) partnered with leading state, local, and tribal agencies and other diverse stakeholders, totaling over 200 separate resources, to establish a statewide initiative known as the Colorado Hemp Advancement and Management Plan (CHAMP).

In keeping with CDA's core mission to continuously strengthen and advance Colorado agriculture, a key objective of CHAMP is to create a well-structured and defined supply

¹ <https://docs.house.gov/billsthisweek/20181210/CRPT-115hrpt1072.pdf>

² 84 Fed. Reg. 211 p. 58522 (Oct. 31, 2019). <https://www.govinfo.gov/content/pkg/FR-2019-10-31/pdf/2019-23749.pdf>

³ Regulated industrial and commercial hemp is referred to as 'hemp' throughout this document.

chain for hemp to establish a strong market for the state's farming communities. CHAMP will provide a next-generation regulatory framework to build on the Plan submitted herein.

As one of the Nation's longest tenured and leading hemp producers, Colorado is an innovating force in the regulation and development of this burgeoning agricultural commodity. The Plan provides a robust framework to advance Colorado's thriving hemp industry while addressing the specific concerns and requirements laid out by the USDA in a manner that best works for Colorado and its hemp producers. This framework has been widely vetted in the CHAMP stakeholder process by industry representatives, state regulatory and public safety agencies, and local government officials.

Thank you for your review and consideration of our submission. We look forward to your approval.

Sincerely,



Kate Greenberg
Commissioner
Colorado Department of Agriculture

Colorado's Industrial Hemp Program

Colorado 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 industrial hemp.⁴ Legislation adopted in 2013 delegated the responsibility for establishing registration and inspection regulations pertaining to hemp cultivation to CDA.^{5,6} 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").

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 start of the hemp industry in Colorado. Since then, Colorado's industrial 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 industrial hemp industry, the 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, the Colorado Attorney General's office, higher education, local government, and citizen advocates. Since 2013, the HAC has provided vital input to the Industrial Hemp Regulatory Program. With input from the HAC, CDA developed all elements of its regulatory scheme, including systems for registration, compliance testing, reporting, enforcement, and inspection.

Between 2014 and 2019, CDA Rules were continuously revised to improve registration, data tracking, definitions, and reporting. Colorado's Act and Rules are designed with purposeful flexibility to anticipate technology changes, federal regulations, including the IFR, and future iterations of USDA rules.

⁴ 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 Δ -9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

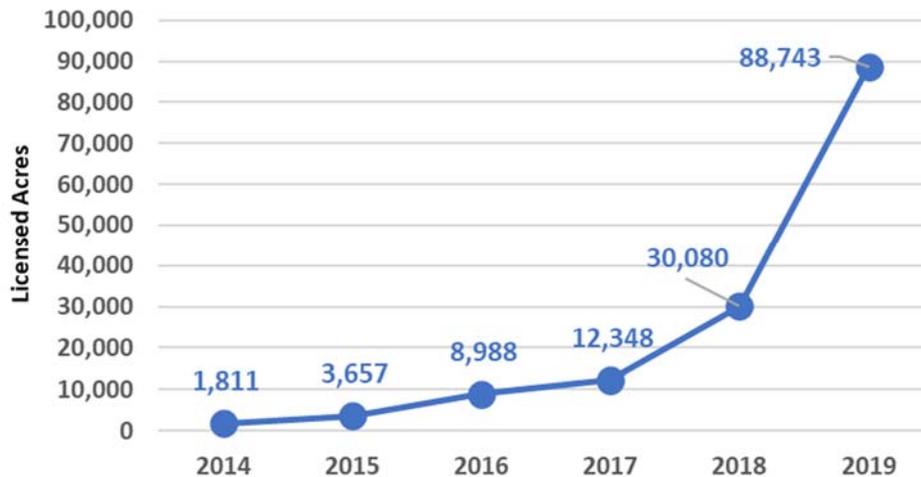
⁵ The CDA Industrial Hemp Program's regulatory role is limited to industrial hemp cultivation (growing) and certified seed program administration only. The program does not regulate the sale or distribution of industrial hemp. The Colorado Department of Public Health & Environment ("CDPHE"), pursuant 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

⁶ Hemp FAQ: <https://drive.google.com/file/d/1UTKiORSQUYANd0Q9TAePkBk07jhXWdda/view>

In late 2019, CDA launched 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 the community of hemp cultivators and ancillary business operators 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 has grown exponentially, as illustrated in Figure 1. Colorado anticipates a continued high rate of hemp production growth in the coming years, following approval of the Plan.

Figure 1.
Colorado Acres Registered for Hemp Cultivation



As the first state to establish a hemp industry regulatory structure, Colorado quickly grew into the state with the largest hemp cultivation acreage in the nation. Colorado will continue to be a national leader in innovative hemp policy and industry performance by combining our first-mover advantage with our extensive experience regulating, through distinct channels, the industrial hemp and legal marijuana industries.

The table below, Figure 2, provides information on CDA Industrial 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 acreage. CDA has received approval from Colorado’s Joint Budget Committee to increase CDA’s spending authority starting in fiscal year 2021 (FY 2020-2021). The request gained approval from the legislature and is now awaiting Governor Polis’ signature. As of June 16, 2020 it is expected to be signed and passed. CDA will continue to grow the regulatory program to scale with the industry.

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

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

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’ stated priority for Colorado to remain a driving force in hemp production,⁷ CDA developed a statewide partnership known as CHAMP in June 2019.

CHAMP represents a broad stakeholder effort. CHAMP includes 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 experts. Together this group of stakeholders is developing 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 is 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 industrial hemp topics. Ultimately, the resulting policy recommendations presented in this Plan, and in the forthcoming CHAMP Report, will outline state ambitions for the hemp industry, representing a consensus of the largest gathering of hemp industry and government stakeholders held in any state to date.

⁷ <https://www.colorado.gov/pacific/agplants/champ-initiative>

Colorado State Hemp Plan for USDA

The 2018 Farm Bill and the IFR require each state that desires to have primary regulatory authority over the production of hemp within its state to submit a management plan to USDA that outlines how the state will regulate various aspects of hemp cultivation. After enactment of the 2018 Farm Bill, USDA published nine requirements for states that intend to develop an industrial hemp regulatory program.⁸ In October 2019, USDA issued the IFR to further specify the requirements for state hemp plans.

This section describes how the state of Colorado intends to implement the IFR 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 November 1, 2020 and are intended to govern Colorado's industrial hemp industry beginning with the 2021 growing season. Bold text in the sections below represents language directly from the IFR.

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

The first requirement presented by the USDA IFR, which is set forth at 7 CFR § 990.3(a)(1) and is further described in the IFR summary in Section II.A. (*State and Tribal Plans; Land Used for Production*), relates to the states' 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:

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.

7 CFR § 990.3(a)(1) (84 Fed. Reg. 221 p. 58556).

Colorado's Industrial Hemp Regulatory Act, C.R.S. § 35-61-101, *et seq.*, (2019), provides the Commissioner of Agriculture ("Commissioner") the authority to promulgate rules. (C.R.S. § 35-61-104(5)) The Commissioner's published Rules are codified at 8 Colo. Code Regs. 1203-23, *Rules Pertaining to the Administration and Enforcement of the Industrial Hemp Regulatory Program Act*.

⁸ <https://www.ams.usda.gov/sites/default/files/media/2018FarmBill.pdf>

As set forth in the following paragraphs, the Rules regarding registration require registrants to provide all information required in the IFR. 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).)

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.

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 industrial 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.⁹ This new, online registration process offers CDA the ability to provide real-time updates to USDA as required by the IFR 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 (*i.e.*, indoor or outdoor); and provide the intended seed variety and end use (*i.e.*, 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 IFR.

CDA maintains a database that contains all 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.

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 IFR'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 October 31, 2020. 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.

⁹ <https://www.colorado.gov/pacific/agplants/commercial-registration-application>

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

The sampling and testing rules are set forth in 7 CFR § 990.3(a)(2) and discussed in the IFR summary in Section II.B. (*Sampling and Testing for Delta-9 Tetrahydrocannabinol*).

A State or Tribal plan must include a procedure for accurate and effective sampling of all hemp produced, to include the requirements in this paragraph (a)(2).

7 CFR § 990.3(a)(2) (84 Fed. Reg. 221 p. 58556).

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

In 2019, CDA sampled 26.5 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;
- 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 1023-23, (Rules 4.1 and 4.2) (Appendix B p. B-5). CDA will enhance its well-developed inspection and sampling procedures to comply to the greatest extent practicable with the 100 percent testing requirements of the IFR.

CDA will continue to conduct sampling with its own staff, 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 maintain its current direct sampling rate of 20-30 percent of registrations during the 2020 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 seek to achieve representative sampling of all hemp lots, starting with the effective date of the plan in November 2020. To achieve this goal, CDA will seek a legislative amendment to authorize the Commissioner to promulgate rules to develop and implement a third-party, state-certified sampler accreditation program.

To acquire certification, an applicant will have to 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.

Once this program is operational, CDA will use third-party certified samplers to collect hemp samples on behalf of CDA and deliver them to eligible laboratories for THC testing. The sampler certification program will be offered 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. Certifications will be reviewed annually and will require applicants to pay an initial application fee or annual renewal fees to CDA.

As of June 16, 2020, there are two DEA-certified labs in Colorado listed on the USDA website.¹⁰ The CDA laboratory is currently ISO 17025 accredited (Appendix E) 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 will also create a state-certified laboratory THC testing program in partnership with the Colorado Department of Public Health and Environment (CDPHE).

CDPHE currently conducts a certification inspection program for THC testing laboratories for the Colorado Marijuana Enforcement Division (MED). Certified laboratory requirements under the MED and CDPHE laboratory certification program are described in 1 CCR 212-36-400, included in Appendix F (excerpts). This MED and CDPHE laboratory certification program will provide the basis for the CDA certified hemp laboratory testing program. A program overview of the MED/CDPHE Marijuana Testing Facility Certification program is attached in Appendix G.

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

¹⁰ https://www.ams.usda.gov/rules-regulations/hemp/dea-laboratories?field_state_tid=168

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

The existing CDPHE certification program for legal marijuana laboratories (Appendices F and G) is very similar in nature to the USDA's proposed Laboratory Approval Program described in the IFR. 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 are able to acquire certification to participate in the program. The state 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:

- **Approved laboratories**, which will have met all specific CDA requirements, including ISO 17025 accreditation and registration with DEA; and
- **Conditionally approved laboratories**, which will be laboratories that are already CDPHE-certified, and ISO 17025 accredited, or have met all CDA and CDPHE certification requirements, but have not received DEA certification.

It is CDA's intention to process all samples for testing through the CDA laboratory or approved laboratories, as described above, where practicable. However, given the current scale and expected growth of the industry in Colorado, relying on these facilities alone will likely be insufficient to reach the target of 100 percent testing coverage within the USDA-required timeline. Therefore, we plan 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 during the 2021 growing season.

At this time, CDPHE has certified 18 marijuana testing laboratories under existing law. CDA will consider these laboratories to be conditionally approved laboratories, pending their decision to obtain DEA certification.

As of the effective date of this hemp plan, all producers will be subject to state-certified sampling and testing programs. All samples will be collected by CDA field inspectors or approved state-certified samplers and delivered to an eligible approved or conditionally approved state-certified laboratory as described above.

All participating laboratories will report test results to CDA and USDA electronically in real time starting in the 2021 growing season.

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

(i) Within 15 days prior to the anticipated harvest of cannabis plants, a Federal, State, local, or Tribal law enforcement agency or other Federal, State or Tribal designated person shall collect samples from the flower material from such cannabis plants for delta-9 tetrahydrocannabinol concentration level testing as described in § 990.24 and § 990.25.

7 CFR § 990.3(a)(2)(i) (84 Fed. Reg. 221 p. 58556).

CDA's current Rule provides that “[a]t least 30 days prior to harvest, each Commercial Industrial Hemp Registrant shall file a Harvest Report, on a form provided by the Commissioner.” (Appendix B p. B-4, 8 CCR 1203-23 (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 has historically allowed CDA to dispatch field inspectors effectively and efficiently to rural and often remote areas of the state to collect samples within CDA requirements.

To achieve the most accurate testing results, CDA or a state-certified sampler shall schedule the testing date based on the producers' submitted Harvest Reports. CDA will schedule and conduct sampling within 15 days prior to the anticipated harvest date, per the IFR requirement described above, to the greatest extent practicable. Variables such as industry scale, weather, terrain, distance, and other factors may make it impossible to achieve this timeline, in which case CDA can assure USDA that all samples are collected within 30 days prior to harvest, as has been our previous practice.

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

- *Sampling is to be scheduled and completed within 15 days of expected harvest whenever possible and not more than 30 days from harvest;*
- *Registrants must have all files, including harvest report with map 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*
- *Inspectors will report any Registrant that fails to contact the inspector within 5 days of the inspector's initial contact with the Registrant to the Hemp Program Manager.*

Additionally, if a Registrant needs to amend a reported harvest date, 8 CCR 1203-23 (3.3.3) (Appendix B, p. B-4) 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 existing Rule will aid in compliance with the IFR testing requirements.

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

(ii) The method used for sampling from the flower material of the cannabis plant must be sufficient at a confidence level of 95 percent that no more than one percent (1%) of the plants in the lot would exceed the acceptable hemp THC level. The method used for sampling must ensure that a representative sample is collected that represents a homogeneous composition of the lot.

7 CFR § 990.3(a)(2)(ii) (84 Fed. Reg. 221 p. 58556).

The CDA Hemp Sampling Guidelines in Appendix D instruct sampling agents to collect a representative sample of each lot and to adjust their sampling density according to each field. Similar to the IFR, CDA currently requires at least one plant per acre, although that can vary by physical characteristics of each field.

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

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

(iv) Representatives of the sampling agency shall be provided with complete and unrestricted access during business hours to all hemp and other cannabis plants, whether growing or harvested, and 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)(iii) and (iv) (84 Fed. Reg. 221 p. 58556).

CDA, pursuant to its statutory authority to promulgate Rules to implement and administer its industrial hemp program, has adopted detailed Rules for site and THC inspections. These Rules are consistent with the IFR and provide CDA with the authority it needs to fully implement this provision of the IFR. For example, Rule 4.4 provides:

During the inspection, the Registrant or authorized representative shall be present at the growing operation. The Registrant or authorized representative shall 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

Industrial Hemp, and all documents and records pertaining to the Registrant's Industrial Hemp growing business.

8 CCR 1203-23 (Rule 4.4) (Appendix B, p. B-6).

The final sampling requirement in the IFR states, “**A producer shall not harvest the cannabis crop prior to samples being taken.**” 7 CFR § 990.3(a)(2)(v) (84 Fed. Reg. 221 p. 58556) (emphasis added).

CDA has proposed legislative changes to prohibit the harvest of any industrial hemp crop prior to sampling to make such activity a violation of law. This specification is currently implied in CDA Rule (8 CCR 1203-23(3.3), Appendix B, p.B-4), and will be explicitly required to align with the IFR.

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 IFR summary Section II.B. (*Sampling and Testing for Delta-9 Tetrahydrocannabinol*) requires 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 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 delta-9 tetrahydrocannabinolic acid (THC-A) in hemp into THC and the test result measures total available THC derived from the sum of the THC and THC-A content. Testing methodologies meeting these requirements include, but are not limited to, gas or liquid chromatography with detection. The total THC concentration level shall be determined and reported on a dry weight basis.

7 CFR § 990.3(a)(3) (84 Fed. Reg. 221 p. 58556-58557).

This Plan presents a robust set of protocols for meeting the testing requirements of the IFR. 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 industrial 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")," which is attached in 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)

as required in the IFR. The state-certified lab program also outlines approved testing methodologies (Appendix F, p. F-11 – F-14), and provides chain of custody and reporting requirements for THC content (Appendix F, p. F-17 – F-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 17 percent in 2019, 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. Lots tested and not certified by the DEA-registered laboratory at or below the acceptable hemp THC level may not be further handled, processed or enter the stream of commerce and the producer shall ensure the lot is disposed of in accordance with § 990.27.

7 CFR § 990.3(a)(3)(i)(84 Fed. Reg. 221 p. 58557).

Under CDA's current Rules, if an in-field sample tests non-compliant with THC between 0.3 percent and 1.0 percent, CDA may grant a waiver to an affected producer to allow a representative, homogenized post-harvest sample to be collected and tested for final determination if a full representation of the plant material intended for the stream of commerce is non-compliant. Eligibility for post-harvest testing will be restricted to producers that use varieties pre-approved by CDA, as indicated in their pre-planting report.¹¹ CDA requires pre-approval to restrict this program to seed varieties that are determined capable of producing compliant hemp. If this post-harvest sample tests below 0.3 percent THC, the result will supersede the prior test result and will be considered conclusive.

The Hemp Sampling Guidelines (Appendix D, p. D-5) describe detailed sample collection procedures for post-harvest sampling. These guidelines describe post-harvest sample preparation, handling, and testing requirements. Producers will be responsible for all post-harvest sampling and testing costs. By allowing for post-harvest 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 (i.e., after post-harvest sampling) tests higher than the acceptable hemp THC level but below 1.0 percent THC, CDA will issue an Options Letter (Appendix J) that describes the nature of the failure, informs the producer that CDA

¹¹ Crops produced with non-approved varieties will not qualify for post-harvest testing. The results of their pre-harvest in-field sampling and testing will be considered conclusive and final.

will notify the USDA of non-compliant hemp, and provides guidance on how to dispose of their hemp crop.

The Options Letter explicitly notes 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.

In the event destruction is required, 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 or utilized on site in a manner approved of and verified by the Commissioner" (Appendix B p. B-7, 8 CCR 1203-23, (Rule 5.2).) Approved disposal/utilization methods include disking the crop into the ground, mulching, composting, burning, and burying. These destruction methods are aligned with 21 CFR § 1317.15 and § 1317.90, which require that controlled substances be rendered non-recognizable and irretrievable, while keeping environmental considerations in mind.

If required, CDA will seek certification as a DEA Reverse Distributor. Where practicable, CDA will send state agents or law enforcement to oversee and confirm disposal compliance. CDA will reserve the option to verify compliant disposal via video or credible photo evidence submitted directly by producers.

CDA will adopt procedures via rulemaking requiring 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.

In the future, and if USDA rules permit, CDA and CDPHE intend to establish, by rule, a program to provide effective and safe processing and remediation of hemp material that tests between 0.3 percent and 1.0 percent for THC content, called the Hemp Value Retention program. This program is a future vision that will bring needed certainty and predictability to the industry while hemp genetics improve. It will drastically reduce the amount of product destruction and improve investment in all facets of the hemp industry. To be implemented, the Hemp Value Retention program will require cooperation from CDA, CDPHE, local government, law enforcement, and importantly, the USDA.

The Hemp Value Retention program would be supported by a supply chain tracking system with distributed ledger technology, such as blockchain or other system, that will ensure an uninterrupted chain of custody for all hemp produced in the Colorado Industrial Hemp Program. This tracking system is currently in development by CDA and the state Office of Information Technology (OIT). After implementation, CDA will have the capability to monitor, in real-time, the custody status of all hemp and hemp products throughout the entire supply chain.

If implemented in the future, the Hemp Value Retention program will offer two options for farmers to sell their products into a restricted processor pool and retain some value in the crops they produce that test conclusively between 0.3 percent and 1.0 percent THC at post-harvest: (1) an industrial processing channel; and (2) a THC remediation channel. Any hemp testing above 1.0 percent THC after post-harvest testing will require disposal.

In the industrial option, the crop may enter the stream of commerce limited to industrial uses, including plastics, textiles, building materials, or other uses that do not allow for human or animal consumption. In this case, material transferred to a specially licensed processor must be approved prior to leaving the registered land area and must be verified by CDA as destined for an industrial product processor. The harvest and transfer will be specially classified in the supply chain tracking system for enhanced monitoring. The processor will then provide CDA with a delivery confirmation to ensure the material reaches its intended destination.

In the remediation option, the crop may be sold to a specially licensed processor where the THC will be extracted and isolated through a chemical process for disposal or reverse distribution. CDA will monitor THC destruction according to DEA rule (21 CFR § 1317.15 and § 1317.90). The remaining plant compounds will only proceed along the supply chain for further processing upon receiving a compliant THC test result. All transfers to licensed remediation processors and all disposal activity will be closely monitored by CDA through the supply chain tracking system.

Any producers that enter the Hemp Value Retention program on a repeated basis, defined as three times in any five-year period, will be subject to penalty at the discretion of the Commissioner of Agriculture.

CDA will commence program scoping and rulemaking upon completion of the CHAMP initiative in fall 2020, where an implementation timeframe will be developed. The state expects implementation no earlier than the 2022 growing season, contingent on the implementation of the supply chain tracking system and discussions with USDA.

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)(84 Fed. Reg. 221 p. 58557) (emphasis added).

The CDA Hemp Sampling Guidelines, Appendix D, provides 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, p. D-4 – D-5) 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 sample during transfer to laboratory.

The IFR further defines requirements for THC testing procedures and measurement as:

Analytical testing for purposes of detecting the concentration levels of THC shall meet the following standards:

- (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) An effective disposal procedure for hemp plants that are produced that do not meet the requirements of this part. The procedure must be in accordance with DEA regulations.**
- (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)(84 Fed. Reg. 221 p.58557).

CDA will require in its Rules that hemp THC analysis be conducted at the CDA Biochemistry Laboratory where practicable. The CDA Laboratory currently has ISO 17025 accredited certification (Appendix E) and expects to acquire DEA certification in time for the 2021 growing season. Appendix I describes CDA Laboratory procedures for the THC testing process for hemp plant material, which conform with USDA requirements as they pertain to THC analysis.

The certification requirements in Appendix F and standard operating procedures in Appendix I will apply for all approved and conditionally approved state-certified laboratories used for hemp testing, including ISO 17025 accredited certification, reporting, and GC/FID or other similarly reliable testing methods.

The process laid out in the certification and testing procedures ensures 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 p. I-7) and all state certified laboratories (Appendix F p. F-17) must have compliant disposal procedures in place. All laboratories will retain the samples for up to one year and then grind the sample to a fine powder and mix with dirt, compost, and other refuse to render the sample unrecognizable and irretrievable as described in 21 CFR § 1317.15 and § 1317.90.

The CDA testing guidelines (Appendix I p. I-6) also 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 ensures 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. Disposal Notification – 7 CFR § 990.3(a)(4)

7 CFR § 990.3(a)(4), described in IFR Section II.C. (*Disposal of Non-Compliant Plants*), refers to disposal of non-compliant hemp and associated USDA notification and provides:

A State or Indian Tribe shall promptly notify the Administrator by certified mail or electronically of any occurrence of cannabis plants or plant material that do not meet the definition of hemp and attach the records demonstrating the appropriate disposal of all of those plants and materials in the lot from which the representative samples were taken.

7 CFR 990.3(a)(4)(84 Fed. Reg. 221 p. 58557).

Under Colorado's Rules, 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 this occurrence and provide documentation of crop destruction according to the Controlled Substances Act (CSA) and Drug Enforcement Administration (DEA) rules.

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.

5. Enforcement – 7 CFR § 990.3(a)(5)

7 CFR § 990.3(a)(5), described in IFR summary Section II.D. (*Compliance with Enforcement Procedures Including 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 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**

7 CFR § 990.6(b)(84 Fed. Reg. 221 p.58558) (summary).

The Commissioner may deny, revoke, or suspend a hemp registration if a producer violates any provision of the Act or the Rules promulgated pursuant to the Act. (Section 35-61-107).

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 industrial 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 (6) (Appendix B p. B-7).

The Act and the Rules promulgated pursuant to the Act provide the Commissioner with authority to comply with the enforcement procedures of § 990.6. CDA will define negligent violations and culpable violations in the Rule and adopt regulations providing for the correction of negligent violations per USDA IFR requirements. All penalties and remedies are assigned at the discretion of the Commissioner based on mitigating and aggravating factors.

By rule, CDA will establish that failure to provide information or failure to provide correct information will constitute a negligent violation of the Act and the Rules. The Rule will provide that such offenders will, within five days of notification of the infraction, be able to provide any omitted information from their registrations or production information or correct inaccurate information in their registrations or production information.

Under proposed CDA Rules, a hemp crop will be deemed non-compliant *and* negligent with respect to THC content when a homogenized post-harvest sample tests above 1.0 percent THC (if eligible), or when a producer waives their option of post-harvest testing (if eligible) following an in-field sample test result greater than 1.0 percent. This 1.0 percent level reflects CDA's historically successful approach to handling negligent violations, which serves to balance the need to protect public health with the goal of facilitating the development of a healthy hemp industry and the current lack of stable genetics.

According to CDA analysis included in comments submitted on the IFR, if the 0.5 percent negligence threshold and 100 percent testing requirements in the IFR had been applied to Colorado's industrial hemp program in 2019, Colorado would have been required to issue over 200 negligent violations to over 150 unique producers (13 percent of total). At Colorado's 1.0 percent threshold, there would be only 47 violations (3 percent of total). CDA cannot in good faith issue negligent violations to that large a share of producers given the known current genetic instability in hemp. Please see Appendix K for excerpts from Colorado's IFR comments that provide more detail.

If the crop conclusively tests greater than 1.0 percent THC content in either of these scenarios, the producer may be charged with committing a negligent violation of the Act for producing a non-compliant crop. Test results between 0.3 and 1.0 percent THC shall result in crop disposal¹² according to Appendix J, but not an allegation of a negligent violation of the Act.

¹² If allowed in the future under USDA rules, the hemp value retention program could be elected by the producer at this point, avoiding disposal.

CDA has several options in place for hemp cultivated with conclusively determined non-compliant THC levels, included in Appendix J. This program provides a plan for non-compliant plants with a maximum threshold level of 1.0 percent THC. The corrective action plan includes the requirement to dispose of the hemp material on site or in a manner approved by the Commissioner.

Currently, any violations that would constitute grounds for alleging a negligent violation of the Act and the Rules are noted in the producer's file and taken into consideration for future risk-based compliance inspections. A negligent violation originates when the CDA acknowledges and notifies the producer of a conclusive and final test result of non-compliant hemp with over 1.0 percent THC content. 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 will adopt rules setting forth specific corrective action for negligent violations that comply with 7 CFR § 990.6(c). Each corrective action issued to a producer will include:

1. A reasonable date by which the producer shall correct the negligent violation (currently 5 days).
2. A requirement that the producer shall periodically report to CDA on its compliance for a period of 2 years following the negligent violation.
3. The producer shall not be subject to any criminal enforcement action pertaining to items 1); and 2) above and upon compliance with items 1); and 2) above.
4. 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.
5. CDA will conduct periodic inspections to ensure compliance with the corrective action plan.

CDA will adopt rules setting forth specific provisions addressing the corrective action taken against a producer who has made 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 shall report the producer to the U.S. and Colorado Attorneys General.

CDA will advance a legislative amendment to authorize the Commissioner to require registrants to submit criminal background checks as a condition of registration per the terms in the IFR. Starting in the 2021 planting season, all program registrants will be required to obtain and submit an FBI Identity History Summary Check¹³ obtained from the FBI directly or through an approved Colorado Bureau of Investigations provider.¹⁴ This criminal background check must be submitted and renewed with registration application.

Per the IFR, registration in the hemp program will not be permitted for any key business participant¹⁵ 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 business 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.

¹³ <https://www.fbi.gov/services/cjis/identity-history-summary-checks>

¹⁴ <https://www.colorado.gov/pacific/cbi/employment-background-checks>

¹⁵ A key participant is defined as an owner-operator or any shareholder of 10 percent or more in a business, or any employee that makes operational or management decisions that directly impact the business.

6. Inspections – 7 CFR § 990.3(a)(6)

7 CFR § 990.3(a)(6), described in IFR summary Section II.D. (*Compliance with Enforcement Procedures Including 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 sample of producers to verify that hemp is not produced in violation of this part. These procedures must enforce the terms of violations as stated in the Act and defined under § 990.6.

7 CFR § 990.3(a)(6)(84 Fed. Reg. 221 p. 58557).

Rules for hemp inspections are included in 8 CCR 1203-23(4) (Appendix B p. B-5). CDA will apply both a random and a risk-based sampling approach to general compliance inspections. Each year, CDA will randomly select approximately 25 percent of registrants in good standing for a general compliance inspection, which also includes THC sampling. As shown on page 9, above, under CDA's current protocols registrants assigned high-risk status are placed on an enhanced inspection schedule.

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 with complete and unrestricted access to all industrial hemp plants and seeds whether growing or harvested, all land, buildings and other structures used for the cultivation and storage of industrial hemp, and all documents and records pertaining to the registrant's industrial 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)(7)

7 CFR § 990.3(a)(7) and IFR Section II.E. (*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 information described in § 990.70¹⁶ to the Secretary not more than 30 days after the date on which the information is received. 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)(7)(84 Fed. Reg. 221 p. 58557).

Under Colorado’s current 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 on 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 for additional information).

Pursuant to the requirement in 7 CFR § 990.3(a)(7), 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.

¹⁶ 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)(8)

7 CFR § 990.3(a)(8), described in IFR summary Section II.F. (*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 (1) through (7) of this section.

7 CFR § 990.3(a)(8)(84 Fed. Reg. 221 p. 58557).

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

In fiscal year 2018-2019, CDA had more than ten full time equivalent (FTE) staff readily available, including 4.6 dedicated FTEs within the hemp program itself, 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.

Additionally, in 2019, the Colorado General Assembly granted increased spending authority starting in 2020 to ensure CDA is able to meet regulatory and enforcement demand and to allow the Plant Industry Division Hemp Regulatory Program to spend the registration fees it collects. Program expenditures will increase in 2020 to include additional administration, inspection and testing staff. The program was initially funded via a one-time transfer of other tax funds and is now demonstrating it can be largely funded through 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)(9)

7 CFR § 990.3(a)(9) requires:

The State or Tribal plan must include a procedure to share information with USDA to support the information sharing requirements in 7 U.S.C. 1639q(d).¹⁷ The procedure must include the requirements described in this paragraph (a)(9).

7 CFR § 990.3(a)(9)(84 Fed. Reg. 221 p. 58557).

The information described in 7 U.S.C. 1639q(d) is collected in each registration application for both individuals and business entities. The CDA Registration Application is attached in Appendix C, and all applicants submit full contact information and a legal description of the land (Township/Range/Section).

As mentioned 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 permit conditional access to the database, upon request, to the USDA; as well as to relevant law enforcement agencies pending approval of confidentiality procedures. Once operational, CDA will also grant selected access to the supply chain tracking system on an as-requested basis.

Pursuant to the requirement in 7 CFR § 990.70(a)(9), CDA will submit the information described in 7 U.S.C. 1639q(d) to the Secretary in a monthly report following the format of USDA document OMB No. 0581-NEW, AMS-23 (10/2019). This report will be automatically generated by CDA's data management and reporting system and will include all new or revised hemp producer registration information, including contact information and legal descriptions of the land used for hemp production.

¹⁷ **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—

(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.